

Piscataway 1985

10/21

- Notice of Motion for leave to Appeal An Interlocutory
Order, for Stay of Trial court proceedings pending
Appeal and for Consolidation

- Certification

Pgs. 14

P.i. 3152

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ATTORNEYS FOR Defendant, TOWNSHIP OF PISCATAWAY

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY/OCEAN COUNTY

URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, ET AL., :

Plaintiffs, :

vs. :

THE MAYOR AND COUNCIL :
OF CARTERET, ET AL., :

Defendants. :
_____ x

DOCKET NO. C-4122-73

Civil Action

NOTICE OF MOTION FOR LEAVE
TO APPEAL AN INTERLOCUTORY
ORDER, FOR STAY OF TRIAL
COURT PROCEEDINGS PENDING
APPEAL AND FOR CONSOLIDATION

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Hon. Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Courthouse
CN-2191
Toms River, New Jersey 08753

PLEASE TAKE NOTICE that on the date and time to be
set by the Court, the undersigned, attorneys for the defen-
dant/appellant, Township of Piscataway (herein "Piscataway")

will move for an Order (a) granting Piscataway leave to appeal an interlocutory order dated October 11, 1985, issued by the Superior Court of New Jersey, Chancery Division, Middlesex/Ocean Counties, denying Piscataway's application to transfer litigation presently pending in this matter before the Honorable Eugene D. Serpentelli, Judge of the Superior Court of New Jersey, to the Affordable Housing Council, (b) staying further proceedings pending in the trial court pending the resolution of the within application, and (c) consolidating this matter with applications brought or to be brought by other municipalities similarly situated, including, but not limited to, Cranbury, Monroe, South Plainfield, Warren, Holmdel and Bernardsville.

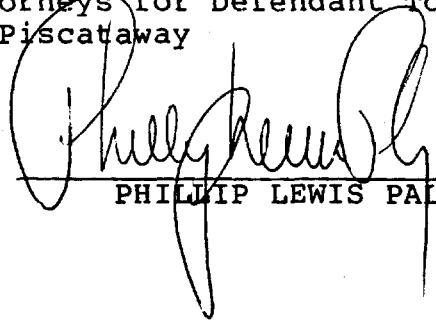
The basis for the within application is that the decision of the trial court denying Piscataway's application to transfer this matter to the Affordable Housing Council is contrary to the intent of the Legislature in adopting the Fair Housing Act, promotes manifest injustice against Piscataway and other defendant municipalities similarly situated, will cause irreparable harm to Piscataway and, further, that the requested interlocutory appeal is mandated by the interest of justice, as is more particularly set forth in the accompanying brief in support of motion for leave to appeal an interlocutory order and for stay of enforcement pending appeal and in the accompanying Certification of the undersigned in support of this application.

The defendant Township of Piscataway respectfully requests oral argument on this application.

Respectfully submitted,

KIRSTEN, FRIEDMAN & CHERIN
A Professional Corporation
Attorneys for Defendant Township of
Piscataway

By:



PHILLIP LEWIS PALEY

Dated: October 21, 1985

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CERTIFICATION OF
PHILLIP LEWIS PALEY

PHILLIP LEWIS PALEY, of full age, hereby certifies
as follows:

1. I am the Township attorney for, and Director
of Law of, Township of Piscataway, a Municipal Corporation
of the State of New Jersey. I have personally represented
the Township of Piscataway in all aspects of the within
matter following its remand to the Superior Court of New

Jersey by the New Jersey Supreme Court. I have close familiarity with, and personal knowledge of, those matters reflected in this Certification, which I respectfully submit in support of the application of the Township of Piscataway ("Piscataway") for leave to appeal an interlocutory order entered by the trial court on October 11, 1985, denying Piscataway's application to transfer the pending litigation to the Affordable Housing Council, in support of Piscataway's application for a stay of all proceedings pending in the trial court until this Court rules definitively upon the merits of Piscataway's application, and in support of consolidating this matter with applications brought or to be brought by other municipalities similarly situated.

2. I further respectfully submit this Certification to seek to clarify, relatively briefly, the procedural history of the within matter, insofar as it is relevant to this application.

3. In 1976, the Honorable David D. Furman, Judge of the Superior Court, rendered an opinion which held that a number of municipalities within Middlesex County were required to adopt new zoning ordinances providing for the development of a number of low and moderate income dwelling units [142 N.J. Super. 11 (Ch. Div., 1976)]. Piscataway, a defendant municipality, appealed. Judge Furman's decision was reversed by the Appellate Division [170 N.J. Super. 461 (A.D., 1971)]; plaintiff, the Urban League (now "Civic League") of Greater New Brunswick

appealed that reversal to the New Jersey Supreme Court. During 1983, the Supreme Court, in a landmark decision reported at 92 N.J. 158 (1983), reversed the Appellate Division and directed a remand of the matter to the Chancery Division of the Superior Court of New Jersey. As this Court well knows, the Supreme Court proceeded by designating three judges throughout the State to hear all "Mt. Laurel" litigation; the Honorable Eugene D. Serpentelli was selected to hear all cases involving municipalities within central New Jersey.

