appendix for Δ twp [redacted] of Randolph
(on COATH transfer)

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SUPERIOR COURT OF
NEW JERSEY

APPELLATE DIVISION

DOCKET NO. L-6001-78 P.W.
L-59128-85 P.W.

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| MORRIS COUNTY FAIR HOUSING COUNCIL, et. al. | : | CIVIL ACTION |
| Plaintiffs | : | ON MOTION FOR LEAVE TO APPEAL FROM INTERLOCUTORY |
| v. | : | ORDER OF SUPERIOR COURT, |
| BOONTON TOWNSHIP, et. al. | | LAW DIVISION, MORRIS COUNTY/ MIDDLESEX COUNTY (MOUNT |
| Defendants | : | LAUREL II LITIGATION) |
| RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX, a New Jersey Corporation | : | SAT BELOW |
| Plaintiff | : | HONORABLE STEPHEN SKILLMAN |
| v. | | |
| THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF RANDOLPH, et. al. | : | |

# APPENDIX FOR DEFENDANT TOWNSHIP OF RANDOLPH, RANDOLPH TOWNSHIP PLANNING BOARD, RANDOLPH TOWNSHIP MUNICIPAL UTILITIES AUTHORITY AND RANDOLPH TOWNSHIP BOARD OF ADJUSTMENT

EDWARD J. BUZAK, ESQ.
Montville Office Park
150 River Road, A-4
Montville, New Jersey 07045

ATTORNEY(S) FOR: Defendants Township of Randolph, Randolph Township Planning Board and Randolph Township Municipal Utilities Authority

KENNETH H. GINSBERG, ESQ.
210 West Blackwell Street
PO Box 406
Dover, New Jersey 07801-0406

ATTORNEY(S) FOR: Defendant Randolph Township Board of Adjustment

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ALFRED A. SLOCUM
PUBLIC ADVOCATE OF NEW JERSEY
DEPARTMENT OF THE PUBLIC ADVOCATE
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Attorney for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX/MORRIS COUNTIES
DOCKET NOS. L 6001-78 P.W.
L 59128-85 P.W.

| | |
|---|---|
| MORRIS COUNTY FAIR HOUSING COUNCIL, et al., | |
| Plaintiffs, | |
| vs. | Civil Action (Mt. Laurel) |
| BOONTON TOWNSHIP, et al., | |
| Defendants, | |
| and Consolidated Cases, | |
| RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX, | ORDER FOR JOINDER OF ADDITIONAL PARTIES |
| Plaintiff, | |
| vs. | |
| BOARD OF ADJUSTMENT OF THE TOWNSHIP OF RANDOLPH, et al., | |
| Defendants. | |

This matter having been heard by this Court on May 14, 1986, on the application of plaintiffs Morris County Fair Housing Council et al. and Randolph Mountain Industrial Complex to join additional parties, and in the presence of counsel for plaintiffs Morris County Fair Housing Council et al., plaintiff Randolph Mountain Industrial Complex, defendant Township of Denville, defendant Denville Township Planning Board, defendant Township of Randolph, Denville Township Board of Adjustment, defendant Randolph Township Board of Adjustment, (Randolph Township Planning Board) Randolph Township Municipal Utilities Authority, and Rockaway Valley Regional Sewerage Authority; (the motion to join Rockaway Valley Sewerage Authority having been withdrawn on the record;) and

The Court having considered the briefs and arguments of counsel; and

The Court having determined, for the reasons set forth in its oral opinion, that the applications were timely and satisfied the requirement of R. 1:6, that the Court has the jurisdiction and power to grant relief against the Denville Township Board of Adjustment, Randolph Township Planning Board, Randolph Township Board of Adjustment, and Randolph Township Municipal Utilities Authority, and that the application to join these parties should be granted,

It is on this 29th day of May, 1986, hereby ORDERED:

1. The Denville Township Board of Adjustment, Randolph Township Planning Board, Randolph Township Board of Adjustment, and Randolph Township Municipal Utililties Authority are joined as parties in Morris County Fair Housing Council et al. v. Boonton Township et al. for the limited purpose of binding them

to any order that this Court may grant in connection with imposition of conditions upon the transfer of so much of this case as concerns Denville and Randolph Townships to the Council on Affordable Housing.

2. The Denville Township Planning Board is a defendant in a case consolidated with Morris County Fair Housing Council et al v. Boonton Township et al. and is thus already properly before the Court in connection with any orders which the Court may order in connection with imposition of conditions upon transfer to the Council on Affordable Housing.

3. The Randolph Township Municipal Utilities Authority is joined as a party in Randolph Mountain Industrial Complex v. Board of Adjustment of the Township of Randolph for the limited purpose of binding it to any order that this Court may issue in connection with imposition of conditions upon transfer of this case to the Council on Affordable Housing.

4. (a) Plaintiffs in the above entitled matters shall file and serve any additional briefs or other papers in support of applications for imposition of conditions on or before May 23, 1986. These papers shall include all additional exhibits and affidavits setting forth in full all testimony upon which plaintiffs intend to rely.

(b) Parties opposing imposition of conditions upon transfer shall file and serve all briefs and other papers on or before June 11, 1986. These papers shall include all exhibits and affidavits setting forth in full all testimony upon which these parties intend to rely. If any party opposing imposition

of conditions desires to present oral testimony of any witness, it shall file and serve, in addition to the affidavit setting forth the testimony in full, a written statement setting forth with specificity its reasons.

(c) Plaintiffs shall file and serve any briefs or other papers in reply on or before June 18, 1986. Such papers shall include all exhibits and affidavits setting forth in full the testimony of all witness upon which plaintiffs intend to rely in rebuttal. If any plaintiff seeks to cross-examine any defense witness, it shall so state. If any plaintiff seeks to present oral testimony, it shall file and serve, in addition to an affidavit setting forth that testimony in full, a written statement setting forth with specificity its reasons.

5. Briefs by all parties on the issue of whether, and in what manner, notice should be given to nonparties who may indirectly be affected by any orders that this Court might issue in connection with imposition of conditions upon transfer, shall be served and filed on or before May 23, 1986.

HONORABLE STEPHEN SKILLMAN,

Dated: 5/29/86

ALFRED A. SLOCUM, PUBLIC ADVOCATE
DEPARTMENT OF THE PUBLIC ADVOCATE
BY: STEPHEN EISDORFER
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CN 850
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/
MORRIS COUNTIES
DOCKET NO. L-6001-78 P.W.

| | | |
|---|---|---|
| MORRIS COUNTY FAIR HOUSING COUNCIL, et al. | : | Civil Action |
| | : | (Mt. Laurel Action) |
| Plaintiffs, | : | |
| | : | NOTICE OF |
| vs. | : | APPLICATION FOR CONDITIONS |
| | : | UPON TRANSFER TO THE COUNCIL |
| BOONTON TOWNSHIP, et al., | : | ON AFFORDABLE HOUSING |
| | : | |
| Defendants, | : | |
| | : | |
| and consolidated cases. | : | |

To: HON. STEPHEN SKILLMAN, J.S.C.
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08903

EDWARD BUZAK, ESQ.
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57 Old Bloomfield Avenue
Mountain Lakes, New Jersey 07046

CLERK OF THE COURT
Superior Court of New Jersey
Law Division
Richard J. Hughes Complex
Trenton, New Jersey 08625

PLEASE TAKE NOTICE that plaintiffs Morris County Fair Housing Council et al. will apply to the Law Division, Middlesex County at the Middlesex County Court House in New Brunswick, New Jersey at such time and date as the Court may designate for an order:

1) placing conditions upon transfer of this litigation, insofar as it concerns Randolph Township, to the Council on Affordable Housing;

2) joining the Randolph Township Planning Board of Adjustment, Randolph Township Municipal Utilities Authority, and Rockaway Valley Regional Sewerage Authority as parties to this proceeding;

3) issuing such further interlocutory restraints against the parties pending final disposition of this matter by the Council on Affordable Housing as may be necessary or desirable and appropriate to preserve the ability of Randolph Township to meet its constitutional obligations to provide sufficient realistic housing opportunities for safe, decent housing affordable to lower income households to meet the needs of its indigenous poor and its fair share of the needs of the region's poor.

ALFRED A. SLOCUM
Public Advocate of New Jersey

By: Stephen Eisdorfer
STEPHEN EISDORFER
Assistant Deputy Public Advocate

March 21, 1986

CERTIFICATION

I certify that the original of the foregoing notice of application has been filed with the Clerk of Superior Court, Trenton, New Jersey, and a copy with the Honorable Stephen Skillman, J.S.C., Middlesex County Court House, New Brunswick, New, Jersey.

STEPHEN EISDORFER

rec'd 4-21-86

State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY
CN 850
TRENTON, NEW JERSEY 08625

ALFRED A. SLOCUM
PUBLIC ADVOCATE

RICHARD E. SHAPIRO
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TEL: 609-292-1693

April 17, 1986

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

Re: Morris County Fair Housing Council v. Boonton Township
Docket No. L-6001-78 P.W. (Randolph Township)

Dear Judge Skillman:

This brief is submitted by plaintiffs Morris County Fair Housing Council et al. in support of their application for imposition of conditions upon the transfer of this case involving Randolph Township to the Council on Affordable Housing. Plaintiffs seek interlocutory restraints against Randolph Township and also against the Rockaway Valley Regional Sewerage Authority, Randolph Township Municipal Utilities Authority, the Randolph Township Planning Board and the Randolph Township Zoning Board of Adjustment. Pursuant to the procedures set forth in Hills Development Corporation v. Township of Bernards, Docket No. A-122-85 (February 20, 1986) (hereinafter Hills Development), plaintiffs seek through such restraints to preserve "scarce resources" pending the final disposition of this matter by the

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Council on Affordable Housing so as to "protect and assure the municipality's future ability to comply with its Mount Laurel obligations." Hills Development, slip op. at 88.

Specifically, plaintiffs seek preservation of the following resources:

1. Vacant developable land

2. Public sewage treatment

Randolph Township has previously represented to the Court that the limited availability of each of these resources places constraints upon the municipality's ability to satisfy its constitutional obligations under the Mt. Laurel decisions. To preserve these resources, plaintiffs seek imposition of the following conditions upon transfer of this case to the Council on Affordable Housing:

1. Neither preliminary nor final approval may be given to any site plan or subdivision application for development of vacant land for any purpose (including, but not limited to, residential, commercial, industrial, public or nonprofit uses) or for redevelopment or conversion of any existing vacant or unused land or structures.

2. No additional connections into the public sanitary sewage collection system or increased usage by any existing user may be permitted, except by order of this Court to meet compelling health or safety needs of residents of dwelling units which were existing and occupied as of the date of application by

the municipality for transfer of this case to the Council on Affordable Housing.

3. The Rockaway Valley Regional Sewerage Authority, if it does not adopt a regionwide system giving preference to residential developments which include lower income housing, must preserve a reasonable proportion of its sewerage capacity for the development of low and moderate income housing in Denville Township.

4. Exceptions may be granted from any of the above conditions only for residential developments in which at least 20 percent of the dwelling units are affordable to, and reserved for, low and moderate income households, of which at least half of the dwelling units are affordable to, and reserved for, low income households.

