



TOWNSHIP OF SOUTH BRUNSWICK

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January 20, 2016

Clerk of Superior Court – Law Division
Middlesex County Courthouse
56 Paterson Street
P.O. Box 964
New Brunswick, NJ 08903-0964

Re: In the Matter of the Application of the Township of South Brunswick
Docket No. MID-L-3878-15
Our File No. L1347

Dear Clerk:

Enclosed please find an original and one copy of the Township of South Brunswick's Notice of Motion for Consolidation and/or Intervention, together with supporting Brief, proposed form of Order and Certification of Service for all related documents in the above captioned matter.

Please file and return a filed copy to me. I am enclosing the appropriate filing fees.

Thank you for your considerations in this matter. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

/Donald J. Sears

Donald J. Sears
Director of Law

DJS/lw
Enclosures

Cc: Hon. Douglas K. Wolfson, J.S.C.
Christine Nazzaro-Cofone, AICP/PP, Special Master
Elizabeth McKenzie, PP, PA, Special Master
All parties on attached Service Lists

Donald J. Sears, Esq.
Township of South Brunswick
540 Ridge Road
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Phone No.: (732) 329-4000

Attorney for Declaratory Plaintiff,
Township of South Brunswick

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO.: MID-L-003878-15 CIVIL ACTION – <i>MOUNT LAUREL</i> NOTICE OF MOTION
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PLEASE TAKE NOTICE that the undersigned attorney for Declaratory Plaintiff, Township of South Brunswick, shall move on Friday, February 5, 2016, at 9:00 a.m., or such other date and time as the Court may direct, before the Hon. Douglas K. Wolfson, J.S.C., or such judge as may be assigned, at the Middlesex County Courthouse, 56 Paterson Street, New Brunswick, New Jersey, for entry of an Order of Consolidation of all pending Middlesex County Mount Laurel cases for purposes of determining the Statewide and Regional affordable housing need as well as the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet those obligations. In the alternative, the undersigned shall move for an Order granting Intervention so that the Township is permitted to participate in any trial that will result in the determination of its fair share obligation

Reliance shall be placed upon the accompanying Brief submitted in support of the motion.

Oral argument is respectfully requested.

Discovery end date: none
Pretrial conference date: none
Trial date: none

TOWNSHIP OF SOUTH BRUNSWICK

s/ Donald J. Sears

Dated: January 20, 2016

By: _____
Donald J. Sears

CERTIFICATION OF SERVICE

I hereby certify that I caused to be served the original and one copy of the within Notice of Motion, Brief, form of Order and Certification of Service, by delivering same on this date to the Middlesex County Clerk – Law Division, Superior Court of New Jersey, 56 Paterson Street, P.O. Box 964, New Brunswick, New Jersey 08903-0964, with a copy served upon the Hon. Douglas K. Wolfson, J.S.C., Superior Court of New Jersey, Middlesex County Courthouse, 56 Paterson Street, P.O. Box 964, New Brunswick, New Jersey 08903-0964 and all parties of record, on notice to all interested parties as set forth in the accompanying Certification of Service.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

TOWNSHIP OF SOUTH BRUNSWICK

s/ Donald J. Sears

Dated: January 20, 2016

By: _____
Donald J. Sears

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Attorney for Declaratory Plaintiff,
Township of South Brunswick

<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY</p> <p>DOCKET NO.: MID-L-003878-15</p> <p>CIVIL ACTION – <u>MOUNT LAUREL</u></p>
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**BRIEF IN SUPPORT OF MOTION FOR CONSOLIDATION AND/OR
INTERVENTION**

Donald J. Sears, Esq.
Of Counsel and on the brief

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

As a result of the invalidation by the New Jersey Supreme Court of the Council on Affordable Housing (COAH) Third Round regulations in In Re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 215 N.J. 578 (2013), COAH was directed to adopt revised Third Round regulations. When it failed to do so, the Supreme Court determined in In Re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV), that COAH is not capable of functioning as intended by the Fair Housing Act (FHA), and thus municipalities must submit to judicial review for a determination of their compliance with the constitutional obligation to provide for opportunities for the development of low and moderate income housing. Id. at 25-26. In this regard, municipalities were permitted to file a Declaratory Judgment Action seeking an Order for temporary immunity from “builder’s remedy” lawsuits as well as entry of a Judgment of Compliance and Order of Repose, protecting them from such suits. Id. at 5.