4. Judge Serpentelli, along with Judges Skillman and Gibson, the other two Mt. Laurel judges assigned by the Supreme Court, determined to proceed with the trial of all remanded and all new matters by adopting a common formula in order to determine, at least prima facie, the fair share of dwelling units affordable by low and moderate income households to be reflected in the zoning of each defendant municipality. Because of the number of defendant municipalities in the instant litigation, and the number of developer and non-developer plaintiffs which had brought suit on Mt. Laurel grounds against Cranbury, Monroe and other defendant municipalities, Judge Serpentelli decided to appoint an expert to assist the Court. The expert, Carla Lerman, scheduled a series of conferences of those experts retained by all parties to this lawsuit, approximately 17 in

number. As a result of those conferences, a "consensus methodology" was derived. This methodology is reflected in an opinion of Judge Serpentelli in litigation entitled "AMG, etc., et al. v. Township of Warren," to date unpublished. The methodology involved a complex statistical analysis applicable to each municipality, including, among other things, the use of an eleven county region to determine present need; the use of a commutershed region, varying from municipality to municipality, to determine prospective need; the use of ratios involving the number of jobs within each municipality as a proportion of the number of regional jobs which existed in 1980, the growth of jobs in each municipality between 1970 and 1980 as a percentage of the regional job growth, the proportion of municipal land area as compared to land area in the present need and commuter shed regions, the employment of population projections based upon the averaging of two population models propounded by the Department of Community Affairs of the State of New Jersey, and other statistics. In Piscataway's case, because of the huge influx of jobs as a function of the location of Route 287 (which bisects the municipality) and the zoning which permitted industrial and commercial development along Route 287, the number of Mt. Laurel dwelling units called for by the consensus methodology was 4,192.

5. In order to place this number into proper perspective, this Court should be aware that the policy of the trial courts in this matter has been to permit the construction of four dwelling units to sell at market prices for every Mt. Laurel dwelling unit to sell at a price affordable to lower income households. Therefore, Piscataway's obligation of 4,192 translates into an overall obligation of just under 21,000 housing units. This, in a municipality which, according to the 1980 census, has only 12,300 dwelling units contained within its borders. This too, in a municipality which has a population approximating 43,000, as of 1980. Effectively, the consensus methodology would have nearly doubled the number of dwelling units and substantially increased the population.

6. During the deliberations regarding the adoption of the consensus methodology, a number of planners felt that some consideration should be given to the relative income levels of each municipality in determining the fair share number. The assumption underlying this view was that the existence of a municipal median household income would evidence past exclusion of the poor. In Piscataway's case, the median household income ratio, based upon census data determined by the trial court to be reliable in all respects, is 102%. Therefore, 49% percent of the households living in Piscataway in 1980 had a median household income

below the median household income of Piscataway's region. Thus, virtually half of Piscataway's households lie below the regional income median.

7. The trial of Piscataway's case (together with Cranbury, Monroe, South Plainfield and other municipalities) commenced on April 30, 1984, and consumed 19 trial days. The focus of that trial was to determine a fair share number for each municipality. It soon became apparent, as to Piscataway, that the strict application of the consensus methodology was inappropriate, because Piscataway had developed at a pace over the past two decades which left relatively little vacant land suitable for residential development. Indeed, according to the testimony presented at trial, Piscataway has approximately 1800 to 1900 vacant acres of land, of which no more than 1100 is suitable for residential development at any density. Clearly, in order to house 4,192 Mt. Laurel dwelling units to be constructed at a density of 2 to the acre, approximately 100 acres of suitable vacant land would be required. Recognizing this dilemma, the trial court concluded in early June, 1984, that it should hear testimony on a site specific basis as to the suitability of Piscataway's vacant land. Accordingly, it commissioned Ms. Lerman to prepare an analysis of each vacant site within Piscataway and directed her to draw conclusions as to the suitability of each site for high

density residential development and to recommend appropriate densities for each site.

8. During November, 1984, the trial court received Ms. Lerman's recommendations. Ms. Lerman identified approximately 37 suitable sites within Piscataway ranging in area from 2.8 acres to 110 acres, and recommended densities for the development of each site. Later, Ms. Lerman prepared a supplemental report identifying two or three additional sites within the Township which she had inadvertently overlooked in her initial analysis. In the aggregate, Ms. Lerman concluded that approximately 1100 acres of vacant land within Piscataway was suitable for high density residential development, at an approximate average density of 10 units to the acre. The trial court permitted Piscataway to present evidence seeking to persuade the Court that particular sites included in Ms. Lerman's inventory were unsuitable, evidence to that effect was presented to the Court in February, 1985. The trial court rendered an opinion on July 23, 1985, concluding that the fair share number attributable to Piscataway was 2,215 (a copy of Judge Serpentelli's opinion is appended hereto as Exhibit A and a copy of the Order dated September 17, 1985 is appended hereto as Exhibit D).

