U.L. v. Carteret, Piscataway 9/10/84 1984

- Plaintiff's motion for Temporary Restraining Order and Interlocutory Injunction
- Plaintiffs Brief in support of Same
- Affidavit of Bruce Gelber in Support of Same
  Att: Exhibits A-F
- Affidavit of Ralph [redacted] Rieder

Pgs. 46

P.I. 1049

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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX/
OCEAN COUNTIES

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants.	Docket No. C 4122-73
	NOTICE OF MOTION FOR TEMPORARY RESTRAINING ORDER AND INTERLOCUTORY INJUNCTION

TO: The Honorable Eugene Serpentelli
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Mr. Lewis Bambrick
Clerk
Superior Court
Trenton, New Jersey

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Attorney for Algin, Inc.

PLEASE TAKE NOTICE that on Tuesday, September 11, 1984 at 9:00 A.M. or as soon thereafter as counsel may be heard, plaintiffs in this action will move for an order restraining the Planning Board of the Township of Piscataway from granting preliminary or final approval or taking any other action with respect to the subdivision application of Reidhal, Inc. which would create a vested use, zoning rights or a claim of reliance against a claim by the plaintiffs or

an order of the Court requiring rezoning of the site to satisfy the township's obligation under Mount Laurel II, and further instructing the Court-appointed expert to inspect the site and submit a recommendation as to its suitability for development of Mount Laurel housing.

Dated: September 6, 1984

BRUCE GELBER
BARBARA WILLIAMS
JOHN PAYNE

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URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARTERET,
et al.,

Defendants.

Docket No. C 4122-73

MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER
AND INTERLOCUTORY INJUNCTION

In this motion, the Urban League plaintiffs seek to preserve their opportunity for adequate and appropriate relief against the defendant Township of Piscataway, by restraining the Township's Planning Board from taking action that might irrevocably divert vacant and developable land in the township to non-Mount Laurel purposes. Such action is threatened as early as September 12, 1984, when the Planning Board is scheduled to hear Reidhal, Inc.'s applications for preliminary and final subdivision approval.

Application of the methodology adopted by this Court in AMG Realty Company, et. al. v. Township of Warren, Docket Nos. L-23277-80 PW and L-67820-80 PW (July 16, 1984) and in its Letter Opinion in this case dated July 27, 1984 yields a fair share obligation for Piscataway Township for the decade 1980 to 1990 that is in excess of 3,800 units of low and moderate income housing. Affidavit of Bruce Gelber, ¶ 3. It is evident, as the Township has repeatedly argued, that there is insufficient vacant and developable land in Piscataway to completely satisfy an obligation of this magnitude. Lerman Report, p.2; Affidavit of Alan Mallach, ¶ 4.

Notwithstanding these facts, the township has undergone substantial growth in the recent past, and continues to experience substantial growth at this time. None of this growth has provided low and moderate income housing opportunities; indeed, by concentrating on commercial and office structures, it has served to exacerbate the need for affordable housing in the township. See Affidavit of Alan

Mallach, ¶ 5. The township's growth policy, which has required the active participation of the governing body and the planning board, vividly demonstrates Piscataway's insensitivity to its Mount Laurel obligation.

The Planning Board of the Township of Piscataway now has before it applications for preliminary and final subdivision approval that would permit construction of single family residences on one-quarter acre lots with no provision for the set aside of low or moderate income housing. Affidavit of Bruce Gelber, ¶¶ 6-8. The Planning Board has scheduled a public hearing on these applications for September 12, 1984, and could act upon the applications at that time.

The Urban League plaintiffs submit that approval of the pending applications will cause it irreparable harm. They therefore ask the Court to restrain all action with respect to these applications, pending completion of the Urban League trial, that would make this parcel unavailable for rezoning as part of a remedy in this case.

The familiar standard which plaintiffs must meet in order to obtain temporary relief was recently restated by the Supreme Court in Crowe v. DeGioia, 90 N.J. 126, 447 A.2d 173 (1982). Plaintiffs must show: (1) a valid legal theory and a "reasonable probability of ultimate success on the merits," id. at 133; (2) irreparable harm, not adequately redressable by money damages; and (3) a relatively greater harm to the plaintiff if relief is denied than to the defendant if relief is granted.

Plaintiffs amply meet this test.

Probability of success. In light of the Supreme Court's decision in Mount Laurel II, 92 N.J. 158 (1983), and this Court's rulings in AMG Realty Company, et. al. v. Township of Warren and this case, it goes without saying that plaintiffs' Mount Laurel theory is legally valid. It is also virtually certain that plaintiffs will prevail on the merits and that Piscataway's zoning ordinance will be found to be in non-compliance with Mount Laurel II. At trial, the township conceded that its zoning ordinance does not provide for a mandatory set aside of lower income housing. In addition, the township acknowledged that, even if its voluntary density bonus provision were fully utilized, it would result in the development of only 462 units of Mount Laurel housing. Because the fair share number for Piscataway resulting from the AMG methodology is in excess of 3800 units, even if that number were reduced to account for "credits" sought by the township, it would still greatly exceed the number of lower income units that may be developed under Piscataway's existing ordinance.

Irreparable harm. Given the probable size of Piscataway's fair share number and the limited amount of vacant and developable land in the township, it is obvious that any action that removes otherwise suitable land from the remedial reach of the Court and its master in the compliance phase of this proceeding will undermine the Urban League plaintiffs' ability to achieve complete relief. In addition, alternative money damages are wholly inappropriate

in a case of this nature.