On July 1, 2015, the Township of South Brunswick (Township) filed a Declaratory Judgment Action in compliance with the Court’s direction in Mount Laurel IV. Between eight (8) and eighteen (18) other municipalities in Middlesex County did the same (collectively referred to herein as the DJ Actions). On July 31, 2015, the trial court entered various orders in the South Brunswick case granting intervention to certain interested parties as well as Fair Share Housing Center (FSHC). On that same date, the court entered an Order granting an initial five-month period of immunity to the Township, nunc pro tunc, from the filing date of the complaint through and until December 2, 2015. Similar orders were also entered in the other DJ Actions. The court further ordered that, “upon further application of the Township and on notice to all

interested parties, [the Township could seek to] extend the initial immunity period past December 2, 2015, for such additional time as the court deems warranted and reasonable.”

Pursuant to a Case Management Order entered by the court on September 16, 2015, the Township was directed to submit to the court, Special Master and all parties its Housing Element and Fair Share Plan (either adopted or in draft) by November 9, 2015. At the same time, leave to file a motion seeking to extend the temporary immunity granted to the Township beyond the December 2, 2015, deadline was granted by the court. Any such motion was to be filed no later than November 9, 2015, returnable on short notice on November 13, 2015.

On October 2, 2015, the court entered a further Order requiring all municipalities involved in the pending DJ Actions to submit a Plan Summary, utilizing the “Summary of Plan” sheets prepared on behalf of the court by certain Special Masters previously appointed by the court in the DJ Actions. The October 2, 2015, order modified the previous requirement as to the form of Draft Plan to be submitted to the court, requiring that all municipalities make use of the “Summary of Plan” sheets to describe their respective preliminary Housing Element and Fair Share Plans. Said completed sheets were to be submitted to the designated Special Master in each case, with copies to all intervenors and interested parties, no later than November 9, 2015. Completion of the Plan Summary in compliance with the October 2, 2015, order was required as a prerequisite to any application for a further extension of immunity. All intervenors and interested parties were ordered to submit any objections or comments on the Plan Summary sheets to the Special Master and the municipality no later than November 25, 2015. Thereafter, the Special Master was required to review the submissions by the parties and provide the municipalities with the opportunity to address any concerns that the Special Master may have had with the proposed Plan. The Special Master was required to submit a report to the court on

each preliminary Plan no later than December 14, 2015.

Concurrent with the filing of the Township's motion for extension of immunity, without knowing its fair share obligation or the acceptable compliance mechanisms for addressing that obligation, in order to comply with the court's October 2, 2015, order, the Township submitted its completed "Summary of Plan" sheets, describing its preliminary Housing Element and Fair Share Plan, to the Special Master, intervenors and all interested parties. The cover letter transmitting the "Summary of Plan" sheets pointed out that the court had not yet calculated the Township's present and prospective obligation; that several estimates of the Township's obligation had been suggested in various reports offered by Dr. David Kinsey, Mr. Arthur Bernard and Dr. Robert Burchell. In addition, a report was prepared by Richard Reading at the request of the Mount Laurel judges in Ocean, Monmouth and Mercer Counties, which reaches different conclusions regarding the Statewide and Regional need when compared to the Kinsey/Bernard conclusions. The Kinsey conclusions had also been criticized by Econsult Solutions as well as Nassau Capital, in reports prepared by these entities on behalf of the N.J. State League of Municipalities. As such, it was very difficult for the Township to identify which obligation it should plan for.

It was further stated in the cover letter that the Township reserved the right to revise its preliminary draft Third Round Housing Element and Fair Share Plan based upon the anticipated report from Econsult regarding Statewide, Regional and Municipal need/obligations, which report was expected by the end of December 2015. Accordingly, the Summary of Plan was submitted without prejudice, the Township reserving all rights it had to amend same should the need arise as the matter progressed.