To the extent that effectuation of these conditions requires the action of public entities other than the Township of Randolph, plaintiffs seek to join those entities as parties to this litigation and seek the imposition of interlocutory restraints against those entities.

Plaintiffs will first set forth the legal standards to be applied in this case and then will address each of the proposed conditions in turn.

## I. THE COURTS HAVE THE POWER AND DUTY TO IMPOSE CONDITIONS UPON TRANSFER OF A CASE TO THE COUNCIL ON AFFORDABLE HOUSING

In Hills Development, the Supreme Court held that L. 1985 c. 222 §16(a) generally requires that pending exclusionary zoning cases be transferred to the Council on Affordable Housing on the application of any party. The Court, however, held that one exception to this general rule is constitutionally mandated:

> There is one possible consequence of transfer, however, which we believe the Legislature did not foresee, one that it would have intended to constitute "manifest injustice," a consequence that would probably be constitutionally impermissible. We refer to a transfer that does not simply delay the creation of a reasonable likelihood of lower income housing but renders it practically impossible. That result would warrant, indeed, require, denial of transfer. Hills Development, slip op. at 77.

The Court, however, noted that the scope of this exception was limited by the fact that the courts (and ultimately the Council itself, when it is fully operational) have broad powers to impose conditions upon municipalities that seek to invoke the jurisdiction of the Council on Affordable Housing. Specifically the Court held that the trial courts have the power and duty to impose conditions so as to "protect and assure the municipality's future ability to comply with its Mount Laurel obligations" during the pendency of proceedings. Id. at 86-88.

Under Hills Development, a trial court has the power and duty to impose conditions upon transfer if it finds that three criteria are met:

(1) There exists a scarcity of resources that may potentially limit the ability of the municipality to satisfy its constitutional obligations;

(2) It is "necessary or desirable" to preserve those "scarce resources" to "protect and assure the municipality's future ability to comply with its Mount Laurel obligations.";

(3) It is "appropriate" for the court to impose conditions to preserve those "scarce resources."

We shall first analyze the legal significance of each of these criteria and then demonstrate that they require the imposition of conditions in the present case.

1. Scarce Resources. The purpose of the imposition of conditions upon municipalities seeking to invoke the jurisdiction of the Council on Affordable Housing is to "preserve 'scarce resources.'" Hills Development, slip op. at 86. The Court has defined "scarce resources" as "those resources that will probably be essential to the satisfaction of [the municipality's] Mount Laurel obligation." Id. The Court gave examples of the types of "scarce resources" it had in mind: vacant land, sewerage capacity, transportation facilities, water supply and "any one of the innumerable public improvements that are necessary to the support of housing but are limited in supply." Id. at 86-87.

Availability of resources cannot be evaluated in the abstract, but only in terms of what is likely to be necessary to enable a particular municipality to satisfy its housing obligations under the Mount Laurel decisions. Until the Council on Affordable Housing itself formulates a statewide methodology for determining municipal housing obligations, Hills Development, slip op. at 40, the courts must determine for themselves what the municipality's obligation is and whether there is any likelihood that the scarcity of necessary resources may impair the ability of the municipality to satisfy that obligation. The Supreme Court specifically noted that one of the signal achievements of the trial courts under Mount Laurel II was the development of a methodology for determining the housing obligations of municipality that is both generally consistent throughout the state and satisfies the requirements of the constitution. Id. at 91. See AMG Realty v. Township of Warren, 207 N.J. Super. 388 (Law Div. 1984); J. W. Field Co. v. Township of Franklin, 206 N.J. 165 (Law Div. 1985); Morris County Fair Housing Council v. Boonton Township, Docket No. L-6001-78 P.W. (Law Div., Middlesex/Morris Ctys., Jan. 14, 1985). In determining whether the scarcity of resources may impair the ability of a municipality to satisfy its Mount Laurel obligations, the courts should look to determinations of municipal housing obligations made under this methodology.

Furthermore, in evaluating the possible scarcity of resources affecting a particular municipality, the factual

representations previously made by the municipality concerning shortages of resources that place constraints upon its ability to provide lower income housing are highly probative and, in some cases, dispositive.

2. Necessity or Desirability of Imposing Conditions. The Court is required to determine if the imposition of conditions is "necessary or desirable" to "protect and assure the municipality's future ability to comply with a Mount Laurel obligation." Id. at 88. In making this determination, the Court must consider a variety of factors. Id. The Court must determine whether the availability of any necessary resource is likely to diminish during the pendency of the proceedings before the Council on Affordable Housing and whether the diminution "is likely to have a substantial adverse impact on the ability of the municipality to provide lower income housing in the future." Id. at 87. The Court may also properly assess whether the municipality will "actively try to preserve" the necessary resources. Id. at 88-89. In considering this factor, the Court must also determine whether such municipal efforts are sufficiently likely to assure the provision of "realistic" opportunities for safe, decent housing affordable to lower income households and not mere hypothetical or theoretical opportunities. Mount Laurel II, 92 N.J. at 206-61.

Here, too, the previous factual representations previously made by the municipality concerning shortages of resources that

place constraints upon its ability to provide lower income housing are highly probative and perhaps dispositve.

3. Appropriateness of Conditions. Finally, the Court must determine what conditions are appropriate to protect the scarce resource whose preservation has been determined to be necessary or desirable. Hills Development, slip op. at 87. The Supreme Court has ruled that "appropriate" in this context "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 conditions." Id. at 87-88.

If the Court determines that it is "necessary or desirable" to preserve "scarce resources" but yet concludes that it is not practical to do, then the Court is constitutionally obliged to deny transfer of the case to the Council on Affordable Housing. Id. at 77. To avoid this outcome, the trial courts must be deemed to have the broadest possible power to grant interlocutory relief to preserve "scarce resources." This broad power necessarily includes the power to grant both relief against the municipality and against third parties. This view is consonant with previous holdings by the various Mount Laurel courts that they have the authority to grant interlocutory restraints against third parties to preserve their own power to vindicate the constitutional rights of lower income persons. See, e.g., Morris County Fair Housing Council v. Boonton Township, Docket No. L-6001-78 P.W. (Law Div., Middlesex/Morris Ctys., July 5, 1984)

(interlocutory restraints against preliminary approval of site plans and subdivision applications by nonparty municipal planning board and board of adjustment in the face of municipal contentions that shortage of vacant developable land limited ability of municipality to satisfy housing obligations); Davis v. Mt. Laurel Municipal Utilities Authority, Docket No. C-635 (Ch. Div., Atlantic/Burlington Ctys., March 8, 1983) (interlocutory restraints against granting sewer connections by nonparty municipal utilities authority in the face of evidence that shortage of sewerage would limit ability of municipality to satisfy housing obligations). It is an application of the well-established principle that courts have broad powers to grant ancillary relief against third parties to preserve their jurisdiction and their power to effectuate their decrees. See e.g., Fidelity Union Trust Co. v. Union Cemetary Association, 13 N.J. Eq. 254 (Ch. 1943), aff'd 134 N.J. Eq. 539 (Ct. of Err. & App. 1944).

Under R. 4:30, additional parties may be joined at any time on the motion of any party or the court itself. See Schnitzer and Wildstein, New Jersey Rules Services IV-1060-1063 (Sp. Reprint Ed. 1982). In appropriate cases, it is thus proper for the Court to join additional parties and enter interlocutory restraints agianst them to preserve "scarce resources."

In sum, where it is shown that (1) scarcity of resources may potentially limit the ability of the municipality to satisfy its constitutional obligations, (2) it is "necessary or desirable"

that these resources be preserved, and (3) it is "appropriate" for the court to impose conditions to preserve these resources, the Court has both the power and duty to impose such conditions. As we will explain in the next section, the facts of this case provide a compelling basis for imposition of the conditions requested by plaintiffs.

## II. CIRCUMSTANCES IN RANDOLPH TOWNSHIP REQUIRE IMPOSITION OF CONDITIONS UPON DEVELOPMENT OF VACANT LAND AND PUBLIC SEWER USAGE

Randolph has represented to the Court that the scarcity of two types of resources limit its ability to provide realistic opportunities for lower income housing. Each of these "scarce resources"[1] is, according to documents filed by Randolph, either

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1. Plaintiffs do not concede that all of these resources are necessary, or even germane, to the provision of lower income housing. Nor do plaintiffs necessarily agree that these resources are limited in the manner that defendant claims. Plaintiffs expressly reserve the right to challenge these views in subsequent proceedings.

Nonetheless, for purposes of this proceeding, it is appropriate for this Court to accept at face value defendant's representations as to the nature and extent of the limitations upon its ability to provide lower income housing and the expert testimony which defendant has offered in support of these claims. The Court must assume that these representations were made in good faith before this Court, that they embody the municipality's best judgment as to the extent of its resources, and that the municipality will make these same representations to the Council on Affordable Housing.

In addition, the Court's obligation in this proceeding is to determine what conditions are "necessary or desirable" to "protect and assure the ability of the municipality to satisfy its Mt. Laurel obligations." Hills Development, slip op. at 86-

(Footnote continues on next page)

already unavailable in sufficient supply to enable the municipality to satisfy its housing obligation as determined by this Court or is likely to diminish in its availability in the near future. Thus, it is "necessary or desirable" to preserve these resources to enable the municipality to satisfy its housing obligations. Finally, it is feasible and within the power of the Court to impose effective restraints to preserve these scarce resources, either through the imposition of conditions on Randolph or through restraints against third parties.

We address each of these "scarce resources" in turn.

1. Vacant Developable Land - According to documents prepared by municipal planner Adrian Humbert which Randolph has filed with the Court, there are only approximately 900 acres of vacant land in the "growth areas" as mapped by the State Development Guide Plan. (Humbert Fair Share Report, Oct. 1983; Exhibit A). Of this area, only approximately 400 acres are

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(Footnote continued from previous page)
87. In such a determination, the risks all lie on the side of preserving too little, of permitting essential resources to be exhausted or dissipated during the pendency of proceedings before the Council on Affordable Housing, and thereby denying low income persons the opportunity to vindicate their constitutional rights. Under such circumstances, it is proper for the Court to err, if err it must, on the side of protecting too much rather than protecting too little. It is therefore appropriate for the Court to accept for purposes of this proceeding the representations of the municipality as the scarcity of essential resources, even if these representations ultimately prove to be somewhat exaggerated.

vacant and developable (Id.) In his deposition, Mr. Humbert estimated that providing 719 units of lower income housing -- which he estimated to be Randolph's fair share -- would require 500 to 1000 acres of vacant developable land. (Humbert Dep. at 53, Exhibit B).[2]

Court-appointed expert Carla Lerman, using the methodology approved in AMG Realty v. Township of Warren, 207 N.J. Super. 388 (Law Div. 1984), determined that Randolph's lower income housing obligation is 872 units. Adjusted in accordance with this Court's decision in Morris County Fair Housing Council v. Boonton Township, Docket No. L-6001-78 P.W. (Jan. 14, 1985), this methodology results in a lower income housing obligation of 840 units.[3] If this need were to be addressed through inclusionary zoning on terms typically utilized in Morris County (10 dwelling units/acre with 20 percent of the units set aside for lower income households), approximately 420 acres of vacant developable land would be required.