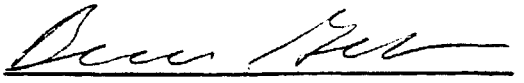
Approval of the pending applications will for all practical purposes make these parcels unavailable for development of Mount Laurel housing. Under N.J.S.A. 40:55D-49(a), a developer's right to an approved "use" becomes vested upon preliminary approval, thus precluding a rezoning from commercial to residential or from single-family to multi-family uses. It also would presumably preclude any revision of the approval to include low and moderate income housing as a component of the proposed development. Although the statute refers to "general terms and conditions," this language has been interpreted to mean any basic or fundamental aspect of the project for which preliminary approval is granted. See Hilton Acres v. Klein, 64 N.J. Super. 281, 165 A.2d 819 (App. Div., 1960), aff'd, 35 N.J. 570, 174 A.2d 465 (1961). Although there is no case law directly in point, whether a proposed development is a Mount Laurel or non-Mount Laurel one would seem to fit within the Hilton Acres concept of a "basic" or "fundamental" aspect of the developer's thinking, and therefore would come within the reach of N.J.S.A. 40:55D-49(a).

Balancing of harms. The defendants, as public bodies, would suffer little, if any, harm should temporary relief be granted, since their role is that of a regulator rather than a principal. Indeed, the absence of prejudice to the township is especially evident here, since the temporary

restraint sought by plaintiffs allows the Planning Board to continue to process and approve the applications, subject only to the plaintiffs' right to request rezoning of the tract as part of the remedy in this case.

Assuming that the developer-applicant is entitled to have its interests considered in the balance, the balance still remains overwhelmingly in the plaintiffs' favor. As a matter of law, the applicant is not entitled to approval simply because its applications are complete and pending; the applications could be disapproved by the planning board on grounds unrelated to the present action. More importantly, however, except for the issues of site suitability and appropriate densities, trial in this action has been completed and the temporary restraints are likely to last at most for a couple of months until a decision is rendered. Plaintiffs thus submit that they fall amply within the requirements of Crowe, having shown a probability of success on the merits, irreparable harm, and a balancing of interest that is overwhelming in their direction. Accordingly, plaintiffs respectfully move for entry of a temporary restraining order regarding the processing and possible approval of the Reidhal, Inc. applications.

Respectfully submitted:



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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX/
OCEAN COUNTIES

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et. al., Plaintiffs, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants.	Docket No. C 4122-73 AFFIDAVIT OF BRUCE GELBER

DISTRICT OF COLUMBIA) :ss:

AFF-GLB. 4-8-84

BRUCE S. GELBER, of full age, being duly sworn according to law, deposes and says:

1. I am one of the attorneys representing the Urban League plaintiffs in this action.

2. I submit this affidavit in support of the Urban

League plaintiffs' Motion for a Temporary Restraining Order and Interlocutory Injunction.

3. On July 27, 1984, this Court rendered its decision in this case regarding the fair share obligations of Cranbury and Monroe Townships. (Letter Opinion of July 27, 1984, attached hereto as Exhibit A). Application of the methodology used by the Court in that decision yields a fair share allocation for Piscataway Township for the decade 1980 to 1990 of 3806 units of lower income housing. (See Tables 16A and 16B of J-5, marked in evidence, attached hereto as Exhibit B, and page 9 of J-20, marked in evidence, attached hereto as Exhibit C).

4. On July 18, 1984, Carla Lerman, the Court-appointed expert, submitted a preliminary report regarding vacant land in Piscataway in which she concluded that there are approximately 1100 acres in Piscataway Township that are either entirely or partially suitable for higher density residential use. (See Lerman Report attached hereto as Exhibit D). This conclusion is consistent with that reached by plaintiffs' planning and housing expert in an earlier affidavit filed in this case. (See Affidavit of Alan Mallach, attached hereto as Exhibit E, ¶ 4). Even if all of this land were developed for residential use at a density of 10 to 15 units per acre (a prospect which is unlikely given the legitimate concerns about appropriate densities on a number of these sites), there would still be an insufficient amount of vacant land in Piscataway suitable for residential development to meet the township's fair share obligation.

(Exhibit E, ¶¶ 3-4).

5. As a result, on May 7, 1984, this Court entered a temporary restraining order with respect to three applications for subdivision approval which permitted the Piscataway Township Planning Board to process and approve the applications, but provided that "such processing or approval, if any, shall not, until further order of the Court, create any vested use or zoning rights or give rise to a claim of reliance against a claim by the Urban League plaintiffs or an order of this Court for revision of the Piscataway Township zoning ordinance if this land . . . must be re-zoned in order to provide opportunities for development of low and moderate income housing under Mt. Laurel II, 92 N.J. 158 (1983)." On June 1, 1984, the Court continued the temporary restraints as to these three applications; appointed Ms. Lerman as the Court's expert to assist in determining the amount of available acres and specific sites in Piscataway Township that are suitable for development of Mount Laurel housing and the appropriate densities for development of each site; and further ordered that its ruling as to Piscataway's fair share would be reserved until after submission of Ms. Lerman's report and any hearing thereon.

6. In July 1984, Riedhal, Inc. submitted an application for preliminary and final subdivision approval for a 24.4 acre site located off Lincoln Avenue and designated as Block 593, Lots 16, 17, 47A and 50, Block 594, Lot 14A, and Block 595, Lot 10A on the Piscataway Township Tax Map. According

to the applications, Reidhal, Inc. proposes to subdivide the site into 36 lots to construct houses for sale on lots of 10,000 square feet or greater. (See Applications for Approval of Major Subdivision Plat, attached hereto as Exhibit F).

7. In a recent conversation with Piscataway Township's Assistant Planner Richard Scalia, I learned that at its agenda meeting on August 22, 1984, the Piscataway Township Planning Board placed the Riedhal, Inc. applications on the agenda for its next regular meeting, now scheduled for September 12, 1984. I was further advised that, while the applicant had received preliminary approval for the entire tract several years ago, only one section had received final approval, and the preliminary approval as to that portion of the site involved in the instant applications had expired.

8. The Riedhal site is located east of Hoes Lane, south of the municipal complex and north of site 44 and the adjoining cemetary. Since the Piscataway Township Planning Board had already approved the site for residential development several years ago, the site is apparently appropriate for such use.

9. If these applications are approved, they will create for the applicant substantial vested rights in the terms and conditions of the approval and may preclude rezoning of the tract to permit multifamily or higher density residential development as part of a remedy in this case.