Instead of following the procedures set forth in the October 2, 2015, order regarding

review and revision of the draft Plan, however, and without establishing the Township's obligation or determining acceptable compliance mechanisms, the court on November 13, 2015, rejected aspects of the Township's Plan, directing the Township to propose other sites for development of affordable housing. The court also rejected aspects of several plans submitted by other municipalities. The Township was given until December 18, 2015, to submit a revised plan.

In order to comply with the court's November order, on December 18, 2015, the Township submitted a revised preliminary Third Round Plan for consideration. The cover letter accompanying the revised Plan stressed that the Township continues to remain committed to voluntary compliance with its constitutional obligation to provide realistic opportunities for affordable housing. Given the uncertainty of the Township's actual Third Round obligation, however, the Township reserved the right to revise its Third Round Housing Element and Fair Share Plan based upon the anticipated report from Econsult regarding Statewide, Regional and Municipal need/obligations.

On December 22, 2015, Econsult released its report on Statewide, Regional and Municipal need/obligations. The conclusions reached were very different from the conclusions of Kinsey and Bernard. By letter dated December 23, 2015, the Township served the Econsult report, pointing out that there was a clear difference of opinion on Statewide, Regional and Municipal need and obligations between the experts that have been identified by the parties in this and the other DJ Actions pending in Middlesex County. It was quite apparent that the court would have to conduct a trial on such issues to definitively establish the Statewide and Regional need as well as each municipality's fair share obligation. In addition, a determination of acceptable compliance mechanisms must also occur.

Given the common issues and interests of the parties in all pending Middlesex County cases, the Township informally requested that the court consolidate all Middlesex County cases for purposes of determining the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet said obligations. Such a consolidation of cases for this limited purpose has already been ordered in other counties handling affordable housing matters. This informal request was denied by the court since it was not made by formal motion.

In order to finalize the Township's Housing Element and Fair Share Plan, the court must calculate the Township's present and prospective need, finally arriving at a definitive obligation to be assigned to the Township as its Third Round obligation. Before this can be done, however, the court must conduct a trial to determine the Statewide and Regional need for affordable housing, thereafter assigning each municipality its fair share of present and prospective need. This determination of each municipality's obligation is critical to finalizing acceptable affordable housing plans that are constitutionally compliant. Until the court determines each municipality's obligation in this definitive fashion, the Township's obligation will be speculative at best. Once each municipality's obligation is determined, the court must also advise what the acceptable compliance mechanisms are before a final Plan can be prepared.

LEGAL ARGUMENT

POINT I

THE TOWNSHIP'S MOTION FOR CONSOLIDATION SHOULD BE GRANTED

It is clear that there is a wide difference of opinion on Statewide, Regional and Municipal need and obligations between the experts that have been identified by the parties in this and all the other DJ Actions pending in Middlesex County. Without question the court will have to conduct a trial on such issues to definitively establish each municipality's fair share obligation. In addition, a determination of acceptable compliance mechanisms must also occur.

Rule 4:38-1 governs the consolidation of actions in the Superior Court. Pursuant to that rule, "when actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the court on a party's or its own motion may order the actions consolidated." There can be no doubt that every municipality with DJ Actions in Middlesex County have an interest in any fair share determination to be made by the court as it would directly affect their obligation and the plan they need to develop. Given the common issues and interests of the parties in all pending Middlesex County cases, the court should consolidate all Middlesex County cases for purposes of determining the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet those obligations. This will promote judicial economy, represents the most efficient use of resources of both the court and the parties involved and will result in consistency and uniformity in all pending cases while at the same time provide each party with the opportunity to participate in the determination of these issues. This process would be similar to the process previously used by the court in handling the issues related to the 1,000 unit cap.

Accordingly, it is submitted that all municipalities can be made a part of the proceedings

for this determination. Once the determination is made, each municipality will be able to prepare a Housing Element and Fair Share Plan that meets that determination, which will then permit the court to conduct the required individualized assessment. See Mount Laurel IV, *supra*. at 29.