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2. In answers to interrogatories, Randolph statedin 1983 that there were 980 vacant acres in the SDGP growth area, of which 484 acres are developable. Randolph Answers to Plaintiffs' Third Set of Interrogatories, question #5.

3. This Court held that indigenous need should be calculated on the assumption that 67.5% of substandard and overcrowded units are occupied by lower income households, rather than 82%, as used in Ms. Lerman's report. This reduces Randolph's indigenous need from 180 units to 148 units, and its total present and prospective need from 872 units to 840 units.

Thus, based on the analysis of Randolph's planner, vacant developable land is a scarce resource in Randolph. Any significant diminution in the availability of vacant developable land would impair the ability of Randolph to satisfy its Mt. Laurel obligations.

Furthermore, the available vacant developable land in Randolph continues to diminish. Although development in Randolph has been sharply limited by the court-imposed ban on new connections with the public sewer system (Affidavit of Thorsten Nelson, Exhibit C), building permits were granted for 107 new single family units in 1984, the last year for which full data is available (N.J. Dept. of Labor, N.J. Residential Building Permits - 1984 Summary, p. 32, Exhibit D). In 1985, for which only partial data is available at this time, building permits were granted for another 107 dwelling units (N.J. Dept. of Labor, Residential Building Permits, Feb., July, Aug., Nov. 1985, Exhibit E). If the sewer connection ban is lifted, as is likely in the next several months, development can be expected to accelerate rapidly.

Thus, in light of Randolph's factual representations to the Court, conditions and restraints on development of vacant land must be imposed to preserve and assure the ability of the municipality to satisfy its Mt. Laurel obligations. The Court can preserve this scarce resource only by enjoining the issuance of preliminary and final site plan approvals and subdivision approvals.

2. Public Sewage Treatment - Randolph has represented to this Court that scarcities in sewage treatment facilities limit its ability to provide housing opportunities for lower income persons. (Affidavit of Thorsten Nelson, Exhibit C).

The portion of Randolph located in the SDGP growth area is in the service area of the Rockaway Valley Regional Sewerage Authority (RVRSA). RVRSA has recently constructed a new 12 million gallon per day (mgd) sewage treatment plan that will serve nine municipalities, including Randolph. The new RVRSA plant was designed to accommodate population growth permitted by the zoning in effect in 1980.[4] No provision was made for the possibility of additional population growth as a result of zoning amendments or variances. Similarly, no provision was made for the possibility that 1980 municipal zoning might be found to represent unconstitutional exclusionary zoning.

RVRSA now projects that existing users will exhaust all but 3.7 mgd of the capacity of the new plant. (RVRSA Resolution, Exhibit F). Of this, RVRSA views .91 mgd as already committed through prior court orders and connection approvals already granted by RVRSA. This leaves 2.79 mgd for connections by new users and expansion of use by existing users.

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4. The design capacity of the plant was determined by calculating the total population that would reside in the RVRSA service area if all vacant developable land were fully developed in accordance with the then existing zoning.

Connections to the RVRSA facility are currently regulated by court orders issued in Department of Health v. City of Jersey City, Docket No. C-3447-67 (Ch. Div., Morris Cty.), which ban all connections except to meet compelling health and safety needs. Judge Gascoyne has advised the parties that this ban will be lifted in May 1986 or shortly thereafter. If the ban is lifted without conditions, the remaining capacity will, under existing agreements, be available to all potential users in the service area on a first-come, first-serve basis. RVRSA estimates that existing short term demand exceeds available treatment capacity by 2.53 mgd (Id. at Schedule A).

Thus if the ban is lifted without conditions,[5] it is clear that little or no treatment capacity will be available for the development of lower income housing by 1988. In that event, it is essential that this Court issue restraints against RVRSA to enjoin it from permitting additional connections without reserving adequate capacity for lower income housing in Randolph.

RVRSA, in response to an invitation by the court in the Jersey City case, has recently proposed a plan for allocation of available sewage treatment capacity among member municipalities.

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5. Plaintiffs, over the opposition of defendants in this matter, have intervened in the Jersey City litigation for the purpose of urging the court to act aggressively to preserve sewerage capacity for lower income housing. A copy of plaintiffs' brief has been submitted to this Court under separate cover. Obviously, the proper course of action by this Court will depend upon Judge Gascoyne's decision.

(Id.). This plan would allocate 1.6 mgd for municipal growth in the nine member municipalities. This gallonage would be allocated among the nine municipalities by a complicated formula. The formula does not purport to reflect the relative additional need for sewage treatment arising from constitutional obligations of municipalities to provide lower income housing and does not in fact do so. (Id). Under this plan, Randolph would be allocated 325,547 gallons per day (gd) for additional connections (in addition to 466,807 mgd for connection of existing units which are on septic systems in areas which are unsuitable for such systems, and 60,731 gd for new users who have already received RVRSA approval or are entitled by previous court order to connect). Using the standards for household sewage flow utilized by the Department of Environmental Protection, this would permit connection of only approximately 1,450 additional residential units throughout Randolph Township.[6] By contrast, Randolph's

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6. For purposes of designing small treatment plants and individual septic systems, DEP requires that sewage treatment needs be computed on the basis of 100 gallons per day/person in single family dwelling units and 75 gallons per day/person in multifamily units. N.J.A.C. 7:9-1.106, 7:9-2.6. This figure is lower than that commonly used for larger systems since it makes no allowance for inflow or infiltration. (See RVRSA Resolution, at Schedule A, Exhibit H). Assuming that households in Randolph continues to average 2.99 persons/households (as is presently the case, N.J. State Data Center, N.J. Population Per Household 1970 & 1980 (1981) (Exhibit G)), the need for sewage treatment for each additional housing unit will be approximately 224 gallons per day/dwelling unit. If the total new available treatment capacity is 325,547 gallons per day, then 1,453 additional dwellings could be accommodated.

unmet housing obligation to 1990, as determined by the methodology approved by this Court, is 840 units. If this obligation were satisfied through inclusionary zoning, a total of 4,200 additional units would have to be built.

Thus, if RVRSA and the court in the Jersey City litigation follow this course, it is critical that Randolph and RVRSA be enjoined from permitting additional connections in Randolph Township, except to meet compelling health and safety needs. Restraints must run against the Randolph Municipal Utilities Authority, which has actual responsibility for permitting connections to the sanitary sewer system.

In sum, Randolph satisfies all the criteria for the imposition of conditions upon transfer of the case to the Council on Affordable Housing. The scarcity of vacant developable land in the growth area and sanitary sewage treatment capacity, as well as their potential impact upon Randolph's ability to provide lower income housing have been strenuously asserted by Randolph and must be taken as admitted. Preservation of each of these resources is desirable, indeed necessary, to protect and assure the ability of the municipality to satisfy these constitutional obligations under the Mt. Laurel decisions. Each of these resources can be preserved through appropriate court orders, either against Randolph or other parties. Restraints upon site plan and subdivision approvals, must be imposed upon the Randolph Township Planning Board and the Randolph Township Zoning Board of Adjustment as well as against the municipality.

Restraints to preserve sewerage treatment capacity must be imposed upon the Rockaway Valley Regional Sewerage authority and the Randolph Township Municipal Utilities Authority.These restraints are both necessary and appropriate to "protect and assure the municipality's future ability to comply with its Mt. Laurel obligations." Hills Development, slip op. at 87.

## CONCLUSION

For all the foregoing reasons, this Court should grant plaintiffs' application to join the Randolph Township Planning Board, the Randolph Township Zoning Board of Adjustment, the Randolph Township Municipal Utilities Authority, and Rockaway Regional Sewerage Authority as parties in this matter and that the Court enter interlocutory restraints to preserve scarce resources so as to protect and assure the defendants' ability to satisfy its constitutional obligations.

If the Court determines that restraints to preserve scarce resources are necessary or desirable but are not "appropriate," the Court should properly deny Randolph's application for transfer to the Council on Affordable Housing.

Respectfully submitted,

ALFRED A. SLOCUM
Public Advocate of New Jersey
Attorney for Plaintiffs
Morris County Fair Housing Council,
et al.

BY: Stephen Eisdorfer
STEPHEN EISDORFER
Assistant Deputy Public Advocate

SE:id

cc: All Counsel

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(609) 292-1692

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX/MORRIS COUNTIES
DOCKET NO. L-6001-78 P.W.

| | | |
|---|---|---|
| MORRIS COUNTY FAIR HOUSING COUNCIL, et al., | : | |
| Plaintiffs, | : | |
| vs. | : | Civil Action (Mt. Laurel Action) |
| BOONTON TOWNSHIP, et al., | : | |
| Defendants. | : | |

ATTACHMENTS

## ATTACHMENTS

| | Exhibit |
|---|---|
| A. Humbert, Procedure For Allocation For Randolph's Fair Share of Housing Under Mt. Laurel II (October 1983) | A |
| Deposition of A. Humbert (Jan. 3, 1984) pages 52-53 | B |
| Affidavit of Thorsten Nelson (Dec. 1983) | C |
| N.J. Dept. of Labor, N.J. Residential Building Permits - 1984 Summary p. 32 (August 1985) | D |
| N.J. Dept. of Labor, N.J. Residential Building Permits (various dates in 1985 and 1986) | E |
| Resolution of Rockaway Valley Regional Sewerage Authority | F |
| N.J. Data Center, N.J Population per Household 1970 and 1980) (1981) | G |
| Davis Enterprises v. Mount Laurel Municipal Utilities Authority, C-635 (Chancery Division, Burlington County, March 8, 1983) | H |

EXHIBIT A

HR-1 I.D
1-3-84
V.F.

# PROCEDURE FOR ALLOCATION FOR RANDOLPH'S "FAIR SHARE" OF HOUSING UNDER MT. LAUREL II

OCTOBER, 1983

ADRIAN P. HUMBERT
PLANNING DIRECTOR

## Introduction

Mt. Laurel II redefined a municipality's obligation to provide a realistic opportunity for a fair share of the region's present and prospective low and moderate income housing need. It redefined this obligation in terms of the State Development Guide Plan (SDGP) and whether the municipality or any portion of it lies within a "growth area" as designated by the Plan. If the municipality has, in fact, provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation.

## Defining Randolph Township's Obligation

A determination of "fair share" requires the resolution of three distinct issues: (1) identifying the relevant region; (2) determining its present and prospective housing needs and; (3) allocating these needs to the Township. These issues will be addressed one at a time.

In addition to regional "fair share," the Township must also provide a realistic opportunity for decent housing for its resident poor who occupy dilapidated housing.

## Identifying the Region

The term "region" and what constitutes it has been a source of debate, confusion, and bafflement among planners, geographers and regional experts for decades. The Court's decision did little or nothing, to clarify this problem. In fact. "region" without a specific yardstick or method of measure-

ment, is only a concept which can be defined in many ways. The Court, itself acknowledges this ambiguity and notes in the decision that, as cases are tried before the judges selected for each of three areas of the state, that a regional pattern would emerge and eventually establish a regional pattern for the State.