10. Due to the lack of sufficient vacant land in the

township appropriate to meet the township's fair share obligation, and in light of the apparent suitability of this site for that purpose, plaintiffs move for a temporary order enjoining approval of the subdivision applications as against any claim by the Urban League plaintiffs or order of this Court requiring the rezoning of this tract to satisfy the Township's obligation under Mount Laurel II.

11. Plaintiffs further move for an order instructing the Court-appointed expert to inspect the site and include as part of her final report a recommendation regarding the suitability of the site for development of Mount Laurel housing and the appropriate density for development.

Bruce A Gelber
BRUCE S. GELBER

SWORN To and Signed
Before Me this 6
Day of September, 1984

Margaret T. Whiston
NOTARY PUBLIC

My Commission Expires:

My Commission Expires November 14, 1985

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER, N. J. 08753

July 27, 1984

Bruce S. Gelber, Esq.
Eric Neisser, Esq.
William. Warren, Esq.
Carl Bisgaier, Esq.
Michael Herbert, Esq.

Guilet Hirsch, Esq.
Stewart Hutt, Esq.
Arnold Mytelka, Esq.
Thomas Farino, Esq.
William Moran, Esq.

LETTER OPINION

Re: Urban League v. Carteret
Docket No. C-4122-73

Gentlemen:

Before the receipt of this letter, you should have received a copy of the court's opinion in the AMG Realty Company et al v. Township of Warren. That opinion is dispositive of all of the legal issues relating to the establishment of a fair share methodology concerning the Townships of Monroe and Cranbury and is fully incorporated herein by this reference.

Based upon that opinion and the calculations contained in J-5 marked in evidence, the fair share of the Township of Monroe is established at 774 units, representing 201 indigenous and surplus present need units and 573 prospective need units for the decade of 1980 to 1990. As to Cranbury the fair share is established at 816 units representing 116 indigenous and surplus present need units and 700 prospective need units for the decade of 1980 to 1990. The reduction in the fair share numbers as shown on Tables

EXHIBIT A

13A, 13B, 15A and 15B of J-5 represents a recalculation of the indigenous need based upon Carla Lerman's memorandum of May 24, 1984 and the use of J-20 in evidence. As to Monroe, the indigenous need is reduced from 196, as shown on Table 15A, to 133, as shown in J-20. As to Cranbury, the indigenous need is reduced from 29, as shown on Table 13A to 23, as shown in J-20.

In the case of Monroe the total fair share shall consist of 387 low cost and 387 moderate cost units. As to Cranbury, the total fair share shall consist of 408 units low cost and 408 moderate cost. The use of the terms "low and moderate" shall be generally in accordance with the guidelines provided by Mount Laurel II at p. 221 n 8. I find that the factual circumstances which warranted an equal division between low and moderate income housing in the AMG case exist with respect to Monroe and Cranbury. (AMG at 24) Similarly, the factual circumstances justifying phasing of the present need in the AMG case are sufficiently analogous here. (AMG at 24-25)

As should be evident from the fair share discussion above, I have rejected Cranbury's challenge to the State Development Guide Plan (hereinafter SDGP). Essentially, Cranbury argued that since the 1980 version of the SDGP, the Department of Community Affairs (hereinafter DCA) amended the concept maps, thereby characterizing less of the municipality as growth area. A reduction in growth area would lower Cranbury's obligation somewhat and might impact on the granting of a builder's remedy.

Cranbury's argument fails for two reasons. First, the testimony at trial did not demonstrate that the SDGP was ever formally amended. Apparently, the DCA considered many possible changes to the May, 1980 SDGP

and summarized their comments in a document dated January, 1981. (J-8 in evidence). However, the process never progressed beyond mere general discussion and, in fact, Mr. Ginman did not recall any specific discussion of a change affecting Cranbury with the Cabinet Committee. Second, and more importantly, our Supreme Court has adopted the May, 1980 SDGP - not the subsequent alleged amendments. Indeed, the Supreme Court went as far as giving the 1980 SDGP evidential value. (Mount Laurel II at 246-47) Any informality in adoption of the 1980 edition of the SDGP is overcome by the Supreme Court's endorsement of it as a means of insuring that lower income housing would be built where it should be built. (Mount Laurel II at 225)

With respect to the issue of compliance of the respective land use regulations of Monroe and Cranbury, counsel for both townships have stipulated that the ordinances do not provide a realistic opportunity for satisfation of the municipalities' fair share of lower income housing. Therefore, the land use regulations of both municipalities are invalid under Mount Laurel II guidelines.

Having identified the obligations of Cranbury and Monroe, and having found their land use regulations noncompliant, I hereby order these municipalities to revise their land use regulations within 90 days of the filing of this opinion to comply with Mount Laurel II. Both townships shall provide for adequate zoning to meet their fair share, eliminate from their ordinances all cost generating provisions which would stand in the way of the construction of lower income housing and, if necessary, incorporate in the revised ordinances all affirmative devices necessary to lead to the

construction of their fair share of lower income housing. (see generally Mount Laurel II at 258-278)

In connection with the ordinance revisions, I hereby appoint Carla L. Lerman, 413 Englewood Avenue, Teaneck, New Jersey, 07666 as the master to assist the Township of Monroe in the revision process and Philip B. Caton, 342 West State Street, Trenton, New Jersey, 08618, as the master to assist the Township of Cranbury in the revision process.

The right to a builder's remedy relating to both municipalities is reserved pending the revision process. To the the extent that any of the plaintiff builders are not voluntarily granted a builder's remedy in the revision process, each master is directed to report to the court concerning the suitability of that builder's site for Mount Laurel construction. As to the issue of priority of builder's remedies in Cranbury, Mr. Caton should also make recommendations, from a planning standpoint, as to the relative suitability of each site. After the 90 day revision period, all builder's remedy issues in both municipalities will be considered as part of the compliance hearing.