The alternative will involve multiple trials where the evidence presented would be repetitive and time consuming for the court and all parties involved. Separate trials on these issues could also result in inconsistent or conflicting verdicts, leading to confusion, uncertainty and a lack of uniformity in affordable housing compliance and administration. This approach will also require unnecessary expenditures by the taxpayers and will impose an unnecessary burden on the citizens of the state. One must not forget that the municipalities are representatives of the citizens of New Jersey who have a real interest in having their rights addressed in an appropriate, fair, and reasonable manner. Moreover, the Supreme Court in Mount Laurel IV recognized that the municipalities were not the source of the delay and thus should not be punished in this process.

With all due respect to the court, to date the court's procedures for handling the DJ Actions has not been orderly or efficient as it has required each municipality to continue to develop plans without any guidance from the court. Judge Johnson in Atlantic County aptly described the approach of requiring towns to develop and submit plans prior to the fair share determination as "akin to being dropped in the middle of a dense forest on a cloudy day, without a compass and told, 'Find your way home.' With a compass one would have some comfort as to the direction to pursue; with the sun, one could plot a general course and hope for the best; with neither, one walks in circles." In Re City of Absecon, Superior Court, Law Division, Atlantic and Cape May Counties, Docket No. ATL-L-2726-12, et seq., at page 4. A consolidation of all

Middlesex County DJ Actions for this purpose is consistent with the process being employed in other Counties throughout the State. The approach to handle these cases in a manner that is uniform where possible also follows the Supreme Court's directive for the trial court not to handle the cases like any other litigation, but to be creative in their approach to the resolution of these matters. Mount Laurel IV, *supra.* at 27.

Currently there are anywhere from eight (8) to eighteen (18) individual DJ Actions pending in Middlesex County. Each of the DJ Actions was filed by a municipality as a direct result of the New Jersey Supreme Court's decision in Mount Laurel IV. In each case, it is critical for not only the municipalities but also all parties in the case that the trial court makes findings of fact and thereafter firmly establish the Statewide, Regional and Municipal need/obligation for affordable housing. The testimony to be presented in each of these cases consists primarily of expert testimony to be given by Dr. David Kinsey (on behalf of FSHC and other intervenors), Arthur Bernard (on behalf of certain intervenors), Peter Angelides of Econsult Solutions and Robert Powell of Nassau Capital Advisors (on behalf of municipalities and/or the N.J. State League of Municipalities). Each one of these witnesses will be required to give testimony for the court to weigh the credibility of the opinions offered and draw conclusions from the evidence presented as to the Statewide, Regional and Municipal need/obligation for affordable housing.

At least four separate estimates of the Township's Third Round Obligation have been submitted to the court. These vary dramatically, even though all purport to comply with the Supreme Court's directive to employ the previous methodologies utilized in the First and Second Round Rules. See Mount Laurel IV, *supra.* at 30. Each expert that has been relied upon to provide estimated obligations asserts that they "adhere to the prior round formula" in arriving at the obligations assigned to the Township. Dr. Kinsey estimates that number to be 2,968; Mr.

Bernard estimates the obligation to be 2,427; the 2014 COAH projections estimated that obligation to be 1,677. In this court's decision related to the 1,000-unit cap issues, assuming use of the Kinsey estimations, the Township's obligation would be 1,533. Mr. Angelides of Econsult has rendered a report estimating the Township's obligation at 215. Clearly there is wide divergence in the conclusions reached by these experts. Similar results obtain for all of the other municipalities involved in the pending DJ Actions. Each municipality therefore has a strong interest in participation in a trial where each of these experts testify, where their credibility can be tested and their testimony subjected to cross examination so that the court can ultimately determine each municipality's actual constitutional obligation for the Third Round.