For this report, Morris County has been selected as the "region" for a number of reasons. The growth area of Randolph Township is centrally located in Morris County, making the journey-to-work at peak traffic hours to the perimeter of the County a 25-35 minute drive. The 1980 Census figures note that the mean travel time to work for Morris County residents is 25.5 minutes and for Randolph residents it is 28.3 minutes. For low income workers a trip significantly longer than this would probably not be economical due to transportation or commutation costs being disproportionate to the wages being paid. The economic cohesiveness of Morris County as the place of work for most Randolph residents is confirmed by the 1980 Census data in TABLE 1 below.

TABLE 1

Workers 16 years and over by Place of Work - Randolph Township, 1980

| Worked in State | Number | Percent |
|---|---|---|
| In Morris County | 6191 | 68.4 |
| Outside Morris County | 1855 | 20.5 |
| Worked Outside of State | 425 | 4.7 |
| Not Reported | 575 | 6.4 |
| Total | 9046 | 100.0 |

Source: U.S. Census, 1980.

Jobs within Morris County are the source of employment for more than two-thirds of Randolph's labor force, making the County the dominant economic base for the Township.

The use of the County as "region" also provides a standard statistical base for future monitoring of applicable data on low and moderate income housing requirements. It also is standard reference unit for future State activities in connection with the SDGP.

## Determining Housing Needs

For the determination of what constitutes a "moderate income" or "low income" family, this report uses the Court suggested standards:

Low Income Families - those whose incomes are less than fifty percent of the median.

Moderate Income Families - those with no more than eighty percent or less than fifty percent of the median.

These percents were then applied to the family income statistics and statistics for unrelated individuals provided by the Census for Morris County in 1980. Table 2 is the result of this estimating procedure.

Where the percent of median income fell within a Census income group, say between $12,500 - $14,999, the entire group was counted within the low income category for statistical consistency.

TABLE 2

Estimate of Regional Housing Need

Morris County

| Moderate Income | Families | Individuals |
|---|---|---|
| ($15,000 - 24,999) | 25,500 | |
| ($6,000 - 8,999) | | 4,700 |
| Low Income | | |
| ($0 - 14,999) | 14,800 | |
| ($0 - 5,999) | | 11,400 |
| Totals | 40,300 | 16,100 |

Median Family Income = $29,283
Median Individual Income = $10,736

Source: Based on U.S. Census, 1980.

The other component of need which must be addressed is that of the Township's "indigenous poor." Again, using the 1980 Census the number of these residents is estimated in TABLE 3.

TABLE 3

Estimate of Indigenous Poor - Randolph Township

| | Families | Individuals |
|---|---|---|
| Low Income | | |
| ($0 - 17,499) | 795 | |
| ($0 - 7,999) | | 317 |
| Totals | 795 | 317 |

Median Family Income = $32,104
Median Individual Income = $14,588

Source: Based on U.S. Census, 1980.

To determine how many of these families and persons might actually need better housing an estimate of dilapidated housing (i.e. housing which is below standard) has been made using various census indicators in TABLE 4.

TABLE 4

ESTIMATE OF DILAPIDATED UNITS - RANDOLPH TOWNSHIP

| Units with: | |
|---|---|
| No bathroom or only a half bath | 13 |
| No complete kitchen facilities | 8 |
| No central heat | 156 |
| | 177 |

Source: U.S. Census, 1980.

Therefore, Randolph's "fair share" of low and moderate income housing is to be calculated based on a total regional need of units as follows:

| | | Number of Units | |
|---|---|---|---|
| Regional | Moderate Income | 30,200 | (families + individuals) |
| | Low Income | 26,200 | (families + individuals) |
| Local | Indigenous Poor | 177 | (dilapidated units) |

Allocating Needs to Township

The allocation of the "fair share" of regional needs for low and moderate income housing has been established with reference to the SDGP, as is required by the Mt. Laurel II decision.

A summary of the relevant statistics from the SDGP and the Township Engineer's analysis of vacant areas within the Randolph

portion of the "growth area" defined in the SDGP is presented in TABLE 5.

TABLE 5

SUMMARY OF SDGP DATA RE: GROWTH AREAS

| | Acres |
|---|---|
| TOTAL "GROWTH AREA" STATEWIDE: | 1,520,000 |
| Developable Areas: | 700,200 |
| As percent of total: | 46% |
| ROCKAWAY CORRIDOR "GROWTH AREA": | 66,000 |
| Developable Areas: | 33,000 |
| As percent of total corridor: | 50% |
| LARGE VACANT PARCELS IN RANDOLPH TOWNSHIP PORTION OF R.C.G.A.: | 900 ± |
| Developable Areas: | 400 ± |
| As percent of vacant parcels: | 45% |

Sources: State Development Guide Plan and Township Engineer's Analysis of Large Vacant Parcels.

To ascertain a realistic working number for Randolph's share determination, a ratio between the Township's developable area and the Rockaway Corridor's developable area was set up as follows:

$$\frac{\text{R.T. Developable Area}}{\text{R.C. Developable Area}} = \frac{400 \text{ ac.}}{33{,}000} = 1.21\%$$

This percentage is then applied to the regional need figures as follows:

| | Families + Individuals | | R.T. Share |
|---|---|---|---|
| Moderate Income | 25,500 + 4,700 (1.21) | = | 365 |
| Low Income | 14,800 + 11,400 (1.21) | = | 317 |
| Indigenous Poor | (dilapidated housing) | = | 177 |
| Gross "Fair Share" Housing Units Required | | = | 859 |

This gross requirement can then be reduced by 140 units to account for the Senior Citizen housing and family housing now being actively sought by the Township. The net fair share is thereby 719 units. At an absorption rate of about 100 units a year for these units, the Township's present and prospective need until 1990 could be met. At a construction density of 7 units per acre, 100 acres of the developable land would be consumed.

The 719 units does not include any reductions or adjustments the Township might attempt to claim because of the large number of existing garden apartments. In 1980, the Census reported a median rent of $332 per month for renter-occupied housing in Randolph. This translates into an annual income of about $16,000 to afford this type of rent using the rule-of-thumb standard that 25 percent of income is used for rent. It might be that some of the projected moderate income families would fit in this category. However, they would have to be small families, 2 or 3 persons, since the garden apartments are 90% one bedroom units. Rents for the larger units are considerably higher than the median reported.

The last step in this process is to apportion these 719 units by market group to get an idea of what type of dwelling unit mix would be appropriate. To estimate this, the 719 units have been apportioned proportionate to the regional need mix with the following result:

| Low Income | Number of Units |
|---|---|
| Family Housing | 324 |
| Individuals | 65 |
| **Moderate Income** | |
| Family Housing | 187 |
| Individuals | 144 |

## Policy Considerations

The thrust of Mt. Laurel II is that a municipality must not only remove restrictive barriers to low and moderate income housing but also must take affirmative steps or set up inducements to make the opportunity for lower income housing real. Some of the mechanisms the Court suggests are:

1. encouraging or requiring use of subsidies
2. setting aside a portion of private developments for lower income housing
3. voluntary or court-ordered tax abatement
4. zoning substantial areas for mobile homes, if it is necessary for compliance, and for other types of low cost housing
5. zoning maximum unit size regulations to keep housing units small

Randolph is presently pursuing 1. above in terms of the senior citizen and family housing sites. It is my opinion that the only realistic way to provide low income housing is through some type of subsidy, either public or private. The history of private developers being willing or able to do this does not give much reason for optimism that the Mt. Laurel II goals are attainable. Likewise, the availability of public subsidies has dried up.

For affirmative zoning techniques that the Township might follow, I feel that the conditional use approach is worth looking into. It could establish a minimum tract area consistent with the size of vacant parcels in the growth area and set varying density limitations. These limits could be established based

upon a developer providing a certain proportion of low and moderate income housing. The Court suggests a system of incentive zoning that is accomplished either through a sliding scale density bonus that increases the permitted density as the amount of lower income housing provided is increased or through a set bonus for participation in a lower income housing program.

One potentially serious problem that I foresee happening is that where the Township might rezone or permit high density housing in response to a private developer's initiative only to find when the project is built that rents or sales prices are too high to serve moderate or low income needs. The Township is then confronted with higher densities, reductions in its development standards and greater municipal services requirements but is no further along toward meeting its Mt. Laurel II obligation. To avert this type of situation, I recommend that a certification of the housing proposal be obtained from the appropriate regional Court prior to any final municipal approval. The purpose of this certification is to ensure that the Township be fully credited for any housing built as part of its "fair share."

EXHIBIT B



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
Docket No. L-6001-78-P.W.

MORRIS COUNTY FAIR HOUSING COUNCIL, et al.,

Plaintiffs

-v-

CIVIL ACTION

BOONTON TOWNSHIP, et al.,

Defendants

Deposition testimony of ADRIAN HUMBERT taken stenographically in the above-entitled matter before Virginia Floyd, Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the law offices of VILLORESI and JANSEN, Attorneys at Law, 360 Hawkins Place, Boonton, New Jersey on Tuesday, January 3, 1984, commencing at 10:00 A.M.

A P P E A R A N C E S

JOSEPH H. RODRIGUEZ, PUBLIC ADVOCATE,
Attorneys for the Plaintiffs
BY: STEPHEN M. EISDORFER, ESQ.

VILLORESI & JANSEN, ESQS.
Attorneys for the Defendants
BY: JOHN P. JANSEN, ESQ.

Silver, Renzi & Geist Reporting Service
824 West State Street, Trenton, New Jersey 08618
609-989-9191 800-792-8880 (TOLL FREE IN N.J.)

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Q Now, tell me if I'm correctly expressing your thought back, because I may not be.

Is it your opinion that merely creating the voluntary opportunity to produce higher density housing isn't going to induce the private market to do it, or isn't it going to induce the private market to induce housing to low and moderate income people?

A I think that the market is going to try to maximize its profit in housing, and I think that they will attempt to sell a housing unit for as much as they can obtain for the sale of that unit, being economically logical that this is what would happen, and that that was the reason behind my statement.

Q Now, you go on and you say that the conditional use approach is worth looking into.

What did you have in mind by that?

A That was one possible way, I thought, might be explored to promote the construction of this type of housing. Permitting as a conditional use in a particular zoned districts low and moderate income housing subject to it meeting various criteria, governmental criteria, for that type of housing as a conditional use and the prime condition

being that it be affordable by low and moderate income persons.

Q So, in effect, the conditions on approval would constrain the freedom of the developer to maximize profits?

A Yes.

Q Has that concept been implemented anywhere in Randolph Township?

A No.

Q In your view, if some such technique was used, how many acres of land would it require to provide 719 units?

A Using this as one.

Q Let's take this as the exclusive technique, this conditional use technique that you've described as the exclusive technique for the moment.

You know, under realistic marketing conditions, in your opinion, how many acres would one have to rezone this way?

A 500 to 1,000.

