TOWNSHIP OF SOUTH BRUNSWICK

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February 2, 2016

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

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

Dear Judge Wolfson:

Please accept this Letter Memorandum on behalf of the Township of South Brunswick ("Township") in reply to the opposition filed by Richardson Fresh Ponds and Princeton Orchards Associates ("Richardson"); Old Bridge intervenors Alfieri-Old Bridge Assoc., LLC, Foxborough Village Associates and Avalon Bay Communities, Inc. (collectively the "Old Bridge Intervenors"); and South Brunswick Center, LLC ("SBC") to the Township's Motion for Consolidation or in the alternative Intervention, filed in the above referenced matter and returnable February 5, 2016.

Please further accept this Letter Memorandum in opposition to the purported "Cross-Motion" filed by SBC, which is also designated in the cross-motion as being returnable on February 5, 2016.

POINT I
REPLY TO OPPOSITION TO MOTION FOR CONSOLIDATION OR IN THE ALTERNATIVE INTERVENTION

Richardson and SBC Opposition

In its Letter Memorandum dated January 29, 2016, SBC relies upon the letter submitted by Richardson in opposition to the Consolidation/Intervention motion (SBC letter memorandum, p. 2).

In its Letter Memorandum dated January 27, 2016, Richardson argues that the Township's motion should be denied outright since "each of the cases have their own individual issues of law and fact that cannot be generalized per se" (Richardson letter memorandum, p. 1). Richardson goes on to state that "the Supreme Court is equally clear that municipal compliance is to be determined on an individualized basis and record…it is not this court's role to handhold municipalities and tell them what their affordable housing obligation is,…" (Id. at p. 3). This actually supports the arguments in favor of consolidation and/or intervention. The Township is entitled to have its case considered individually, with its compliance determined on an individualized basis and full record after a trial on the merits.

The process proposed by the court, however, denies a significant aspect of this entitlement. Once the court makes a decision as to Statewide and Regional need, and then determines municipal obligations that result from the allocation of that need, in some other proceeding (potentially Old Bridge), the Township will be foreclosed from raising any of the issues determined in the Old Bridge proceeding. On the contrary, the Township will be "stuck with" the obligation that is determined for it in the Old Bridge proceeding, without ever having the opportunity to participate in those determinations. The court will precisely "tell [municipalities] what their affordable housing obligation is" (Id. at p. 3) without ever giving the Township (or any other municipalities in Middlesex County) the opportunity to cross-examine witnesses and/or present evidence on their behalf on these issues.

Richardson further argues that it is not the court's obligation to determine the municipal affordable housing obligations, and that N.J.A.C. 5:93-2.1, et seq., is to be used by the municipalities in calculating their own obligations. Even if this were true (which it is not – see argument as to Old Bridge Intervenors, infra.), the parties in all of the pending cases have done just that. All experts that have submitted reports, including the Econsult report, purport to follow this process in large degree, yet each comes to different conclusions regarding the actual affordable housing obligation that should be assigned to each municipality. Consistent with the Supreme Court's directive in In Re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"), the parties have presented expert reports that purport to "demonstrate to the court computations of housing need and municipal obligations based on [the First and Second Round] methodologies. (See Id. at 29). Various criticisms have been lodged by the respective parties against all of the expert reports that have been submitted to the court. It is clear that the court must conduct a trial to determine the credibility of each report. Despite the assertion that the Econsult report is not consistent with the prior round methodologies, that is to be determined by the court after hearing testimony and making determinations on credibility and the basis for the opinions rendered by the experts. This is no different than any other case that involves competing experts.

As such, rather than provide support for denial of the Township's consolidation /intervention motion, the arguments submitted by Richardson and SBC actually support the Township's position that consolidation of all matters for purposes of determining the Statewide

and Regional need and allocation of municipal obligation, along with determining the acceptable compliance mechanisms, should be granted.