Despite this, the trial court has informally indicated that it will not consolidate the pending DJ Actions for purposes of determining the Statewide, Regional and Municipal need/obligation for affordable housing. Rather, the court has proposed to conduct separate trials for each municipality. At the first trial held in Middlesex County (which at the time of this writing is scheduled to be Old Bridge Township on February 22, 2016), the court will receive testimony and evidence related to the Statewide and Regional need for affordable housing, thereafter finding facts and making certain determinations that will establish each municipality's constitutional affordable housing obligation. This means that the Township's obligation (and the obligation of every other municipality) will be conclusively established as part of that first trial. The court has indicated, however, that it will preclude other municipalities from participating in such proceeding, even though it will clearly result in the establishment of the constitutional obligation for affordable housing in each town. The court is therefore proposing a process that will firmly establish each municipality's constitutional requirement for affordable housing without ever allowing the vast majority of the DJ Action municipalities the opportunity to be

heard. Such a process, besides being inefficient, violates each municipality's right to procedural due process.

It is well established that procedural due process addresses whether there are sufficient procedural safeguards in place when the government deprives a party of a particular interest. Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 363-64, cert. denied, 519 U.S. 911 (1996). "The minimum requirements of due process . . . are notice and the opportunity to be heard." Jamgochian v. N.J. State Parole Bd., 196 N.J. 222, 240 (2008) (quoting Doe v. Poritz, 142 N.J. 1, 106 (1995)). Indeed, "[t]hose plain notions of procedural due process -- fair notice and a meaningful opportunity to be heard -- must occupy the central stage of analysis." N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88, 120 (2011). In order "to determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate (citation omitted). We must look at the legal system as a whole." Rivkin, supra.

Once the court concludes the first trial in the pending DJ Actions, the subsequent trials that follow will not provide the same level of "opportunity to be heard," since the court has indicated that it will bind each municipality to the findings established in the first trial. Thereafter, each municipality will be "stuck with" the obligation imposed upon it as a result of the first trial, without ever having the opportunity to question the witnesses or present their own evidence related to their constitutional obligation.

Without any opportunity to be heard on the issues, and no chance to cross-examine the witnesses presented in the first trial, the Township (and all other municipalities) will be unduly and severely prejudiced. Each will be bound by the outcome of a trial wherein their participation was barred. This reduces the right to procedural due process to no process at all, since all of the

other municipalities will not be permitted to participate at all. Clearly this is a violation of the constitutional right to procedural due process.

This violation of the Township's right to procedural due process could be avoided if the DJ Actions are consolidated for purposes of determining the Statewide and Regional need, the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet those obligations. Thereafter separate trials can be conducted (if necessary) to determine an individual municipality's compliance or lack thereof. In the first instance, however, all the DJ Actions should be consolidated for purposes of determining these fair share issues. A failure to do so will result in serious procedural due process violations.

Of course, the process of determining the Statewide and Regional need and Municipal obligations first, in a consolidated trial, would not be a new approach to the management of affordable housing cases. The Mount Laurel judges in Ocean, Monmouth and Mercer Counties have already done so in those vicinages. Moreover, in implementing the requirements of the Supreme Court in So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), Judge Serpentelli fully appreciated the need for bright line standards to avoid waste and delay:

Mount Laurel II recognized that, in the absence of bright line standards, "(c)onfusion, expense, and delay have been the primary enemies of constitutional compliance in this area." Thus, in an effort to strengthen the Mount Laurel doctrine and provide certainty in its implementation, the Court adopted several bright line tests. J.W. Field Co., Inc. v. Franklin Twp., 204 N.J. Super. 445, 462 (Ch. Div. 1985).

Judge Serpentelli was correct then and he is correct now. Municipalities need uniform standards to be able to use public resources wisely. Consolidation of all DJ Actions also allows for an efficient use of judicial resources. Once the fair share determination is made for all

municipalities in the region or county, then the municipalities can move forward simultaneously developing plans, as opposed to one town at a time as each case comes up for trial.

It is therefore respectfully requested that this court consolidate all of the pending Middlesex County DJ Actions for purposes of determining the Statewide and Regional need as well as the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet said obligations. This will ensure that the DJ Actions proceed in an orderly manner that fosters a just result that is in the interests of all interested parties and the citizens of New Jersey, including those in need of low and moderate income housing.