Q Now, I'll ask you to look at the top of page 8 where you have a list of possible mechanisms, conceivable mechanisms, for providing opportunities

EXHIBIT C

ALFRED J. VILLORESI
~~VILLORESI AND BUZAK~~
ATTORNEYS AT LAW
360 HAWKINS PLACE
BOONTON, NEW JERSEY 07005

335-0004
AREA CODE 201

ALFRED J. VILLORESI
~~EDWARD J. BUZAK~~
~~(MEMBER OF N.Y. BAR)~~

JOHN P. JANSEN
STEPHEN H. SHAW
JANE M. COVIELLO
DEBRA K. DONNELLY

December 8, 1983

The Honorable Stephen Skillman, J.S.C.
Middlesex County Court House
New Brunswick, NJ 08903

Re: Morris County Fair Housing Council, et al. v.
Boonton Township, et al.
Docket No. L-6001-78 P.W.

Dear Judge Skillman:

Enclosed herewith please find an original and two copies of Affidavits of C. Thorsten Nelson and George J. Szatkowski on behalf of the Defendant, Township of Randolph in the above matter.

Also enclosed is an unsigned copy of an Affidavit of Gary C. Maillard. You will be forwarded the originally-signed Affidavit shortly.

If you have any questions, please feel free to call.

Very truly yours,

John P. Jansen

JPJ:DLW

Enclosures

cc: Stephen Eisdorfer, Asst. Deputy Public Advocate
(with enclosures)
Township of Randolph

ALFRED J. VILLORESI
VILLORESI AND BLIZAK
360 HAWKINS PLACE
BOONTON, NEW JERSEY 07005
(201) 335-0004
ATTORNEYS FOR Defendant
Township of Randolph

SUPERIOR COURT OF
NEW JERSEY
MORRIS COUNTY -
LAW DIVISION

*Plaintiff*

MORRIS COUNTY FAIR HOUSING COUNCIL, et als.

*vs.*

*Defendant*

BOONTON TOWNSHIP, et als.

*Docket No.* L-6001-78 P.W.

*CIVIL ACTION*

AFFIDAVIT

STATE OF NEW JERSEY:
: SS:
COUNTY OF MORRIS :

C. THORSTEN NELSON, being first duly sworn, deposes and says:

1. I am the Executive Director of the Randolph Township Municipal Utilities Authority and am fully familiar with the information contained herein.

2. Presently a portion of Randolph's sewage is handled by the Rockaway Valley Regional Sewerage Authority (RVRSA).

The RVRSA also services eight other municipalities in the area.

3. In August 1968, a sewer ban was imposed upon the Township of Randolph. The ban continues at the present time.

4. Currently the RVRSA plant handles between seven and eight million gallons per day.

5. Expansion of the RVRSA is currently taking place. The anticipated date of completion is some time in 1986.

6. Expansion of the plant will increase its total daily capacity to 12 million gallons, resulting in an additional four or five million gallons per day. This additional gallonage will be shared among all nine municipalities.

7. At present, any reserve capacities of the RVRSA plant are appropriated after approval of the RVRSA and the Honorabl Jacques H. Gascoyne. Reserve is appropriated on a limited basis, usually for health reasons.

8. Development in certain sections of Randolph has come to a virtual standstill due to the present impossibilty of adding the necessary new sewer lines to the existing system.

9. It is expected that the 1986 additional gallonage will serve only a portion of Randolph's present need for sewers.

C. Thorsten Nelson

C. Thorsten Nelson

Sworn and Subscribed to
before me this 8th day
of December, 1983.

Debra L. Westenberger

DEBRA L. WESTENBERGER
A Notary Public of New Jersey
My Commission Expires June 27, 1988

SEARS, SWEENEY & WEININGER
A Partnership Including a Professional Corporation
57 Old Bloomfield Avenue
Mountain Lakes, New Jersey 07046
(201) 334-1011
Attorneys for Plaintiff, Randolph Mountain Industrial Complex

| | |
|---|---|
| MORRIS COUNTY FAIR HOUSING COUNCIL, et al.,<br><br>Plaintiff,<br><br>vs.<br><br>BOONTON TOWNSHIP, et al.,<br><br>Defendants,<br><br>RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX, a New Jersey Partnership<br><br>Plaintiff,<br><br>vs.<br><br>THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF RANDOLPH, et al.,<br><br>Defendant. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION<br><br>Docket No. L-6001-78 P.W.<br>L-59128-85 P.W.<br><br>NOTICE OF MOTION TO ADD ADDITIONAL DEFENDANT AND TO IMPOSE CONDITIONS ON TRANSFER TO COUNSEL ON AFFORDABLE HOUSING |

TO: EDWARD J. BUZAK, ESQ.
Montville Office Park
150 River Road, Suite A-4
Montville, New Jersey 07045
Attorney for Defendant,
Township of Randolph

STEPHEN M. EISDORFER, ESQ.
Assistant Deputy Public Advocate
Hughes Justice Complex
CN-850
Trenton, New Jersey 08625
Attorney for Plaintiff,
Morris County Fair Housing Council, et al.

SIR:

PLEASE TAKE NOTICE that at such time and place as the Court may direct, the undersigned attorney for the Plaintiff, Randolph Mountain Industrial Complex, a New Jersey Partnership, will move before the Honorable Stephen Skillman, J.A.D., t/a of the above named Court at the Middlesex County Courthouse, New Brunswick, New Jersey for an Order for Leave to Allow Filing of an Amended Complaint to Name the Randolph Township Municipal Utilities Authority as an Additional Defendant and conditioning transfer of the within action to the Council on Affordable Housing by obligating the Defendant, Township of Randolph and the proposed Defendant, Randolph Township Municipal Authority, to reserve sewerage gallonage treatment capacity for prospective "Mt. Laurel" housing.

GROUNDS: As set forth in the opinion of February 20, 1986 in this matter of the Supreme Court of New Jersey and the attached certification of counsel.

ORAL ARGUMENT is requested.

A PROPOSED ORDER is attached.

CERTIFICATION OF SERVICE

The originals of these papers have been filed with the Clerk of the Superior Court of New Jersey, Law Division and with the Honorable Stephen Skillman. A copy of these papers has been filed with the Clerk of the County where the motion is to be heard. A copy of these papers has been served on those persons, designated by R. 1:5-1(a) for such. Service was made as permitted by R. 1:5-2.

SEARS, SWEENEY & WEININGER
Attorneys for Plaintiff,
Randolph Mountain Industrial
Complex

DATED: MARCH 21, 1986

By: Richard T. Sweeney
RICHARD T. SWEENEY



472

SEARS, SWEENEY & WEININGER
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57 Old Bloomfield Avenue
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(201) 334-1011
Attorneys for Plaintiff, Randolph Mountain Industrial Complex

| | |
|---|---|
| MORRIS COUNTY FAIR HOUSING COUNCIL, et al.,<br><br>Plaintiff,<br><br>vs.<br><br>BOONTON TOWNSHIP, et al.,<br><br>Defendants,<br><br>RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX, a New Jersey Partnership<br><br>Plaintiff,<br><br>vs.<br><br>THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF RANDOLPH, et al.,<br><br>Defendant. | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br><br>Docket No. L-6001-78 P.W.<br>L-59128-85 P.W.<br><br>CERTIFICATION OF RICHARD T. SWEENEY, ESQ. IN SUPPORT OF NOTICE OF MOTION TO ADD AN ADDITIONAL DEFENDANT AND TO IMPOSE CONDITIONS ON TRANSFER TO THE COUNCIL ON AFFORDABLE HOUSING. |

RICHARD T. SWEENEY, ESQ., upon his certification says:

1. I am an attorney-at-law of the State of New Jersey and am a member of the firm of Sears, Sweeney & Weininger, attorneys for the Plaintiff, Randolph Mountain Industrial Complex. I make this Certification in support of an application to add the Randolph Township Municipal Utilities Authority (RTMUA) as a Defendant and to impose a condition on the transfer of the within matter to the Council on Affordable Housing by which the Defendant, Township of Randolph, and the Township of Randolph Municipal Utilities Authority will be compelled to reserve sewerage capacity to service such low and moderate income housing as the prospective Amendment to the Zoning Ordinance of the Township of Randolph shall provide.

2. On or about October 7, 1971, the Township of Randolph (the Township) by ordinance adopted by it and certain other municipalities, created the Rockaway Valley Regional Sewerage Authority (RVRSA). A copy of the Ordinance as adopted by the Township of Randolph is attached.

On information and belief subsequent thereto the Township by ordinance established the RTMUA. Both the Township and the RTMUA are signatories to a service agreement with the RVRSA.

3. The RVRSA transmits and treats sewerage generated in various portions of the Township.

4. Attached hereto is a copy of the settlement proposal submitted to the Court by the Plaintiff, Morris County Fair Housing Council and the Township, in July of 1984. Of the locations for housing set forth therein, the following are within the service area of the RVRSA:

a. Family subsidized housing, 28 units

b. Randolph Mountain Ski Area, 110 low and moderate income units, 390 market units

c. Mal, Inc., 22 low and moderate income units, 78 market units

d. Kingland Company, 65 low and moderate income units, 231 market units.

5. Where there is no certainty that the Township will propose to zone the aforesaid sites for low and moderate income housing pursuant to the Fair Housing Plan to be submitted by it to the Council, it is respectively submitted, assuming the good faith in the municipality, that it will do so. To my knowledge, the only area within the Township served by a public sewer system other than a small portion in the southeasterly corner, is that within the service area of the RVRSA.

6. From on or about 1968, the Township or the RTMUA has been a party Defendant in an action entitled Department of Health, State of New Jersey, et al. vs. The City of Jersey City, et al., Superior Court of New Jersey, Chancery Division, Docket No. C-3447-67. That action, known as the "Sewer Ban" litigation has resulted in orders by the Court limiting connections to the RVRSA treatment plant. Recently a major expansion of that plant has been completed and placed into operation. As a result, a municipal party to that litigation and participant in the RVRSA, the Township of Rockaway, moved for final judgment in the action.

Attached hereto is a copy of a resolution adopted by the RVRSA on March 13, 1986 by which it proposed an allocation of the available sewerage treatment capacity to the municipal participants.

It is respectively submitted that the Court should note that the RVRSA has identified projected "Mt. Laurel" needs and notes that the presently identified demand already exceeds the available capacity of the sewerage system.

7. Attached hereto is a copy of a letter of Edward J. Buzak, Esq., to the Court setting forth the position of the RTMUA on the application for judgment in the "Sewer Ban" litigation. The Court will note that the RTMUA generally endorses an allocation among the participant municipalities and opposes a time limit for the consumption thereof but makes no specific proposal with reference to the dedication of available gallonage for "Mt. Laurel" housing.

8. Attached hereto is a copy of a report of Clifford Johnson, C.E., of Johnson Engineering, Inc., dated March 21, 1986. That company has consulted with the Plaintiff, Randolph Mountain Industrial Complex, throughout the course of this litigation. The Court is respectively asked to note that it is highly unlikely that on-site sewerage disposal can be provided at the Randolph Mountain site without significant expense and loss of developable land. The Court is also asked to note that the RTMUA is already planning to construct an intercepter sewer through the property of the Plaintiff, Randolph Mountain Industrial Complex. The Kingland property is adjacent to the Plaintiff's property and within the same drainage basin. It too will be served by the proposed intercepter.