As the AMG opinion indicates, it is not the court's desire to revise the zoning ordinances of Monroe or Cranbury by its own fiat. Rather, the governing body, planning board, the master and all those interested in the process now have the opportunity to submit a compliant ordinance to the court. (AMG at 68) All those involved in the process must strive to devise solutions which will maximize the housing opportunity for lower income people and minimize the impact on the townships. (AMG at 80) Only if the townships

should fail to satisify their constitutional obligation must the court implement the remedies for noncompliance provided for by Mount Laurel II. (Mount Laurel II at 285 et seq)

Mr. Gelber shall submit a single order relating to both townships incorporating the provisions of this letter opinion pursuant to the five day rule.

Very truly yours,

Eugene D. Serpentelli, JSC

EDS:RDH
cc: Carla L. Lerman, P.P.
cc: Philip B. Caton, P.P.

Table 16A

PISCATAWAY

Fair Share - Present Need

1982 Municipal Employment	1982 11-County Employment	Percent
26,075	1,244,632	2.095
Municipal Growth Area (State Development Guide Plan) in acres	**11-County Growth Area in acres**	**Percent**
12,096	699,163	1.73
Municipal Median Household Income (1979)	**11-County Median Household Income (1979)**	**Ratio**
$24,636	$24,177	1.02

$$\frac{2.095 + 1.73}{2} = 1.91 \times 1.02 = 1.948$$

$$\frac{2.095 + 1.73 + 1.948}{3} = 1.92\% \times 35,014 = 672$$

Reallocated Excess Need in 11-County Region = 35,014 units

Municipal Share of Reallocated Excess: 672

Staged in three six-year periods: 672/3 = 224

Incl. add'l. reallocation: 224 X 1.2 = 269

Incl. allow. for vacancies: 269 X 1.03 = 277

Indigenous Need is number of units in municipality lacking complete plumbing, overcrowded, or lacking adequate heating.

Indigenous Need: 401

Total Present Need by 1990: 678

EXHIBIT- B

Table 16B

PISCATAWAY

Fair Share - Prospective Need

Commutershed: Essex, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Somerset, and Union counties

New Mt. Laurel Households: 1 990 = Prospective Need = 71,706

1982 Municipal Employment	Commutershed Employment 1982	Percent
26,075	931,012	2.80

Municipal Growth Area (State Development Guide Plan) in acres	Commutershed Growth Area in acres	Percent
12,096	743,287	1.63

Municipal Employment Growth, 1972-82, Average Annual Increase	Commutershed Employment Growth, 1972-82, Average Annual Increase	Percent
1,648	27,939	5.89

Municipal Median Household Income (1979)	Commutershed Median Household Income (1979)	Ratio
$24,636	$24,150	1.02

$$\frac{2.80 + 1.63 + 5.89}{3} = 3.44 \times 1.02 = 3.51$$

$$\frac{2.80 + 1.63 + 5.89 + 3.51}{4} = 3.46\% \times 71,706 = 2,481$$

Prospective Need: 2,481

Incl. add'l. reallocation: 2,481 X 1.2 = 2,977

Incl. allow. for vacancies: 2,977 X 1.03 = 3,066

Total Prospective Need: 3,066

Total Present Need by 1990: 678

Total Municipal Fair Share: 3,744

MNCPLTY	STF-1 Tbl 18 Ovrcrwded Units	STF-1 Tbl 13 Ttl Units Lack Com Plumbing	STF-1 Tbl 15 Net Units Lack Com Plumbing not o/c	STF-3 XII-35 Units Lack Ctrl Heat not o/c	STF-3 X-17 Room Heaters w/flue	STF-3 X-17 Other Units lack ctr heating	% Units w/o ctrl htn, with inad htng	Units Lacking Adequate Heating	Total Present Need	Adjusted Present Need	Occupied Duelling Units	Fair Share Cap	Surplus Present Need
MIDDLESEX													
Carteret	221	118	112	358	329	103	.23842593	85	418	343	6919	443	-100
Cranbury	11	10	10	15	13	12	.48	7	28	(23)	691	44	-21
Dunellen	46	86	84	74	23	51	.68918919	51	181	148	2414	154	-6
East Bruns	154	37	35	188	171	27	.13636364	26	215	176	11189	716	-540
Edison	446	139	130	516	401	155	.27877698	144	720	590	23427	1499	-909
Helmetta	10	5	5	30	27	6	.18181818	5	20	17	313	20	-3
Hghland Pk	109	48	46	105	96	40	.29411765	31	186	152	5605	359	-206
Jamesburg	60	15	14	80	72	13	.15294118	12	86	71	1398	89	-19
Metuchen	70	27	27	57	41	36	.46753247	27	124	101	4959	317	-216
Middlesex	91	22	22	87	79	15	.15957447	14	127	104	4478	287	-183
Milltown	30	13	13	17	11	6	.35294118	6	49	40	2411	154	-114
Monroe	91	33	29	76	55	68	.55284553	42	162	[133]	5765	369	-236
New Bruns	1042	741	663	699	626	223	.26266196	184	1889	1549	13244	848	701
Nrth Bruns	103	85	81	127	112	47	.29559748	38	222	182	7484	479	-297
Old Bridg	427	78	73	344	317	96	.23244552	80	580	476	16593	1062	-586
Perth Amb	1096	644	567	1216	1080	400	.27027027	329	1992	1633	13617	871	762
Piscataway	393	64	60	262	171	128	.42809365	112	565	(463)	12299	787	-324
Plainsboro	25	14	13	67	47	25	.34722222	23	61	50	3080	197	-147
Sayreville	184	45	44	319	246	92	.27218935	87	315	258	9396	601	-343
SouthAmboy	92	54	50	137	86	72	.45569620	62	204	168	2877	184	-16
Sth Bruns	92	32	27	137	84	73	.46496815	64	183	150	5443	348	-199
SthPlnfld	114	24	22	153	116	51	.30538922	47	183	150	6224	398	-249
SouthRiver	154	96	93	328	40	26	.39393939	129	376	308	5091	326	-17
Spotswood	75	16	14	55	40	26	.39393939	22	111	91	2494	160	-69
Woodbridge	572	185	172	760	579	250	.30156815	229	973	798	29297	1875	-1077
TOTALS	5708	2631	2406	6207	4862	2041		1855	9969	8175	196708	12589	-4415