Old Bridge Intervenors' Opposition

The Old Bridge Intervenors argue in their letter dated January 28, 2016, that the process described by this court for determining municipal obligations is the same as was employed by "the initial Mount Laurel judges designated by the New Jersey Supreme Court in 1983" (Old Bridge Intervenors letter memorandum, p. 2). In support of this proposition, the Old Bridge Intervenors cite to Morris County Fair Housing Council v. Boonton Twp., 209 N.J. Super. 393 (Law Div. 1985) and AMG Realty Co. v. Warren, 207 N.J. Super. 388 (Law Div. 1984). In doing so, however, the Old Bridge Intervenors appear to ignore the process clearly recognized by both courts in how present and prospective need as well as municipal obligations are to be determined.

In Morris County, supra, Judge Skillman outlined the process to be followed, stating:

> The initial step in the administrative process is the [Council on Affordable Housing's (COAH's)] determination of housing regions and present and prospective needs for lower income housing, and the adoption of "criteria and guidelines" for individual municipalities to determine their fair shares. L. 1985, c. 222, §7. [COAH] has seven months either after January 1, 1986, or the confirmation of its last member, whichever date is earlier, to discharge this responsibility. Ibid. Once [COAH] acts, any municipality which has elected to participate in the administrative process has five additional months within which to file a housing element and an implementing fair share housing ordinance. Id. at §9(a). The next step in a case transferred from the courts to [COAH] is "review and mediation." Id. at §15(a) (2). It is unclear whether this process may occur simultaneously with municipal consideration of its housing element or only after submission of the housing element. In any event, it would appear that mediation cannot be completed until the housing element is filed, since that is when a municipality will determine the contents of its Mount Laurel compliance plan. If mediation is unsuccessful, the next step in the administrative process is transfer of the matter to the Office of Administrative Law. Id. at §15(c). Morris County, supra at 410-411, aff'd in part, rev'd in part on other grounds sub nom Hills Dev. Co. v. Bernards Tp., 103 N.J. 1 (1986).

It is abundantly clear that the process set forth by Judge Skillman recognized that COAH was first obligated to determine the present and prospective Statewide and Regional need for lower income housing, and then set forth appropriate "criteria and guidelines" for municipalities to use in determining how to comply with the obligations that were allocated to the municipality as a fair share proportion of addressing the regional need. Only when the need and individual obligations of each municipality were determined was a municipality then required to submit a

fair share plan to address its obligation. Contrary to the process proposed by the court in the instant matters, each municipality in the original handling of affordable housing by COAH had the opportunity to submit comments and objections to COAH's proposed findings related to Statewide and Regional need as well as the allocated municipal obligations. Through the Administrative Procedures Act, N.J.S.A. 52:14B-1, et seq., each municipality was given ample opportunity to first review COAH's findings and proposed rules, and then present evidence for and/or against COAH's processes and conclusions. Each municipality's voice was heard in the process, culminating in the final rules adopted by COAH which set forth the statewide and regional need, municipal obligations and acceptable compliance mechanisms. Only after this process was completed, and each municipality in the State had a fair opportunity to participate in the process, was a municipality subject to a defined obligation.

In the present cases pending in Middlesex County, only one municipality will have the opportunity to present evidence on these issues. All other municipalities will apparently be "stuck with" whatever is determined in that initial proceeding. Thus, the proposed process is not consistent with the way these matters were initially handled.

In AMG Realty, supra, Judge Serpentelli developed a method of fair share allocation in order to eliminate the confusion surrounding the issue. Judge Serpentelli aptly pointed out that

> "the development of a fair share methodology constitutes a primary step in achieving the ultimate goal of Mount Laurel II – the actual construction of low- and moderate-income housing. (citation omitted). Only after the court quantifies the fair share obligation can it determine whether the municipal ordinance fully complies with Mount Laurel and thereafter whether the plaintiff is entitled to a builder's remedy." AMG Realty, supra, at 393.

