

(from Trenton)

6/16/83

(1983)

Request for funding to support Mt. Laurel
Decision

4 pgs

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State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850
TRENTON, NEW JERSEY 08625

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE

~~CAROL BISSNER~~
DIRECTOR
TEL: 609-292-1693

June 16, 1983

Bruce Gelber
N.C.D.H.
1425 H Street, N.W.
Washington, D. C. 20005

Dear Bruce,

Enclosed is a draft of a letter which I have prepared to the two foundations. It has not yet been proofread. Please let me know your thoughts.

Sincerely,

A handwritten signature in dark ink, appearing to be "Ken", written over a horizontal line.

KENNETH E. MEISER
Deputy Director

KEM:id
encl.



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DEPARTMENT OF THE PUBLIC ADVOCATE
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JOSEPH H. RODRIGUEZ
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CAP. S. BISGAIER
DIRECTOR
TEL. 609-292-1693

June 16, 1983

I am writing this letter to urge you to give all possible consideration to the request of the National Committee Against Discrimination in Housing, the Center for Metropolitan Action, and the American Civil Liberties Union of New Jersey for grant assistance to implement the Mt. Laurel decision. As New Jersey Public Advocate, I believe that the Mt. Laurel decision presents New Jersey with a unique opportunity to meet the housing needs of our lower income citizens. Your foundation, by funding this request, could play a major role in turning this opportunity into reality.

In January, the New Jersey Supreme court issued the Mt. Laurel II decision, one of the most important land use decisions in American history. The opinion is extraordinary, both because of the fundamental constitutional principles which it expounds and the directions which it gives for applying those principles to the land use practices of New Jersey municipalities. The basic constitutional principle of the Mt. Laurel decision is presented quite simply:

the State controls the use of land, all of the land. In exercising that control it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls this land represents everyone. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages. And the same applies to the municipality, to which this control over land has been constitutionally delegated. 92 N.J. at 209.

To comply with the Mt. Laurel constitutional requirement, a municipality must eliminate all unnecessary cost-producing requirements and restrictions which interfere with the construction of the municipality's fair share of low and moderate income housing. More importantly, the

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municipality has an affirmative obligation to take affirmative steps, including where necessary, the requirement that a large developer construct a percentage of low and moderate income housing within a development.

The test of the Mt. Laurel decision, however, is not what it says, but what it will mean in practice. Its success will be measured in direct proportion to the number of lower income housing units which are built as a result of the decision.

Beyond the 100 units of lower income housing which the Supreme Court ordered to be built in Mt. Laurel Township,* the first test of whether the Mt. Laurel decision will produce housing will come in the cases which the Supreme Court decided. The Supreme Court ordered that masters be appointed in the lawsuits against Mt. Laurel, Mahwah and eleven Middlesex County municipalities to assist in the revisions of the land use regulations of these municipalities. These revisions, when approved by the courts, will become models for other towns to follow.

The intent of the land use revisions is quite clear. If government permits developers to build at the highest densities at which it is feasible to build on the site, permits developers to choose the residential type (e.g., garden apartments, condominiums, mobile homes), and eliminates unnecessary cost generating features in its subdivision and zoning ordinance; the government in exchange can ask developers to build a percentage of lower income housing. Developers will be able to make an overall reasonable profit and will simultaneously provide some of the lower income housing which New Jersey desperately needs.

To describe the process, however, is only the first step in successfully carrying it out. The plaintiffs need a planner and land use expert who can develop high enough densities and sufficient cost-saving measures required so that developers will, in fact, take advantage of the land use changes. They need to do a fair share study to determine how much of the municipality should be rezoned to permit the high density developments which include a percentage of low and moderate income housing. The role of the master is to review the suggestions of the experts and try to mediate with the municipality so they are voluntarily implemented or, if that fails, to ask the court to order the changes made.

The Public Advocate is paying for the cost of its experts in the Mt. Laurel case and is proceeding with litigation against a number of Morris County municipalities which have been unwilling to comply with Mt. Laurel principles. The cost of these cases are stretching the Department of the Public Advocate's resources to its limits. The Department is unable to give

* The Supreme Court issued a building permit to Davis Enterprises in the Mt. Laurel case to build a mobile home park. The remedy is conditioned upon the requirement that the developer build fifty units affordable to and occupied by low income households - households earning less than 50% of median income - and fifty for moderate income persons earning between 50% and 80% of median.

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any financial assistance to the plaintiffs in the Mahwah or Middlesex County cases. The Mahwah plaintiffs have no resources whatsoever to pay for the cost of the proceedings before the master. The Middlesex plaintiffs have no resources to pay for expert witnesses. Unless some financial assistance is provided, I fear that these cases could collapse.

The three cases remanded by the Supreme Court - Mt. Laurel, Mahwah and Middlesex - have tremendous symbolic importance. Everyone will look at the results in these cases to see whether the Mt. Laurel II decision was merely empty words. But the true importance of these cases is as models not as symbols. If we can develop a land use framework that produces lower income housing in Mahwah, it can be replicated throughout Bergen County. If the master's recommendations make it feasible to construct lower income housing in Middlesex County, those recommendations can be applied to Mercer, Monmouth and Somerset County. If the public interest plaintiffs are successful in these cases, there will be no need to reinvent the wheel in lawsuit after lawsuit. Municipalities which seek to avoid future Mt. Laurel litigation can modify their land use ordinances to comply with the revisions in Mahwah, Middlesex and Mt. Laurel.

The Supreme Court decision in Mt. Laurel is courageous and optimistic. The opinion states that lower income housing can be and should be built in today's economy. I share that goal and am doing everything I can in view of my limited resources to make this vision a reality. I urge you to see if you can't do the same thing by approving a grant to these applicants.

Very truly yours,

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE OF NEW JERSEY

JHR:id