9. The Honorable Jacques H. Gascoyne, J.S.C., sitting at the Morris County Courthouse, Morristown, New Jersey, has heard at least two days of argument on the pending motion for Judgment in the "Sewer Ban" litigation. I am advised that the matter is scheduled for further argument for April 11, 1986.

10. It is respectively submitted that the Court allow adjoining of the RTMUA for the limited purpose proposed hereby and impose a condition on the Order of Transfer directed to be entered by the Supreme Court in this matter, an obligation by which the Township and the RTMUA will reserve gallonage for "Mt. Laurel" housing purposes and that the

specific terms and conditions thereof be provided by this Court upon determination of the motion for judgment in the afore-described "Sewer Ban" litigation by Judge Gascoyne.

DATED: MARCH 21, 1986

RICHARD T. SWEENEY

ORDINANCE #21-71

ORDINANCE CREATING THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY

WHEREAS, some of the sanitary sewerage of the Township of Randolph and the other municipalities hereinafter mentioned, is presently treated at the Jersey City Sewerage Treatment Plant located adjacent to the Rockaway River in the Township of Parsippany Troy Hills, which sewerage plant is present inadequate and incapable of properly treating said sewerage which has resulted in the discharge of improperly treated sewerage into the Rockaway River, and the Mayor and Council of the Township of Randolph has ascertained that there is imperative need to relieve said waters from pollution and thereby to reduce and ultimately abate the menace to public health resulting from such pollution and also to provide effective and efficient sewerage treatment facilities for the residents of the Township of Randolph and the other municipalities hereinafter mentioned; and

WHEREAS, the Sewerage Authorities Law of the State of New Jersey (Laws of 1946, Chapter 138, as amended and supplemented) grants power to any two or more municipalities, the areas of which together comprise an integral body of territory, by means and through the agency of a sewerage authority, to acquire, construct, maintain, operate or improve works for the collection, treatment, purification or disposal of sewerage or other wastes, and the areas of this Township and said seven (7) other municipalities together comprise such an integral body of territory; and

WHEREAS, the Mayor and Council of the Township of Randolph has decided and hereby determines that it is necessary and advisable and is in the best interests of the inhabitants of the Township that by joint or parallel action by or on behalf of the Township of Boonton, Township of Denville, Town of Dover, Town of Boonton, Borough of Rockaway, Township of Rockaway, Borough of Wharton (each a municipal corporation of the State of New Jersey situate the County of Morris and herein called "Participant"), there be created a sewerage authority pursuant to said Sewerage Authorities Law as a public body and politic and an agency and instrumentality of said Participants for the purposes of the relief of waters in or bordering the State from pollution arising from causes within the area of the Participants and the relief of waters in, bordering or entering said area from pollution or threatened pollution and the consequent improvement of conditions affecting the public health; now, therefore,

BE IT ORDAINED, by the Mayor and Township Council of the Township of Randolph, in the County of Morris and State of New Jersey, as follows:

Section 1. Pursuant to the provisions of Paragraph (c) of Section 4 of the Sewerage Authorities Law of the State of New Jersey (Laws of 1946, Chapter 138, as amended and supplemented), there is hereby created a public body corporate and politic under the name and style of "The Rockaway Valley Regional Sewerage Authority."

Section 2. The Rockaway Valley Regional Sewerage Authority is and shall be an agency and instrumentality of the said Participants created by parallel ordinances duly adopted by their governing bodies, and is a sewerage authority as contemplated and provided for by said Sewerage Authorities Law and shall have and exercise all of the powers and perform all of the duties provided for by said Sewerage Authorities Law and any other statutes heretofore or hereafter enacted and applicable thereto.

Section 3. The Rockaway Valley Regional Sewerage Authority shall consist of nine (9) members thereof, and one of such members shall be appointed by the governing body of the City of Jersey City, all in accordance with the provisions of paragraphs (c) and (1) of said Sewerage Authorities Law.

Section 4. A copy of this ordinance duly certified by the Township Clerk shall forthwith be filed by said Township Clerk in the office of the Secretary of State of the State of New Jersey.

Section 5. This ordinance shall take effect twenty (20) days after publication thereof by title after it final passage, as provided by law, but shall be of no further force or effect after December 31, 1971, unless on or before said date a paralled ordinance shall have been adopted by the governing body of each of the other Particiapnts.

ATTEST:

Helen M. Bauer, Township Clerk — Township of Randolph

Adopted: October 7, 1971 — William Venne, Mayor

ORDINANCE # 22-71

AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED, "AN ORDINANCE TO RPOVIDE AND DETERMINE THE RATE OF COMPENSATION OF OFFICERS AND EMPLOYEES OF THE TOWNSHIP OF RANDOLPH"

BE IT ORDAINED By the Mayor and Council of the Township of Randolph in the County of Morris and State of New Jersey, as follows:

SECTION 1. Schedule "A" attached to the above captioned ordinance is hereby amended by changing the Annual Salary for the Sanitarian from the present $10,000.00 to $12,000.00.

SECTION 2. This Ordinance shall take effect as provided by law.

ATTEST:

Helen M. Bauer, Township Clerk — Township of Randolph

Adopted: September 16, 1971 — William Venne, Mayor

SETTLEMENT PROPOSAL - RANDOLPH

7-13-84
9-5-85

| | | Low | Moderate | Market |
|---|---|---|---|---|
| 1. | Senior Citizen Subsidized Housing | 100 | | |
| 2. | Family Subsidized Housing | 32 * | | |
| 3. | Bungalow Conversions | | | |
| | A. Diocese of Paterson | 12 | | |
| | B. Kryspin and Greenhut Park 34 units x 66 2/3% | 20** | | |
| 4. | Randolph Mountain Ski Area 78/22 (50 acres) | 55 | 55 | 390 |
| 5. | Suburban Holding Co. 78/22 (30 acres) | 33 | 33 | 234 |
| 6. | Three Misc. Sites 78/22*** | 24 | 24 | 174 |
| 7. | Modular Units | | | |
| | A. Inspection Station (20 acres) | | 70 | 90 |
| | B. 40 acres adjacent | | 96 | 224 |
| 8. | Low income Rehabilitation Loans | 8 | 7 | |
| 9. | Kingland Co. | 33 | 32 | 231 |
| | | 317 | 317 | 1343 |

*Reduced to 28 units

***

| | Low | Mod. | Mkt. |
|---|---|---|---|
| 1. Conrail 3.96 acres | 4 | 4 | [illegible] |
| 2. Mal Inc. 10 acres | 11 | 11 | [illegible] |
| 3. Levco 8.53 acres | 9 | 9 | [illegible] |
| | 24 | 24 | [illegible] |

Low: 317
Moderate: 317
Market: 1343
1977 Total Units

**Actually produces 22 units

80 a 569

RESOLUTION ADOPTING POLICY TO BE RECOMMENDED
TO THE SUPERIOR COURT OF NEW JERSEY REGARDING
CONNECTION TO THE RVRSA SYSTEM

WHEREAS, in 1968, the Superior Court of New Jersey issued Orders(1) to require the City of Jersey City to construct a new wastewater treatment system to replace the facilities constructed 50 years earlier, which no longer functioned properly and were operating in violation of law and (2) to prohibit new connections to the sewer system (without the prior approval of the court), until new facilities were constructed (i.e. the"building ban") and

WHEREAS, as the result of concerted efforts since 1968, a new interceptor sewer was constructed and has been in operation for several years and a 12 million gallon per day (MGD) wastewater treatment facility has recently been completed and placed in operation, and

WHEREAS, as part of the facility planning process, the United States Environmental Protection Agency (EPA) determined to "down size" the capacity of the new treatment plant from 24 MGD to 12 MGD and

WHEREAS, in anticipation of the completion of the construction phase of the treatment plant, the Honorable Jacques H. Gascoyne last year requested the Rockaway Valley Regional Sewerage Authority to undertake an effort to determine, as accurately as possible, the extent of both the available capacity in the new plant and the demand for gallonage therein from the



5) a

Authority's service area and

WHEREAS, the Authority has determined that the new facility will provide sufficient capacityto accommodate additional flow totaling 3.7 MGD and

WHEREAS, in order to estimate the capacity demand, the Authority submitted three rounds of questionnaires to the municipalities and sewer authorities which comprise the service area. Reports of the results of each questionnaire were provided Judge Gascoyne and representatives of the parties, in open Court on three separate occasions; and

WHEREAS, the Authority has determined that a portion of the additional capacity is committed to service connections approved by Court Order, but not yet connected. (approximately 160,000 gpd) and CP-1 Permits previously granted (approximately 750,000 gpd) (Schedule B) and

WHEREAS, the member Municipalities and Authorities reported that approximately 1.2 MGD is required to service structures now served by septic systems through 1990 (Schedule B) and

WHEREAS, demand for new development as measured by applications pending or approved before Municipal Planning Boards and "Mt. Laurel" considerations total approximately 3.50 MGD (Schedule A) and

WHEREAS, the final report to the Court, which was submitted on January 10, 1986, concluded that identified demand exceeds available capacity by approximately 2.53 MGD, (Schedule A) and



5?.1

WHEREAS, given the projected inability of the plant to accomodate all flows, the Authority has considered various proposals regarding the adoption of a policy to be recommended to the Court.

WHEREAS, the Authority has also recognized several fundamental factors in formulating its policy, including the following:

(a) the new interceptor and 12 MGD treatment facilities were constructed to accomplish several goals: (1) the relief of pollution of the Lower Rockaway River, which resulted from the discharge of inadequately treated sewerage into the river. (2) the relief of present and potential surface and groundwater pollution within the service area resulting from discharges and overflows from septic systems in areas unsuitable for such systems and exfiltration from the former interceptor and (3) to provide capacity for modest growth.

(b) a method must be provided to assure a reasonable opportunity to construct local collection systems and connect existing structures now served by septic systems, in areas inappropriate for such systems.

(c) the reservation of capacity allocations for an extended time would have financial impacts, which may impose unfair economic burdens on current users.

(d) sudden change from the unnatural limitation on normal growth and development resulting from the existence of the "building ban" for eighteen years to a total absence of any control on development could cause chaos and disruption and result in the distortion of the goals to be achieved by the construction of the project.

(e) a transition period from total control to unrestricted connections would be in the public interest and would assure an opportunity for the timely connection of existing structures on septic systems and would promote the orderly and planned development of the service area.

(f) some member municipalities are impacted by "Mt. Laurel" considerations and others are not.

(g) the allocation of gallonage to each municipality to be used for new construction will not only permit the municipalities to exercise their discretion regarding the use of available gallonage but will also allow each municipality an opportunity to plan for its development.

(h) the selection of a growth allocation formula presents many formidable difficulties. The Authority has considered various methods of allocation as set forth on Schedule C, each of which is subject to valid criticism.