Clearly, Judge Serpentelli recognized that the court's obligation was to determine the Statewide and Regional need via an acceptable fair share methodology, and then quantify each municipality's fair share obligation. The court in the present cases should follow the same process.

The process followed in AMG Realty in the initial stages of the litigation is similar to the present posture of the cases pending in Middlesex County. In the context of attempting to determine a methodology that would be accepted by all parties, numerous planners and experts in the AMG case consulted with each other, meeting for several days, to come up with an acceptable methodology that would determine the Statewide and Regional need and municipal obligations. Despite all parties' best efforts, a universal consensus as to the methodology to be used could not be reached, as there were competing opinions between the experts. See AMG Realty, supra., at 394-397. Indeed, Judge Serpentelli went through a painstaking process of outlining in detail a workable fair share methodology since he recognized that "the Supreme Court requires me to fix a precise number because it believes that requirement is most likely to

achieve the goals of Mount Laurel (citation omitted)." Id. Thus, Judge Serpentelli as well recognized that it was the court's obligation to determine the Statewide and Regional need and then allocate that need to individual municipalities in the form of a fair share obligation, assigning a "precise number" to the municipality so that the municipality could prepare a plan to address that precise obligation.

Despite the well-written, exacting formula set forth by Judge Serpentelli, even he recognized that both the plaintiffs and defendants in that case were unhappy with the results, the developer/housing advocate plaintiffs arguing that the numbers were too low, and the defendant/municipalities arguing that the numbers were too high. Id. at 450-452. In addressing these objections, Judge Serpentelli made clear what was present at that time, which is not the case in the instant matters. At that time, the Supreme Court had specifically appointed three Mount Laurel judges. Judge Serptentelli made clear that

> "the Supreme Court has charged the three Mount Laurel judges with the responsibility of formulating a methodology which identifies the housing needs of lower income people and thereafter fairly distributes the need. Once the need is identified, it cannot be ignored to satisfy defendants or inflated to satisfy plaintiffs. The answer to the numbers game is squarely addressed by the Supreme Court." Id. at 452.

As such, the Supreme Court specifically directed the three Mount Laurel judges to devise a methodology to be applied on a statewide basis, which would thereafter be mandatorily applied throughout the State.

The landscape of the current litigation is quite different. The Supreme Court has not specifically appointed three Mount Laurel judges to come up with a methodology to be applied on a statewide basis. Rather, the Supreme Court has left it to each Mount Laurel judge in each of the vicinages to determine how they will proceed. The Supreme Court has not mandated a specific methodology to be used, other than referring courts to generally utilize the First and Second Round methodology. In order to do so, each Mount Laurel judge in each county will be required to go through the painstaking process that was experienced by Judge Serpentelli in determining the AMG Realty case. Indeed, Judge Serpentelli made clear that, when the Supreme Court specifically designated the three Mount Laurel judges, "it envisioned that the specialized trial court it created would undertake the task of devising a comprehensive approach to the subject [of fair share]." Id. at 455. Even so, in reaching his conclusion on methodology, Judge Serpentelli conceded that "the methodology represents the beginning of the refinement process. It is not written in stone and it should therefore provide the impetus for those in the legal and planning community, as well as others, to improve upon it or replace it with something better." Id. at 456.

Since the present affordable housing landscape is quite different than the judicial posture of the 1980's, it cannot be said that one trial in one municipality will or can determine the

specific obligation for all other municipalities in Middlesex County. The Supreme Court in Mount Laurel IV did not direct or intend such a result. As Richardson, SBC and the Old Bridge Intervenors all argue, each municipality is entitled to an individualized assessment of its obligation. This requires that each municipality be permitted to participate in the trial that determines Statewide and Regional need and allocates municipal obligations. Since it would be an utter waste of time and resources to conduct multiple trials on the exact same issues, the most prudent, most efficient and most effective process to follow would be to consolidate all pending declaratory judgment actions for purposes of determining Statewide and Regional need, allocating municipal obligation and determining acceptable compliance mechanisms to meet those obligations.