82% of Tot. Pres Need. Indigent's

6.4% of Occ. Units

EXHIBIT - C

Carla L. Lerman
413 W. Englewood Avenue
Teaneck, New Jersey 07666

July 12, 1984

Honorable Eugene D. Serpentelli
Superior Court
Ocean County Court House
CN 2181
Toms River, N.J. 08753

Dear Judge Serpentelli:

I have reviewed all of the sites that were listed in the Vacant Land Inventory, April 1984 in the Township of Piscataway. Based on Alan Mallach's classification, I have personally inspected all of the sites in the Category II and III, and many of those in Category I. Some of the sites in Category I, which both the township planner in Piscataway and the plaintiff's expert witness agreed were not suitable sites for residential development, were not inspected by me personally.

In Category I, there was one site which Alan Mallach indicated was not suitable for development, a large part of which I believe would be very suitable for residential development. This site, #55, owned by Rutgers University, is zoned for educational research use at this time; sixteen acres of this 120 acre area has been zoned for Hotel/Conference Center. If that portion remains as it is now designated, and some additional adjacent land is also set aside in that zone, there still might be at least 80 to 90 acres that would be very appropriate for higher density residential development. Other than this site, I would agree that all of the sites in Category I would be better developed in a use other than residential.

In Category II, twelve sites were listed as questionable for residential development. Most of these sites are located

EXHIBIT D

entirely or partially in the flood plain, or have been dedicated as open space in a planned residential development, or are located adjacent to heavy industry or other uses that are inappropriate for residential development. Two of the sites in Category II might be partially useable for residential development: Site #9 and Site 13. Both sites are adjacent to existing residential areas but border on their western edge on an area of heavy industry. In both cases a buffer strip on the western edge could be reserved, while the eastern portion of the sites might be appropriate for development. Both sites need examination in the field as to the proximity of the industrial buildings and their possible impact regarding pollution, noise, etc. The specific reason for excluding each of the sites in Category II from development is listed in the attached description.

Category III included all of those sites that Allan Mallach thought were suitable for residential development. I have reviewed and personally inspected all of those sites, and for the most part agree with their suitability for residential development. There are, however, nine sites that I would disagree are realistic or desirable for development of high density residential use. These sites I would recommend not be designated for this use; in addition there are five sites that are only partially useable. There are several of the suitable sites that are of such small size that I would not think them suitable or realistic for development under the "20 percent set aside" policy.

Altogether there are 37 sites recommended by the plaintiff's expert that I would find entirely or partially suitable for higher density residential use, totaling 1100 acres, approximately.

In response to the specific requests from property owners regarding an opinion for suitability for residential development, I would like to give the following opinion:

A. Gerickont property (Site #43 and 45) on the north and south sides of Morris Avenue is very well suited for residential development. It is almost identical in character to the site immediately to the west which will be developed at 10 units per acre, and it is in a location where development at a similar density would not be detrimental to any of the surrounding properties. Morris Avenue is a collector street and will connect with the proposed arterial which will connect the existing Hoes Lane with Route 18. Traffic from the adjacent high density area (Hovnanian) will be able to have direct access to this new arterial, which should minimize the impact from that development, which has already been approved. The two cemeteries which comprise most of the northern side of Morris Avenue between Hoes Lane and the Gerickont site will not generate significant traffic. In the Piscataway Master Plan, a collector street was proposed (1978) that would separate the southeast edge of the Gerikont site from the adjacent single family uses. This collector street would connect Morris Avenue to the new arterial extension of Hoes Lane, thereby relieving Morris Avenue of the sole burden of the additional traffic. The development of this street should be an essential component of the development of the Gerickont site.

B. The Lange property (Site #6) is located immediately north of the Port Reading Railroad tracks with frontage on Old New Brunswick Road. This property, designated as Block 319 Lot 1 AQ and Block 317 Lot 11B, is part of a much larger vacant area,

which would be very suitable for higher density residential development. Old New Brunswick Road is a collector street which leads directly to an I-287 interchange about ½ mile away, as well as connecting to the neighborhood shopping area on Stelton Street to the north of the site. There is multi-family housing across the street, on the west side of Old New Brunswick Road.

C. 287 Associates (Site #30) is located immediately south of 287 Corporate Plaza, an office park which has access from South Randolphville Road. Designated as Block 497, Lots 3 and 3Q, this site is presently a farm devoted to raising horses. It is flat, open and not in a flood plain. It is bordered on the south by a paved road which is an easement to provide access to a public elementary school. The south side of the easement is bordered by the school playing fields and an eleven acre vacant parcel that is proposed as suitable for higher density residential development.

Although the characteristics of this site would make it satisfactory for residential use as well as light industry, for which it is zoned, its contiguous nature with the office park, its common ownership and the significant benefit that the office park provides for the township makes this site particularly valuable for office/light industry use. It would be important to buffer this use from the uses to the south.

Site #31 would, however, be appropriate for higher density residential as a transition zone between the office uses and the lower density residential uses to the south. The easement roadway should be upgraded as necessary to make it a public road to be dedicated to the township. This road development would logically be the responsibility of the adjacent property developers.

Because of the limited width and winding nature of the southern part of South Randolphville Road, no access should be permitted to Site 30 from that side of the site. All access should continue to be gained through the existing office park entrance. The attached list identifies those sites in Category II and III which are not recommended for residential use.

I realize that the Court Order requested that I propose a density for each site. However, in order to recommend a specific density for any site, further study would be necessary regarding projected traffic volumes, proposed street improvements, soil conditions, adequacy of available infra-structure, possible impact of adjacent or nearby uses, and potential environmental constraints. If data is readily available, this type of evaluation is easily accomplished.