POINT II

THE TOWNSHIP'S MOTION FOR INTERVENTION SHOULD BE GRANTED

In the alternative, in the event the court determines not to consolidate all of the pending Middlesex County DJ Actions for purposes of determining the Statewide and Regional need as well as the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet said obligations, the court should grant intervention to participate in the first trial held in the DJ Actions.

The Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-51, et seq. (UDJA), governs declaratory judgment actions in New Jersey. The UDJA shall be "liberally construed and administered, and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws, rules and regulations on the subject of declaratory judgments." N.J.S.A. 2A:16-51. The purpose of the UDJA is "to settle and afford relief from uncertainty and insecurity." N.J.S.A. 2A:16-51.

The UDJA mandates that "[w]hen declaratory relief is sought, all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding." N.J.S.A. 2A:16-56. The UDJA requires that "[n]o declaratory judgment shall prejudice the rights of persons not parties to the proceeding." N.J.S.A. 2A:16-57. As such, courts have deemed it critical to join any party "who has the right and the interest to litigate the same issues at another time or before another forum" to properly adjudicate the claim. Finley v. Factory Mutual Liability Ins. Co. of America, 38 N.J. Super. 390 (Law Div. 1955). The UDJA requires joinder of parties in interest because "[t]he absence of these necessary parties would deprive any declaratory judgment rendered herein of that final and pacifying

function it is calculated to serve." Id. (Internal quotations omitted).

Court Rule 4:33-1 provides:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

For a court to determine an application for intervention as of right under R. 4:33-1, therefore, the moving party must show: (1) an interest relating to the property or transaction which is the subject of the action; (2) the applicant is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; (3) demonstrate that its interest is not adequately represented by existing parties; and (4) make a timely application to intervene. See Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998). A motion to intervene should be liberally viewed. Employers v. Tots & Toddlers, 239 N.J. Super. 276 (App. Div.), certif. denied, 122 N.J. 147 (1990). Whether to grant intervention under R. 4:33-1 is not discretionary. Chesterbrooke Limited Partnership v. Planning Board of Township of Chester, 237 N.J. Super. 118, 124 (App. Div. 1989). Rather, if all of the rule's criteria are met, intervention must be approved. Id.

In the instant case, the Township clearly has an interest in the subject of the transaction pending in every other DJ Action that will potentially establish the Township's fair share obligation. This is the critical component needed to determine the Township's constitutional obligation for affordable housing. It is also the measure by which any draft plan proposed by the Township will be judged. Since the Township will be prohibited from participating in the trial that will determine its fair share obligation, however, its right to present evidence and test the credibility of the witnesses through cross-examination will be severely impaired. Even if

the attorney representing the particular municipality involved in the first trial does an outstanding job, the focus of the evidence presented and the trial itself will (as it must) be on that attorney's client – the specific municipality involved in the trial. No attorney can or should be expected to devote the same amount of time, effort and determination to all of the municipalities that have DJ Actions pending in Middlesex County. Such would be an impossible task. As such, evidence relevant and important to determining each of the individual municipalities' obligation will go unrepresented and unconsidered by the court. In any trial where the Township's fair share obligation is established, if the Township is not permitted to participate, its interest will surely not be adequately represented by the existing parties. Finally, the within application for intervention is made in a timely manner since it was not until the Township's last Case Management Conference, held on January 13, 2016, that the court denied the informal request for consolidation and outlined its proposed process for handling the trials in the DJ Actions.

Accordingly, the Township is entitled to intervene as of right pursuant to R. 4:33-1 in any matter which will determine its fair share obligation. In the event the court finds that the Township is not entitled to intervene as of right, pursuant to R. 4:33-2, permissive intervention should be granted. Intervention will clearly not result in any undue delay and will not prejudice the adjudication of any other party's rights. Conversely, however, denial of the application for intervention will result in severe prejudice to the Township, as established by the above.

Whether by R.4:33-1 or 4:33-2, intervention should be granted because the Township has demonstrated that it has an interest in the disposition of the litigation that establishes its fair share obligation and that a failure to permit intervention would impair and impede its ability to protect its interests.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the court grant the motion for consolidation of all DJ Actions currently pending in Middlesex County for purposes of determining the Statewide and Regional need as well as the fair share obligation of each municipality and the acceptable compliance mechanisms available to meet said obligations. In the alternative, if the motion to consolidate is not granted, it is respectfully requested that the court grant the motion for intervention so that the Township is permitted to participate in any trial that will result in the determination of its fair share obligation.