The Old Bridge Intervenors go on to argue that consolidation will cause delay because the court has scheduled the Old Bridge case for trial on February 22, 2016. The Township has not requested an adjournment of this trial date. Should the court feel that the matter is ready for trial, the Township would abide by the February 22, 2016, trial date.

The Old Bridge Intervenors also argue that "South Brunswick has no interest in Old Bridge's fair share obligations." (Old Bridge Intervenors letter memorandum, p. 2). This statement misunderstands the Township's request. The Township has no interest in participating in the individualized assessment of Old Bridge's fair share obligation or its plan to meet that obligation. Those issues are uniquely suited for Old Bridge and the participants in that case. If, however, the Old Bridge trial results in the determination of South Brunswick's fair share obligations (which it appears it will), then South Brunswick has a definite interest in participating in the proceedings.

The Old Bridge Intervenors finally argue that if South Brunswick has the right to intervene in the Old Bridge trial, "each and every municipality throughout the state could intervene in the Old Bridge trial or any other trial as of right." (Id. at p. 3). This is simply not accurate. The Township is seeking a consolidation of only Middlesex County cases. As envisioned by the Supreme Court in Mount Laurel IV, municipalities that are outside of Middlesex County are subject to having their due process rights protected in their respective counties. Indeed, municipalities in Mercer, Monmouth and Ocean Counties already have their rights protected in the consolidated trials being scheduled in those counties. Thus, the Old Bridge intervenors' fears in this regard are unfounded.

POINT II
OPPOSITION TO "CROSS-MOTION"BY SBC

SBC has filed what purports to be a "cross-motion" to the Township's motion seeking consolidation, or in the alternative, intervention. For numerous reasons, this "cross-motion" should be denied on both procedural as well as substantive grounds.

Procedural Grounds

1. The SBC "cross-motion" should be denied since it was filed out of time, in violation of R. 1:6-3 (a). Rule 1:6-3(a) indicates that a cross-motion must be filed and served within eight (8) days before the return date of the motion. The "cross-motion" has yet to be "served" upon the Township in the manner consistent with the rules of court. On February 1, 2016, a copy was served upon the Township via regular mail and hand-delivery (Sears Certif., para. 3, Exhibit A). A copy appears to have also been sent as an attachment to an email that was sent on Friday, January 29, 2016, at 8:35 p.m. (Sears Certif., para. 4, Exhibit B). Even if email is considered valid "service," it was not sent to the Township until well after business hours on a Friday, and not seen by counsel for the Township until Monday, February 1, 2016, when counsel returned to the office (Sears Certif., para. 4). Even this attempted "service" of the "cross-motion" was out of time, since any cross-motion was required by R. 1:6-3 (a) to be served upon the Township no later than Thursday, January 28, 2016.

2. The "cross-motion" violates R. 1:6-3 (b) since the cross-motion does not "relate to the subject matter of the original motion." The original motion seeks a consolidation and/or intervention in other affordable housing declaratory judgment actions pending in Middlesex County. It does not seek a final judgment or an order granting repose or permanent immunity from builder's remedy lawsuits for the Third Round. It is merely a motion seeking to clarify the procedure to be followed in the event trial must take place.

   The "cross-motion" goes well beyond the subject matter of the original motion, seeking a final determination on the merits of the declaratory judgment action, stripping the Township of immunity, granting builder's remedy rights and awarding attorney's fees. Clearly, this is a violation of R. 1:6-3 (b) since the purported "cross-motion" has nothing to do with the process to be followed in any trial to determine fair share issues, but seeks a ruling by the court on the ultimate issues to be determined in the Township's declaratory judgment action.