As the Township of Piscataway has its own Planning Department, I would like to propose that, in the interest of saving time and money for the Township, the Township Planning Department gather all the required data for each site, particularly as it relates to traffic generation and proposed street improvements and constraints due to soil and environmental conditions. I would then be able to make a recommendation on density for each suitable site, based on my own observations and the Township Planning Department's site analysis.

If this is not satisfactory to the parties involved, I would be happy to confer with you regarding an alternative procedure.

Sincerely,

Carla L. Lerman

CLL/bcm
cc: Philip Paley, Esq.
Bruce Gelber, et al.

Attachment A.

Carla L. Lerman July 16, 1984

Township of Piscataway - Vacant Land Inventory

Category I - Not suitable for residential development or for residential development at higher than the existing zoning permits. All sites are appropriate to this category except Site #55. This site is owned by Rutgers University and is currently zoned for Education and Research. On the north, it is adjacent to residential development in an area zoned R-15. A portion of this site which fronts on Hoes Lane could be considered appropriate for a use which would compliment the Hotel Conference Center zone of Site #56. The remaining 80± acres would be appropriate for higher density residential development which might include a mix of higher density garden apartments and lower density townhouses.

Category II - Not <u>apparently</u> suitable for residential development by virtue of environmental or other constraints. Two of the sites listed in Category II are considered to be worth further consideration for residential development, with certain proportions reserved for buffers. Sites #9 and 13 are adjacent on the north to a heavy industry site, for which a substantial buffer zone might be required. Site #9 is presently zoned R-10 and is adjacent on the south to Sites 10 and 12, which are recommended for

higher density residential development. Site #13 is surrounded on three sides by residentially zoned land and would appear to be of similar character. Both Sites #9 and 13 therefore appear appropriate for residential use of a higher density if the appropriate buffer area is provided.

The remainder of the sites in Category II are not considered suitable for higher density residential development. They are identified as follows:

Site # 5: adjacent to railroad track, manufacturing site, and site identified as toxic waste site.

15: floodplain

39: part of business district on heavy traffic street

61 and 62: dedicated open space as part of planned residential development

65, 66 and 67: floodplain

Category III - Potentially suitable for residential development of multi-family housing.

Site # 1: satisfactory

2: approximately 15 acres are in the floodplain, on the northern end of the site. The remainder is satisfactory

3: satisfactory. This site has been proposed for a shopping center. There is an existing neighborhood shopping area on Stelton Road between Old New Brunswick Road and Lakeview Avenue which can serve the same area as the proposed shopping center, as well as the area south of Old New Brunswick Road which is recommended for higher density development. Strengthening that shopping area through upgrading

c.

of properties and provision of off-street parking would appear to be more beneficial to the neighborhood than creating a new competing shopping center.

4: not satisfactory - toxic waste site

6: satisfactory

7: satisfactory

8: satisfactory with buffer-needs further study

10: satisfactory

12: satisfactory

14: not satisfactory. This site presently serves as the buffer which is generally desirable between an interstate (I•287) and residential uses. Access is difficult; the northeastern half is very narrow and crossed diagonally by a pipeline easement, limiting development; if used at all for residential use, a buffer strip of at least 250' with substantial plantings should be required between the development and I-287.

16 and 17: not satisfactory. Presently part of Rutgers Industrial Park which is well developed with industrial uses. It is crossed by power lines and is best retained for industrial development.

28 and 29: not satisfactory. Partly in floodplain

30: not satisfactory. Preferred for extension of office park use (see text)

31: satisfactory

32, 33, 34: satisfactory, although development limited by presence of power lines

35: satisfactory

37: satisfactory

38: not satisfactory. Surrounded by business district on heavy traffic street, power lines

40: partially satisfactory, requires further study. Frontage on heavy traffic business street, adjacent to residential and light industry. Excluding frontage, might be appropriate for mobile home park.

41: not satisfactory, part of existing industrial park

43: satisfactory
44: satisfactory
45: satisfactory
46: satisfactory
47: satisfactory
48: satisfactory
49: satisfactory
51: satisfactory
52: satisfactory
53: satisfactory
54: satisfactory
57: satisfactory
60 A,B,C: satisfactory. Good infill sites
63: satisfactory
68: satisfactory
75,76: satisfactory. Good infill sites
77: satisfactory
78: satisfactory
79: not satisfactory. Narrow strip on heavy traffic street

ERIC NEISSER, ESQ.
JOHN PAYNE, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
(201) 648-5687

BRUCE S. GELBER, ESQ.
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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants	Docket No. C-4122-73 Civil Action AFFIDAVIT OF ALAN MALLACH

OCEAN COUNTY)
) :ss:
NEW JERSEY)

ALAN MALLACH, of full age, being duly sworn according to law, deposes and says:

1. I am a housing and development consultant retained by the Urban League plaintiffs to consult on issues related to the above-mentioned litigation, including determination of

EXHIBIT - E

fair share goals and compliance with those goals by the defendants in this litigation.

2. I have prepared a fair share housing allocation study for the plaintiffs in this litigation, which has yielded a fair share allocation for the Township of Piscataway of 3156 low and moderate income units by the year 1990. In addition, I have reviewed the fair share study by Ms. Carla Lerman, the court-appointed expert, of November 1983, which yielded a fair share allocation for Piscataway of 3613 low and moderate income units by 1990, and participated in the "consensus" fair share process, which resulted in a fair share allocation for Piscataway of 3744 low and moderate income units by 1990. I believe that the methodology used in each of these three procedures was generally reasonable, and that these results represent a reasonable range for the purpose of establishing Piscataway's fair share obligation udner Mt. Laurel II.