Respectfully submitted,

TOWNSHIP OF SOUTH BRUNSWICK

Donald J. Sears

Dated: January 20, 2016

Donald J. Sears, Esq.
Township of South Brunswick
540 Ridge Road
P.O. Box 190
Monmouth Junction, NJ 08852
Phone No.: (732) 329-4000
Attorney for Declaratory Plaintiff,
Township of South Brunswick

<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY</p> <p>DOCKET NO.: MID-L-3878-15</p> <p>CIVIL ACTION – <i>MOUNT LAUREL</i></p> <p>CERTIFICATION OF LISA WARD</p>
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Lisa Ward, of full age, hereby certifies as follows:

1. I am a Legal Assistant employed by the Township of South Brunswick. As such, I have full knowledge of all of the facts and circumstances surrounding this matter.
2. An original and one (1) copy of the Notice of Motion for Consolidation and/or Intervention, accompanying Brief and a Proposed Form of Order, on behalf of the Declaratory Plaintiff Township of South Brunswick, were filed with the Middlesex County Clerk, Law Division, Middlesex County Court House, P.O. Box 964, New Brunswick, NJ 08901-0964, via electronic mail and regular mail on this date.
3. A copy of same was served upon the Honorable Douglas K. Wolfson, J.S.C., Superior Court of New Jersey, Middlesex County Courthouse, 56 Paterson Street, P.O. Box 964, New Brunswick, NJ 08903-0964 via electronic mail and regular mail on this date.
4. A copy of same was served upon the attached Consolidation Service List and Supreme Court Service List via electronic mail and regular mail on this date:
5. Consistent with the court's prior order, I am notifying all those on the attached Interested Parties List by sending the attached form of notice to each one via regular mail on this date.
6. I am also posting a copy of these same court filings on the Township's website at www.sbtnj.net on this date.
7. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 20, 2016

By: *s/Lisa Ward*
Lisa Ward

SUPREME COURT SERVICE LIST

In re Adoption of N.J.A.C. 5:95 & 5:97 by N.J. Council on Affordable Housing (067126)

List of Parties Participating in M-392-14

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IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO.: MID-L-3878-15 CIVIL ACTION – <i>MOUNT LAUREL</i> ORDER OF CONSOLIDATION
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THIS MATTER, having been opened to the Court by Donald J. Sears, Esq., attorney for Declaratory Plaintiff, Township of South Brunswick, by way of Motion, on notice to the Special Masters Elizabeth McKenzie and Christine Nazzaro-Cofone, all parties of record in this and all other similar Mount Laurel Declaratory Judgment Actions pending before this Court, as well as all known interested parties, and the Court having considered the moving papers and the papers filed in opposition to the Motion (if any), and having further considered the arguments of counsel, for the reasons set forth on the record and otherwise for good cause shown;

IT IS HEREBY ORDERED on this _____ day of _____, 2016, that all Mount Laurel Declaratory Judgment Actions pending before this Court that were filed as a result of the New Jersey Supreme Court's decision in In Re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV) shall be and are hereby consolidated for trial for purposes of determining the Statewide and Regional need as well as the fair share obligations of each municipality and the acceptable compliance mechanisms available to meet said obligations;

AND IT IF FURTHER ORDERED that the Township of South Brunswick shall be and is hereby permitted to intervene and participate in any trial of any matter that may result in the determination of its fair share affordable housing obligation;

AND IT IS FURTHER ORDERED that a copy of this Order shall be served upon the Special Masters and all counsel of record in each Mount Laurel Declaratory Judgment Action pending before this Court within seven (7) days of the date hereof;

AND IT IS FURTHER ORDERED that a copy of this Order shall be available for inspection by any interested party.

DOUGLAS K. WOLFSON, J.S.C.

Opposition filed: ___ Yes ___ No