3. The "cross-motion" is in reality a summary judgment motion on the pending Township declaratory judgment action, in violation of R. 4:46-1. Without question, R. 4:46-1 requires that any summary judgment motion be filed and served twenty-eight (28) days before its return date. Clearly, the "cross-motion" was filed in egregious violation of this rule. SBC's "cross-motion" seeks an order from this court declaring that the Township has failed to prosecute its Mount Laurel IV declaratory judgment action in "good faith", has willfully engaged in "abuses of the process for obtaining a declaratory judgment of compliance", has willfully "determined to be constitutionally non-compliant", and seeks an order dismissing the Township's declaratory judgment action with prejudice, vacating the terms of all prior orders that either stayed or dismissed separate intervenor causes of action for builder's remedy relief, reinstating SBC's original complaint that contested the zoning of its property, issuance of a preliminary injunction against the Township from proceeding against SBC's property interests, and award of attorney's fees and costs. This is a blatant violation of the rules governing the filing of summary judgment motions, which has been done by SBC in the

guise of a "cross-motion". Rather than the required twenty-eight (28) days' notice, SBC has decided to give the Township four (4) days' notice. Such blatant violation of the court rules cannot be tolerated

4. The "cross-motion" seeks injunctive relief in violation of R. 4:52-2. Applications for injunctive relief during the course of litigation are governed by R. 4:52-2, which in turn is governed by the standards set forth in R. 4:52-1. R. 4:52-1 requires that the party seeking injunctive relief demonstrate that "immediate and irreparable damages will probably result" if the injunction is not granted. SBC has made absolutely no showing of any such irreparable harm. Moreover, R. 4:52-1(b) requires that the application for injunctive relief must be served at least ten (10) days prior to the return date of the application. SBC has violated this court rule in giving the Township only four (4) days' notice.

5. There is no basis for an award of attorney's fees. Nowhere in R.4:42-9 are attorney's fees permitted, yet SBC demands an award of attorney's fees for having participated in the declaratory judgment action. Simply stated, there is no provision for any such award of attorney's fees. Nor has SBC cited to any authority for the proposition that it is entitled to an award of attorney's fees in this matter.

Substantive Grounds

1. To the extent that SBC relies upon anything contained in the Richardson opposition to the consolidation/intervention motion as support for its "cross-motion", the issues raised by Richardson in its January 27, 2016, letter have already been addressed above.

2. SBC argues that the Township "tacitly disavowed" the Econsult report at the last Case Management Conference when the Township "consented" to the most recent Case Management Order. (SBC letter memorandum, p. 3). This completely misconstrues what occurred at the Case Management Conference. Although the court expressed serious reservations with the Econsult report, the Township never "tacitly disavowed" reliance upon the Econsult conclusions. Nor did the Township ever "consent" to the content of the Case Management Order. On the contrary, the court specifically directed the Township to take certain actions to modify its draft Preliminary Plan. The Case Management Order that was entered as a result of the Conference was not in the form of a Consent Order, nor was the Township asked to "consent" to its terms. As such, SBC's assertions in this regard are unfounded and without basis in fact.

3. SBC goes on to criticize the Econsult report and the conclusions contained therein. All of this criticism goes to the weight of the opinion expressed in the report. The credibility to be given to the Econsult experts, and the weight to be given to the opinions expressed in the Econsult report, will all be determined if and when the matter goes to trial and facts can be determined on the merits of the evidence presented in court. The Township's reliance upon an expert report that well over 280 other municipalities in the State of New Jersey are also

relying upon for a determination of Statewide and Regional need, and allocation of municipal obligations, does not evidence any "bad faith" on the part of the Township. On the contrary, it merely demonstrates issues to be determined by the court at the time of trial.

4. SBC ominously argues that "the time has come for the Township's compliance intentions to be judged". (Id. at p. 5). Any such "judgment" of the Township's "compliance intentions" is to be done in the context of a trial on the merits, and not determined by reviewing various correspondence where the parties engage in posturing and "saber rattling."

5. SBC next argues that an ordinance introduced by the Township Council on January 26, 2016, which will accept a utility easement previously dedicated by SBC somehow seeks to "expropriate sewer utility and roadway infrastructure improvements built by SBC on SBC's property." (Id. at p. 7). In support of this assertion, SBC refers to its own letter of January 26, 2016, that was transmitted to the Township in objection to the ordinance.