3. I have reviewed the availability of vacant land in Piscataway both on the basis of maps and statistical information provided by municipal officials, and through personal observation. On the basis of this review, I have concluded that Piscataway's ability to accomodate its full fair share housing allocation, determined on the basis of any of the three analyses cited above, may potentially be constrained by a limitation on the availability of vacant land suitable for multifamily residential development. If there is to be any realistic possibility of Piscataway's achieving its fair share obligation,

every remaining substantial site suitable for residential development should be, at a minimum, held available to be considered for potential rezoning in order for there to be any possibility of Piscataway's complying with its Mt. Laurel II obligation.

4. More specifically, I have determined on a preliminary basis that the amount of vacant land in the Township in parcels potentially suitable for multifamily residential development is between 1100 and 1250 acres. Since the density at which it is reasonable to develop these sites will vary widely, based on a variety of factors, it is not possible to establish at this time a precise number of units that can be accomodated, but based on reasonable planning criteria I believe that an achievable average density of development will be between 8 and 10 units per gross acre. On that basis, a total of 8,800 to 12,500 units of housing can be provided on sites suitable for multifamily development in Piscataway. If 20 percent of these units are set aside for low and moderate income housing under a mandatory setaside program, the total number of low and moderate income units that can be provided will be between 1760 and 2500 units. While this is a substantial number, it is nonetheless well below the range in which Piscataway's fair share housing allocation figure is located.

5. By virtue of the extraordinary growth in employment and rateables in Piscataway during the past decade, large amounts of land have been developed, and a substantial part of the remaining vacant land rendered unsuitable for residential development by virtue of the proximity and impact of adjacent nonresidential development. The scale of the employment growth in Piscataway

is demonstrated by the fact that between 1972 and 1982 a total of 16,761 new jobs were added in the community, while from 1970 to 1980 only 2,234 housing units were added to the Township's housing stock.

6. At the request of counsel, I have inspected, among many other parcels, the following parcels of land in Piscataway:

a. Block 497, lot 3, located on South Randolphville Road, and referred to as Site 30 in Exhibit A;

b. Blocks 408-410, various lots and Block 413, lots 1 and 3, on Possumtown Road (Site 8 on Exhibit A); and

c. Block 560, lot 5A, on Hillside Avenue (Site 75 on Exhibit A).

Based on this inspection, I have concluded that all three sites are suitable for multifamily residential development at moderate to high density.

7. Site 30 is contiguous to farmed land, a school, and residential areas to the south, and the industrial/office areas to the north have been developed only to a very limited degree and do not present an obstacle to residential development of this parcel with proper buffering. Furthermore, development of this parcel for industrial use would negatively affect potential residential development of major adjacent vacant parcels now being farmed to the east and south of the site. Thus, development of this site for industrial or related uses will not only eliminate a major residentially-suitable site from consideration toward meeting Piscataway's fair share obligation, but may have a negative impact on other adjacent sites which at this time are still potentially available for multifamily residential

development. This is one of no more than ten tracts 50 acres or larger suitable for residential development in the Township of Piscataway.

8. Site 8 is contiguous to an area zoned for planned residential development (R-10A) to the east, and to an open space area to the west. There is a single existing light research facility adjacent to the site, which is easily buffered. Development of this site for industrial or related uses will eliminate a residentially-suitable site from consideration toward meeting Piscataway's fair share obligation, and may potentially have a negative impact on the future development of the adjacent R-10A site. This is a substantial site containing over 35 acres.

9. Site 75 is located in a residential area in which medium density multifamily housing can be developed with no negative impact on the existing character of the surrounding area. Conventional single family subdivision of this site will eliminate a suitable site from consideration toward meeting Piscataway's fair share obligations. Although this site is smaller than the others (roughly 4 acres), it is representative of a large number of "infill" sites in the western part of the Township. Sites of this general size and character, with road frontage and utilities, are particularly suitable for medium density townhouse clusters, which can be constructed economically and efficiently on such sites.

ALAN MALLACH

Sworn to before me this 1st
day of May, 1984.

ATTORNEY AT LAW, STATE OF
NEW JERSEY

Name of Subdivision .....

Application No. 84-PB-10

Date Received 3/12/84

Sketch Plat Approval Date 1/3/79

Fee Paid 1800.00

Signature of Municipal Clerk Shirley Myers

Township of Piscataway

APPLICATION FORM
FOR
PRELIMINARY APPROVAL OF A MAJOR SUBDIVISION PLAT

1. Applicant:

Name RIEDHAL, INC. Phone 846-2211

(IF CORPORATION, STATE PRINCIPALS ON ATTACHED LETTER)

Address 100 Cedar Lane Highland Park, New Jersey 08904

2. Agent Representing Applicant, if any:

Name Howard Gran, Esq. Phone 754-9200

Address 1550 Park Avenue South Plainfield, New Jersey 07080

3. Present Owner, if other than applicant:

Name N/A Phone .....

Address .....

4. Interest of Applicant, if other than owner: N/A

5. Location of Subdivision:

Street Lincoln Avenue

Tax Map: Page No. 52 Block Nos. 494, 593, 595 Lot Nos. 14A, 16, 17, 47A & 50, 10A

6. Existing Zoning: R-15 [density approach]

7. Number of Proposed Lots: 36 Minimum Size Lot: 10,000 square feet

8. Area of entire tract: 24.4 acres (Sections I and II and park lands previously conveyed to Township) Area of portion being subdivided: Entire

9. Intent of Applicant:

a. Sell lots only .....

b. Construct houses for sale XXX

c. Other (specify) .....

NOTE: CORPORATIONS MUST BE REPRESENTED BY ATTORNEYS

PTPB-2

EXHIBIT E

10. Existing and/or contemplated Deed and/or mortgage restrictions. (Check one)

a. none. XXX

b. copy of Deed and/or mortgage restrictions attached

11. Person preparing Preliminary Plat:

Name Community Design Associates Phone 968-7355

Address 491 S. Washington Ave., Piscataway, NJ 08854

Profession Professional Engineer

12. List of maps and other material accompanying this application:

	Item	Number
a.	Revised preliminary plat of Park View and complete	
b.	construction drawings	14
c.	Filed Map of Park View Section Two	14
d.		