9. On July 5, 1985, approximately eighteen days prior to the date of Judge Serpentelli's written opinion addressing Piscataway, the Legislature of the State

of New Jersey adopted the Fair Housing Act. While certain salient aspects of this enactment will be addressed in the accompanying brief, it is sufficient to reflect here only that the law was a direct response to the mandate of Mt. Laurel II; that the law instituted an Affordable Housing Council to adjudicate the obligation of municipalities to accomodate lower income households; that the law provided for specific mandatory deadlines for municipal actions; and the law provided for the transfer of existing litigation from the Superior Court of New Jersey to the Affordable Housing Council, utilizing a standard of "manifest injustice". A copy of the Fair Housing Act is appended hereto as Exhibit B.

10. The Fair Housing Act adopts a procedure permitting the transfer of existing litigation from the Court to the Affordable Housing Council. Specifically, Section 16 of the Fair Housing Act provides as follows:

For those exclusionary zoning cases instituted more than 60 days before the effective date of this Act, any party to the litigation may file a motion with the Court to seek a transfer of the case to the Council. In determining whether or not to transfer, the Court shall consider whether or not the transfer would result in a manifest injustice to any party to the litigation.

Pursuant to this authority, a motion seeking a transfer of the existing litigation was filed with the

Court during early September, 1985. A copy of the motion and certification in support thereof is appended hereto as Exhibit C.*

11. Roughly contemporaneously with the filing of Piscataway's motion, a number of other municipalities sought similar relief, among them being Warren Township, Cranbury Township, Monroe Township, and the Borough of South Plainfield. The Court elected to set all these motions for transfer for argument on Friday, September 27, 1985. The visit of Hurricane Gloria compelled a last minute adjournment of the argument, which took place on Wednesday, October 2, 1985.

12. On that date, a number of parties to the various lawsuits appeared before Judge Serpentelli to present argument in support of, and in opposition to, the transfer applications. Following extensive argument, Judge Serpentelli concluded that all transfer applications returnable before him that date would be denied. (A copy of the Order as to Piscataway entered October 11, 1985, is appended hereto as Exhibit E). His decision was based on a consideration of several factors, specifically including the following:

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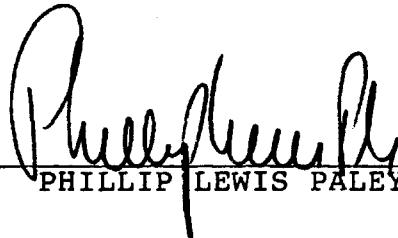
The said motion sought two aspects of affirmative relief: first, the transfer to the Affordable Housing Council, and second, a lifting of a general restraint imposed by the trial court on December 11, 1984, against non-Mt. Laurel development of any of the thirty seven sites deemed suitable by Ms. Lerman in her original report. This application for leave to appeal and an accompanying stay is addressed only to the first aspect of relief sought, namely, the transfer.

A. Given the present status of the litigation, in which all five municipalities appearing before the Court had concluded trial and were in one phase or another of the compliance proceeding, the Court felt that a final adjudication of compliance and the adoption of compliance ordinances could be completed before the Court much more quickly than before the Affordable Housing Council.

B. The Court felt that households of low and moderate income would be deprived of their right to housing within each municipality, should further substantial delay occur, and the Court expressed the opinion that low and moderate income households, as a class, constituted a party to this litigation whose interests the Court felt necessary to protect.

13. The Township of Piscataway respectfully contends that Judge Serpentelli's decision represents an incorrect view of the intent of the New Jersey State Legislature as expressed in the Fair Housing Act. The Township of Piscataway further contends that to continue with the litigation without obtaining appellate review of Judge Serpentelli's decision will effect manifest injustice to Piscataway, and to other municipalities similarly situated, which will be compelled to adopt ordinances changing the land use patterns of each municipality in violation of sound planning criteria and in opposition to strong and substan-

tial public sentiment. The enactment of zoning ordinances, whether by consent or under protest, will effect irreparable damage to each municipality, particularly those in which developers have filed suit as plaintiffs to obtain rezoning of specific tracts at higher density, such as Piscataway. For these reasons, Piscataway respectfully submits this Certification, and the accompanying brief, in support of its urgent request for a stay of the trial court proceedings, pending the appellate review of Judge Serpentelli's ruling on the transfer motion, and it respectfully urges the appellate review of Judge Serpentelli's ruling on the transfer motion on an expedited basis, in the public interest.


PHILLIP LEWIS PALEY

Dated: October 21, 1985