   Everything set forth in SBC's January 26, 2016, letter is completely unfounded and, even if there were a scintilla of truth to what is asserted, it is irrelevant to the issues pertaining to the declaratory judgment action.

   On January 26, 2016, the Township Council introduced Ordinance 2016-2, accepting dedication of a utility easement along Cornwall Road and Northumberland Way (see portion of Exhibit C to SBC letter memorandum dated January 29, 2016) ("Ordinance"). The Ordinance relates to a utility easement that was dedicated to the Township of South Brunswick in 2010 and located on a portion of Block 86.03, Lot 22.031, which is property owned by SBC. This utility easement has absolutely nothing to do with the sewer line or roadway improvements constructed by SBC on separate property that is also owned by SBC.

   The assertions contained in SBC's Letter Memorandum and its letter dated January 26, 2016, seek to cloud the issues, and somehow convince the court that the current Ordinance related to acceptance of the dedicated Utility Easement near the intersection of Cornwall Road/Northumberland Way is somehow connected with the ongoing litigation related to affordable housing and/or the Developer's Agreement from 1995. This is completely inaccurate and misleading.

   On June 15, 1994, the then owner of the SBC property obtained two approvals from the South Brunswick Planning Board:

   1) Minor Subdivision and Lot Line Adjustment for Block 86, Lots 22.03 and 22.04; and
   2) Preliminary Major Subdivision for Block 86, Lots 89.013 and 89.023 (See Sears Certif., Exhibit C).

   Pursuant to N.J.S.A. 40:55D-47, the Minor Subdivision and Lot Line Adjustment approval had to be perfected by the filing of a deed or plat map with the Middlesex County Clerk within 190 days from

June 15, 1994. No such deed or plat map was ever recorded with the County (Sears Certif., para. 7). As such, the Minor Subdivision approval expired as a matter of law.

Pursuant to N.J.S.A. 40:55D-49(d), the Preliminary Major Subdivision approval was granted an extension of the period of approval from the normal three (3) years to twenty (20) years, contingent upon satisfaction of certain conditions set forth in the resolution of approval. One such condition was execution of a Developer's Agreement.

The resulting Developer's Agreement dated May 2, 1995, deals only with the Preliminary Major Subdivision approval for Block 86, Lots 89.013 and 89.023. There is absolutely no mention of the Minor Subdivision and Lot Line Adjustment for Lots 22.03 and 22.04 (See Sears Certif., Exhibit D). SBC's initial Complaint and the Amended Complaint, which has now been consolidated into the above Declaratory Judgment action filed by the Township in July 2015, seek an extension of the Developer's Agreement. As such, it deals solely with the Preliminary Major Subdivision approval from 1994, not the Minor Subdivision Approval, which by the time of the filing of the SBC Complaint had long expired.

As further evidence that the Minor Subdivision granted by the Planning Board in 1994 had expired and was never part of the current litigation, SBC filed a completely separate, new application for a Minor Subdivision and Lot Line Adjustment for Lots 22.03 and 22.04 on November 12, 2009, under South Brunswick Planning Board File No. 09-030. A public hearing was held on April 28, 2010 and final approval of the Minor Subdivision was granted by the Planning Board on June 16, 2010 (See Sears Certif., Exhibit E). Noted in the resolution is a discussion that took place at the commencement of the hearing regarding the ongoing litigation between SBC and the Township/Planning Board. It is clear that the parties considered the ongoing litigation to be separate and distinct from this latest subdivision application, and it was agreed that the subdivision proceedings on that application, as well as any information provided during the application process, would have no evidentiary value pertaining to the ongoing litigation. Without question, they are two separate land use matters.