13. List all improvements and utilities to be installed:

a. Pavement

b. Curbing

c. Sanitary Sewer

d. Storm drainage

e. All other required utilities.

f.

14. Signature of Applicant

DO NOT WRITE BELOW THIS LINE

15. (a) Date Public Hearing held

(b) Newspaper and publication date of the hearing notice

16. Action by Planning Board:

a. Approved

b. Disapproved

c. Reasons for disapproval

d. Disposition

Signatures: Chairman

Secretary

Municipal Engineer

PTPB-2

Date

Application No. 84-PB-106

Sketch Plat Approval Date

Preliminary Approval Date 84-PB-105

Name of Subdivision

Date Received 7/12/84

Fee Paid $900.00 +

Signature of Municipal Clerk Shirley Myers

Township of Piscataway

APPLICATION FORM
FOR
FINAL APPROVAL OF A MAJOR SUBDIVISION PLAT

Applicant:

Name RIEDHAL, INC. Phone 846-2211

Address 100 Cedar Lane Highland Park, New Jersey

Agent Representing Applicant, if any:

Name Howard Gran, Esq. Phone 754-9200

Address 1550 Park Avenue South Plainfield, New Jersey

Present Owner, if other than applicant:

Name N/A Phone

Address

Interest of applicant, if other than owner N/A

a. Total number of lots given preliminary approval 36

b. Total number of lots in request for final approval 36

Location of Subdivision: Street Lincoln Avenue

Tax Map: Page No. 52 Block Nos. 494, 593, 595 Lot Nos. 14A, 16, 17, 47A & 50, 10A

7. List any changes between the Preliminary Plate and the Final Plat:

None.

8. List of maps and other material accompanying this application:

Filed Map of Park View Section Two and complete construction drawings.

Full improvements as shown on construction drawings.

allation of improvements and utilities:

a. to be installed before final approval

b. to be guaranteed by-

(1) Bond TO BE FURNISHED
type

(2) Cashier's check

(3) Other means

c. Estimated cost of installation by Municipal Engineer

d. Amount of bond, check or other security

e. Institution or person issuing bond, check or other security

f. Date of issuance

Term of Bond

Signature of Applicant

DO NOT WRITE BELOW THIS LINE

Approval of amount and form of Performance Guarantee

Signatures: Municipal Engineer

Municipal Attorney or Planning Board Attorney

Action by Planning Board:

a. Approved

b. Disapproved

c. Reasons for disapproval:

d. Disposition

Signatures: Chairman

Secretary

Municipal Engineer

ABRAMS, DALTO, GRAN, HENDRICKS & REINA
A PROFESSIONAL CORPORATION
1550 PARK AVENUE
POST OFFICE DRAWER D
SOUTH PLAINFIELD, NEW JERSEY 07080
(201) 754-9200
(201) 757-4488
ATTORNEYS FOR REIDHAL, INC.

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et. al.,

Plaintiffs,

-v-

THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX/
OCEAN COUNTIES

DOCKET NO. C 4122-73

AFFIDAVIT OF RALPH RIEDER

STATE OF NEW JERSEY)SS:
COUNTY OF MIDDLESEX

RALPH RIEDER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a stockholder, officer and director of RIEDHAL, INC. and am the agent of the corporation in charge of and familiar with the Piscataway project. This affidavit is made in opposition to Plaintiff's motion for a temporary restraining Order.

7-11-84

2. Chronologically, the history of the development is as follows:

A. The Planning Board of Piscataway Township granted preliminary major subdivision approval for forty-nine (49) lots under a density cluster approach on May 14, 1979.

B. Final major subdivision for nineteen (19) lots, designated as Section One was granted on January 28, 1980.

3. Within approximately six (6) months of final approval of Section One, we have almost completed the installation of sanitary and storm sewers throughout the entire tract (Sections One and Two) and had donated over six (6) acres to the Township for public purposes.

4. The tract was sold to LINMIL Construction Company, Inc. of Edison, NJ in 1980, subject to a purchase money mortgage. LINMIL defaulted on its note and mortgage so that we were compelled to take the property back. Unfortunately, by this time the preliminary approval had expired without any provisions for extensions having been secured. The present application is a result of such expiration.

5. Having attended several agenda sessions of the Planning Board and having met with the Township Engineer regarding technical aspects of the plan, I feel certain that the present applications will be granted preliminary and final approval on September 12, 1984, at the regular meeting of the Piscataway Township Planning Board.

6. Since reacquiring the property we have spent $71,000 in securing water lines from Elizabethtown Water Company. A pumping station for Section Two and Section One sanitary sewers has been purchased and installed. This station was designed specifically for the project and affords no opportunity for

greater capacity. Similarly, the water lines are limited to usage by approximatel fifty-five (55) dwellings.

7. Belgium blocks have been installed in Section I and part of Section II. We have cut roads in Section II and cleared most of the property in Section II.

8. The property lies adjacent to a cemetary, a proposed county park, municipal ballfields and a residential development. There is no possibility of acquiring additional land for development.

9. Twelve foundations in Section One have been completed with numerous sales having been made. We have six contracts for the homes to be constructed in Section Two. The project has advertised and marketing prepared.

10. Section Two consists of 36 lots with a street pattern laid out and designed in conjunction with Section One for single family use. The balance of the tract does not appear feasible for multi-family use due to the configuration of the portion remaining.

11. Having installed the improvements previously recited which are specifically designed for this size project and having incurred considerable expense and obligation, a delay in this project of even several months will work a severe hardship and loss. Such loss cannot be overcome since the price for dwellings is substantially fixed by the area. I do not believe due to the limited size of the parcel, its configuration and the improvements already paid for and installed, that the project could be developed for multi-family use in a manner that would be feasible or that

would permit reasonable financial return at this stage of development. Our firm will suffer irreparable harm if our project is halted at this time.

RALPH RIEDER

Sworn and subscribed to
before me this 10th day
of September, 1984.

Notary Public of New Jersey