THEREFORE, BE IT RESOLVED BY THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY AS FOLLOWS:

The following proposal is hereby endorsed by the Authority and Counsel for the Authority is hereby directed to present it to the Honorable Jacques H. Gascoyne, Superior Court of New Jersey:

1. The identified available existing capacity in the treatment plant of 3.7 mgd shall be divided into three general categories consisting of "Committed Flows," "Septic Reserve" and "Municipal Growth Reserve" as more fully described below: (See also Schedule B for a diagramatic analysis)

A. Committed Flows

900,000 gpd to be allocated only for the purpose of providing capacity to allow the connection of all structures not yet connected to the system;

(1) for which Court Orders are validly existing as of April 1, 1986,

or

(2) for which CP-1 Permits are validly existing as of April 1, 1986.

All gallonage in this category which has not been actually connected to the system on or before January 1, 1988, shall be revoked and allocated to the "Septic Reserve" as described below.

B. Septic Reserve

"Municipal Reserve"

1.2 mgd to be allocated only for the purpose of providing capacity(to the extent set forth on Schedule D below) to allow the connection of structures presently served by septic systems, for which a Certificate of Occupancy had been issued before December 30, 1985 and which are located in areas which local authorities determine are unsuitable for such systems.

Gallonage shall be reserved for such purpose for each municipality until January 1, 1988, in the

amounts set forth on Schedul D in the category entitled "Septic Program through 1990."

Unless, such structures are actually connected to the system or CP-1 Construction Permits have been obtained and are in effect, before January 1, 1988, such gallonage shall no longer be reserved to a particular municipality, but shall be transferred to the "Septic Reserve - First Come - First Serve."

Gallonage which continues to be reserved as the result of the issuance of a CP-1 Construction Permit prior to January 1, 1988, will be transferred to the "Growth Reserve" on December 31, 1990, unless the construction of the project to provide for the connection of such gallonage shall have commenced before that date.

"Septic Reserve-First Come-First Serve"

Gallonage which is transferred to the "Septic Reserve-First Come-First Serve" shall be used only for the purpose of serving the structures or septic systems defined above. Gallonage which is neither connected to the sewer system prior to December 31, 1990, or included in CP-1 Construction Permit, issued prior to that date, shall be removed from the reserve and become available for any purpose.

C. Municipal Growth Reserve

1.6 mgd shall be transferred to the "Municipal Growth Reserve." Gallonage in the Municipal Growth Reserve shall be reserved to each municipality until December 31, 1990 in accordance with an allocation method to be determined by the Court. The allocation of the use of such gallonage shall be within the discretion of each municipality.

Gallonage in the Municipal Growth Reserve which is not actually connected to the system or for which a CP-1 Construction Permit has not been issued prior to December 31, 1990, shall be removed from the Municipal Growth Reserve and shall become available for any purpose.

2. No connection shall be made to the Authority's system unless a Permit shall have first been issued pursuant to the Service Rules of the Authority, as the same may be amended from time to time. All connections shall be in compliance with all regulations of the Authority and the entire length of such connection shall be subject to prior inspection by the Authority.

3. The Court should retain jurisdiction of the case, in order to resolve unanticipated issues or to modify the procedures set forth herein upon a showing of changed circumstances.

4. Recognizing that it is uniquely situated to submit a proposed system for the allocation of the

Municipal Growth Reserve, because it has been receiving all the data submitted by the member municipalities and because it is comprised of representatives from each municipality, the Authority has attempted to develop a fair and balanced allocation proposal. Of all the methods considered, that entitled "Average of All Methods" is considered to be the most preferable.

I hereby certify that the foregoing Resolution was adopted at the regular meeting of the Rockaway Valley Regional Sewerage Authority held on March 13, 1986 on motion of Louis Ruisi seconded by Robert W. Busch, Jr.

ROLL CALL VOTE;

YEAS:

Thomas E. Hopkins
Robert W. Busch, Jr.
Joseph McElroy
John P. Whalen
Louis Ruisi
Herbert Steinberg
Chester F. Ritzer
Barbara Boulle

NAYS:

Edward F. Secco

ABSTAIN:

None

ABSENT:

James Delaney

Chester F. Ritzer

Chester F. Ritzer Secretary



6-19

# ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY
## WASTEWATER FLOW EVALUATION

| | Design Projection 1987 | EIS Projection 2000 | 1984 Base (a) | 1985 Base (a) |
|---|---|---|---|---|
| EXISTING CONNECTIONS | | | | |
| Present Theoretical Flow | 5.7 | 6.0 | 5.9 | 5.9 |
| Infiltration/Inflow | 1.2 | 1.9 | 2.4 | 0.99 |
| Base Plant Flow | 6.9 | 7.9 | 8.3 | 6.89 |
| EXISTING DEVELOPMENT | | | | |
| Approved Extensions (dry) | (b) | (b) | 0.08 | 0.08 |
| Approved Extensions(uninstalled) | (b) | (b) | 0.95 | 0.95 |
| Res./Non-Res. on septics | 2.6 | 2.2 | 1.54 | 1.54 |
| Outstanding court orders | - | - | 0.16 | 0.16 |
| SUB-TOTAL | 9.5 | 10.1 | 11.03 | 9.62 |
| PROPOSED DEVELOPMENT | | | | |
| By planning bd./bd. of adjustment | 2.3 | 1.6 | .84 | .84 |
| Mount Laurel: | | | | |
| Town obligation (20%) | | | 0.49 | 0.49 |
| Builders' Remedy (80%) | | | 1.97 | 1.97 |
| Developable Land | | | + Future Applications | |
| Mine Hill | 0.2 | 0.2 | 0.2 | 0.2 |
| TOTAL | 12.0 | 11.9 | 14.53+ | 13.12+ |

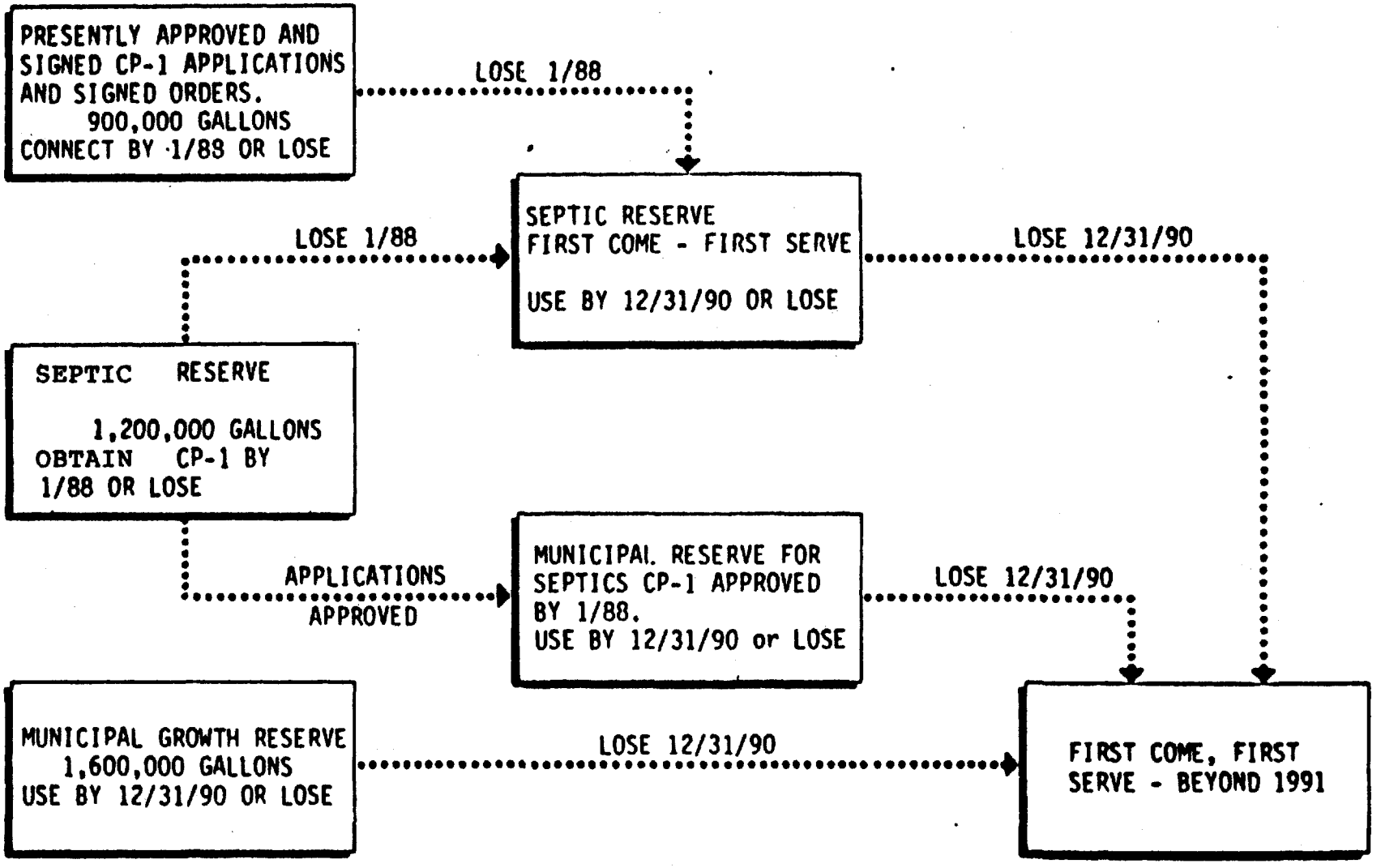
Note: Annual average flow rate in million gallons per day.

(a) Existing and proposed development projections based on municipalities' responses to RVRSA questionnaires of May, 1985 and August, 1985, and responses to Superior Court of N.J. Court Order dated October 18, 1985 by the Hon. Jacques H. Gascoyne.
(b) Included under "Residential/Non-Residential on septics."