Once the Minor Subdivision application was approved, SBC perfected the approved subdivision with the filing of the subdivision map entitled "Minor Subdivision Plat of Northumberland Way and Block 86.03, Lot 22.03 & Block 86, Lot 22.04, for South Brunswick Center, L.L.C.," prepared by Henderson and Bodwell, L.L.P., last revised October 8, 2010, which was filed in the Office of the Middlesex County Clerk on December 15, 2010, as Map No. 58, File 1945 (See Sears Certif., Exhibit F). As is clear from the filed Minor Subdivision map, a certain Utility Easement on Lot 22.03 was dedicated to the Township.

It is well established that once the owner of property makes a dedication to a municipality, the dedication is "complete and irrevocable so far as the dedicator is concerned,…(internal citation omitted). The offer remains in place until the municipality accepts or rejects it, 'no matter how long delayed, and these public rights can only be destroyed by proper municipal action, usually by vacation.'" Township of Middletown v. Simon, 193 N.J. 228, 241 (2008) (quoting Highway Holding

Co., v. Yara Engineering Corp., 22 N.J. 119, 126 (1956)). Any ambiguity in the dedication is resolved against the dedicator and in favor of the public. Id. (quoting Haven Homes, Inc., v. Raritan Twp., 19 N.J. 239, 246 (1955)). The filed Minor Subdivision map irrevocably dedicated to the Township the variable width Utility Easement that the Township has now moved to accept by way of the Ordinance. The Ordinance has nothing to do with any roadway or utility improvements installed by SBC on its other properties, and does not seek to "expropriate" any property owned by SBC.

Since the dedication of the Utility Easement relates to a completely separate and distinct Planning Board approval, and not the Developer's Agreement, acceptance of the easement is wholly unrelated to the current litigation. It has absolutely nothing to do with the remainder of Northumberland Way or the utility improvements installed by SBC on the remainder of its property, all of which are related to the Developer's Agreement litigation. As such, acceptance of this dedication has no bearing on the current litigation, and is certainly not evidence of "bad faith" by the Township. SBC, like any other developer/property owner in the State of New Jersey, is bound by the law of dedication, and cannot use the current litigation to avoid or revoke the dedication that is clearly evident from the record.

6. SBC finally argues that discussions held in Executive Session regarding the use of eminent domain shows that the Township was going to attempt to "commandeer infrastructure" built by SBC, and that this somehow shows that the Township has acted in "bad faith". (SBC letter memorandum, p. 7-8). Although it is true that the Township had discussions related to a sewer line in the area of Cornwall Road and Northumberland Way, there is no evidence that those discussions had anything to do with the sewer line that was constructed by SBC on its property. Indeed, the transcript relied upon by SBC clearly shows that the discussion relates to a sewer line that had not yet been built, and not the sewer line previously constructed by SBC. (See SBC letter memorandum, Exhibit D, T8:16-25). Thus, SBC cannot support its assertion that the Township plans to condemn any of its property. On the contrary, the evidence relied upon by SBC for this proposition proves the contrary.

   Even if the Township Council had discussions in Executive Session about a possible condemnation of any of the SBC property, no eminent domain actions have been filed. The mere fact that discussions may have occurred at some point in the past is irrelevant to a determination of whether the Township is currently acting in good faith. Certainly the vague, innocuous reference at one Council meeting almost one year ago to possible condemnation does not support a finding of bad faith, especially when there has been no condemnation action filed or even threatened.

CONCLUSION

For the foregoing reasons, as well as those previously expressed to this Court in prior submissions, the Court should grant the Township's motion for Consolidation or in the alternative Intervention. In addition, the Court should deny SBC's Cross-Motion on both procedural as well as substantive grounds

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

Respectfully yours,

/Donald J. Sears

Donald J. Sears
Director of Law

DJS/lw

Cc: Middlesex County Clerk
Robert A. Kasuba, Esq., attorney for AVB
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Benjamin Bucca, Jr., Esq., attorney for SB Planning Board
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Elizabeth MacKenzie, PP, Special Master
All parties on attached service list