SCHEDULE B

Rockaway Valley Regional Sewerage Authority

# RESERVED GALLONAGE FLOW CHART



SUMMARY
METHODS OF DISTRIBUTING 1.6 MGD GROWTH RESERVE

| Member Municipalities | | Applications Before Planning Boards | Prior Court Allocations | Stipulation of Settlement | E.I.S. Distribution | Vacant Developable Land | Projected Population Growth | Average of all Methods |
|---|---|---|---|---|---|---|---|---|
| Town of Boonton | % | 2.15 | 4.12 | 11.18 | 2.60 | 1.37 | 2.12 | 3.923 |
| | GAL | 34,400 | 65,920 | 178,880 | 41,600 | 21,920 | 33,920 | 62,773 |
| Township of Boonton | % | 0 | 1.22 | 0.96 | 4.54 | 4.40 | 6.49 | 2.935 |
| | GAL | 0 | 19,520 | 15,360 | 72,640 | 70,400 | 103,840 | 46,960 |
| Township of Denville | % | 10.76 | 18.38 | 15.93 | 20.13 | 9.04 | 6.59 | 13.472 |
| | GAL | 172,160 | 294,080 | 254,880 | 322,080 | 144,640 | 105,440 | 215,547 |
| Borough of Rockaway | % | 1.40 | 7.14 | 11.87 | 2.60 | 0.73 | 5.33 | 4.845 |
| | GAL | 22,400 | 114,240 | 189,920 | 41,600 | 11,680 | 85,280 | 77,520 |
| Township of Rockaway | % | 57.46 | 22.30 | 12.64 | 42.21 | 57.46 | 10.54 | 33.768 |
| | GAL | 919,360 | 356,800 | 202,240 | 675,360 | 919,360 | 168,640 | 540,293 |
| Borough of Victory Gardens | % | 1.59 | 1.39 | 2.13 | 0.65 | 0.01 | 0.86 | 1.105 |
| | GAL | 25,440 | 22,240 | 34,080 | 10,400 | 160 | 13,760 | 17,680 |
| Township of Randolph | % | 11.74 | 26.12 | 4.80 | 16.88 | 19.86 | 42.68 | 20.347 |
| | GAL | 187,840 | 417,920 | 76,800 | 270,080 | 317,760 | 682,880 | 325,547 |
| Borough of Wharton | % | 0.04 | 6.94 | 8.82 | 3.25 | 1.53 | 14.82 | 5.90 |
| | GAL | 640 | 111,040 | 141,120 | 52,000 | 24,480 | 237,120 | 94,400 |
| Town of Dover | % | 14.86 | 12.39 | 31.67 | 0.65 | 0.96 | 8.48 | 11.502 |
| | GAL | 237,760 | 198,240 | 506,720 | 10,400 | 15,360 | 135,680 | 184,027 |
| Borough of Mine Hill | % | 0 | 0 | 0 | 6.49 | 4.64 | 2.09 | 2.203 |
| | GAL | 0 | 0 | 0 | 103,840 | 74,240 | 33,440 | 35,253 |

SCHEDULE C
6/11

| | Boonton | Boonton Twsp | Denville | Rockaway Borough | Rockaway Twsp | Victory Gardens | Randolph Twsp | Wharton | Dover | Picatinny Arsenal | Mine Hill | TOTAL ALLOCATIO |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| eptic Program through 1990 | 168,750 | 16,650 | 324,000 | 7,922 | 119,084 | 0 | 466,807 | 13,225 | 0 | 0 | 0 | 1,116,4 |
| P-1 Application/ Const. Permits, Dry Sewers | 0 | 0 | 11,090 | 14,700 | 441,425 | 0 | 15,121 | 29,100 | 14,000 | 220,000 | 0 | 745,4 |
| igned Orders | 16,460 | 4,360 | 18,597 | 10,650 | 34,231 | 4,687 | 45,810 | 12,369 | 11,890 | 0 | 0 | 159,0 |
| OTAL ALLOCATIONS | 185,210 | 21,010 | 353,687 | 33,272 | 594,740 | 4,687 | 527,738 | 54,694 | 25,890 | 220,000 | 0 | 2,020,9 |

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EDWARD J. BUZAK
(MEMBER OF N.J. & D.C. BAR)

VALERIE K. BOLLHEIMER
(MEMBER OF N.J. & COLO. BAR)
DEBORAH McKENNA ZIPPER



March 3, 1986

Honorable Jacques H. Gascoyne
Court House
Morristown, New Jersey 07960

Re: Department of Health, State of New Jersey, et. al.
v. City of Jersey City, et. al., Docket No. C-3447-67
Motion for Final Judgment -- Rockaway Township

Dear Judge Gascoyne:

The Randolph Township Municipal Utilities Authority had the opportunity to consider the Motion made by the Township of Rockaway for final judgment in the above captioned matter with a specific disposition and allocation of gallonage as set forth therein. After careful consideration, the Authority voted unanimously to oppose the requested relief sought by Rockaway Township. Although a variety of reasons for the opposition were offered by the various members and staff, the focus of the source of their objections was essentially two-fold.

First, the granting of the allocation for the time period set forth in the Motion (up to 42 months) would essentially result in the excess allocation for the New Treatment Facility being given on a first come -- first serve basis. That is to say, Randolph would be unable to utilize the allocation granted to it in the time as suggested by Rockaway Township. Under the proposed plan, the Authority would lose that gallonage and it would be available to others on a first come -- first serve basis. It is suspected that other municipalities will be in the same position. Additionally, the proposed plan encourages municipalities to use up their gallonage in a very short period of time. The Treatment Plant was sized for flows through the year 2000 and yet municipalities are being asked under Rockaway's plan, to essentially utilize their gallonge in 42 months or lose it. Rather, as the Randolph Township Municipal Utilities Authority and others have suggested, no time limitation should be placed on the allocation and a municipality should be permitted to utilize its allocation during a time period that it deems appropriate. It seems to be the height of folly for a plan to be established which encourages the creation of another sewer ban after these municipalities have been subject to a sewer ban for the last seventeen years. A municipality

should be able to plan when it is going to utilize this gallonage without fear that the gallonage will be taken from them and perhaps never be available again.

Alternatively, if any kind of time period is deemed to be essential, that time period should be tied in with the projected flows in the Treatment Plant. Thus, if the plant was sized based upon flows which would develop through the year 2000, a municipality's allocation ought to be available for at least that period of time. If after the year 2000 the gallonage has not been utilized, then it might be worthwhile to have a reexamination, especially if there are municipalities which need gallonage and others which have not utilized their anticipated capacity because the growth or other factors simply did not develop as originally anticipated.

The second source of objection to the Rockaway plan involves the earmarking of gallonage for a particular purpose. A municipality should be permitted to utilize the gallonage it has been allocated as it deems fit for its own residents and citizens in accordance with the dictates of its own conscience, subject to the rights of any individuals within that municipality to challenge the allocation by the municipality to various property owners. Neither this Court nor the RVRSA should usurp the power of the local Authority in determining how it should best utilize its allocation for the benefit of all its citizens. Those are legislative decisions which should be made by the elected and appointed officials of the municipality who are subject to the will of the voters in the system of government under which we operate.

We understand at this time that the RVRSA is working on a proposed allocation plant and as is, the Randolph Township Municipality Utilities Authority. It is hopeful that by the time the March Building Ban Hearing comes up, there will be a fair proposal which incorporates the two major points listed above.

Thank you for your consideration.

Respectfully submitted,

EDWARD J. BUZAK, ESQ.

Edward J. Buzak

EJB:fd
cc: All Parties on Attached List
Herbert Steinberg
Randolph Township Municipal Utilities Authority

RVRSA - ALL COUNSEL 3-4-86

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7 a

**johnson engineering incorporated** engineers, surveyors, landscape architects & planners

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james m. cahill, p.l.s., p.p.

associates
susan l. berninger
carmela r. schommer
richard b. schommer, jr.
william e. thomas, p.l.s.

March 21, 1986

Mr. Richard T. Sweeney, Esq.
Sears, Pendleton, Sweeney & Claps
57 Old Bloomfield Avenue
Mountain Lakes, New Jersey 07046

Subject: JEI #745
Randolph Mountain Ski Area
Randolph, NJ

Dear Mr. Sweeney:

Pursuant to your request, I have reviewed the resolution adopted by the Rockaway Valley Regional Sewer Authority (RVRSA) on March 13, 1986. I am very concerned with the policy of "first come, first served" adopted by the RVRSA. This policy will make it difficult, if not impossible, for the Township of Randolph to meet its obligations to provide land for low and middle income housing.

There has been a sewer ban in Randolph Township for the last seventeen years. For the RVRSA to adopt a policy which encourages municipalities to use up their gallonage within a short period of time does not give the Township or developers sufficient time to properly plan for orderly growth and development.

In addition, I am concerned that the proposed ear-marking of gallonage for particular purposes as proposed by RVRSA will result in sewer gallonage being unavailable to serve low and modern income housing projects of the type suggested for the Randolph Ski Area property.

The Randolph Mountain Ski Area property has many limitations for development and, in my opinion, is not developable as zoned without sanitary sewer service. This property contains a considerable amount of wetlands as well as flood hazard areas and the time needed to get necessary permits will be lengthy.

If an on-site sewage disposal system must be provided, it is unlikely that it would be approved by the New Jersey Department of Environmental Protection (NJDEP) because it would be inconsistent with the waste water management plan for the area. In addition, the land that would be required to be set aside for on-site sewage disposal would be extensive and would have to be in an area that would normally be used for housing. This would result in a loss of developable land.

It is my understanding that the Randolph Township Municipal Utilities Authority is already planning to construct an interceptor sewer through this property, which will negate the need for off-site sanitary sewer improvements and reduce development costs. This is extremely important when attempting to develop low and moderate income housing.

I trust that you will find this information useful. Please contact me should you have questions.

Very truly yours,

Clifford W. Johnson, P.E.
President

CWJ/cip

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

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

EDWARD J. BUZAK, ESQ.
Attorney for Defendant,
Township of Randolph
Montville Office Park
150 River Road, Suite A-4
Montville, NJ 07045

On the Brief:
Edward J. Buzak, Esq.
Deborah McKenna Zipper, Esq.

## 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.



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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,

EDWARD J. BUZAK, ESQ.,
Attorney for Defendant,
Township of Randolph

By _____
Edward J. Buzak

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Arthur Kondrup, Chairman
(609) 292-7899

MAY 21 1986

May 12, 1986

Dear Mayor:

On May 5, 1986, the Council on Affordable Housing approved a draft of fair share housing criteria and guidelines for submission to the New Jersey Office of Administrative Law. It is expected that these criteria and guidelines will be published in the New Jersey Register on June 2, 1986, along with a data base for municipal determination of their low and moderate income housing obligation.

Recognizing the immediate importance and the sensitivity of these need estimates, the Council decided to release them to municipalities before they become generally available to the public. These estimates do not incorporate credits and adjustments which shall be awarded by the Council, after a hearing of facts, on a case-by-case basis. (See attached.)

Three public hearings are scheduled for the criteria and guidelines: June 19, Administration Building, Bergen County Courthouse, Hackensack; June 23, Welpe Theatre, Somerset County College, Route 28, North Branch; and June 26, Cherry Hill Inn, Route 38 and Haddonfield Road, Cherry Hill. All hearings are scheduled for 1:30-4:30 P.M.

We look forward to your participation either at a public hearing or through written comments to Douglas V. Opalski, Executive Director, Council on Affordable Housing, 375 West State Street, Trenton, New Jersey 08618.

Very truly yours,

Arthur R. Kondrup
Chairman, COAH

ARK/rrr
Enclosure

3625 Quakerbridge Road • CN 18550 • Trenton, NJ 08650-2085

101a

The following figures reflect the gross, aggregate and unadjusted fair share calculations for your municipality determined pursuant to the method outlined in Subchapter 5 of the enclosed draft of substantive rules and related base data.

These figures are illustrative of the method described and do not account for crediting (Subchapter 6), drastic alterations (Subchapter 7) and adjustments (Subchapter 8) which may apply to individual municipalities, and which may ultimately result in a lower estimate of the municipal obligation.

Estimate of
Low and Moderate Income Housing Need
For July 1, 1987 Present Need, and 1987 to
July 1, 1993 Prospective Need

| | Municipality | Region | |
|---|---|---|---|
| | Randolph Twp. | 2 | New Jersey |
| Estimate of Need | 452 | 28,773 | 145,707 |