Piscataway 1986

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Piscataway's Brief in support of its motions for leave to appeal an Interlocutory Order

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET AL.,

Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF CARTERET, ET AL.,

Defendants.

DOCKET NO. C-4122-73

Civil Action

TOWNSHIP OF PISCATAWAY'S BRIEF IN SUPPORT OF ITS MOTION FOR LEAVE TO APPEAL AN INTERLOCUTORY ORDER OF THE SUPERIOR COURT DENYING ITS APPLICATION TO TRANSFER THIS LITIGATION TO THE AFFORDABLE HOUSING COUNCIL; IN SUPPORT OF STAYING FURTHER PROCEEDINGS PENDING RESOLUTION OF THIS APPEAL; AND IN SUPPORT OF CONSOLIDATING THIS APPEAL WITH THE APPEAL OF OTHER MUNICIPALITIES SIMILARLY SITUATED

KIRSTEN, FRIEDMAN & CHERIN
A Professional Corporation
Attorneys for Defendant
TOWNSHIP OF PISCATAWAY
17 Academy Street
Newark, New Jersey 07102
(201) 623-3600

On The Brief:

PHILLIP LEWIS PALEY, ESQ.

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POINT I

LEAVE TO APPEAL THE ORDER DATED OCTOBER 11, 1985 DENYING PISCATAWAY'S MOTION TO TRANSFER THE WITHIN LITIGATION TO THE AFFORDABLE HOUSING COUNCIL SHOULD BE GRANTED IN FURTHERANCE OF THE INTERESTS OF JUSTICE

Leave to appeal an Order entered by the trial court below on October 11, 1985 (herein the "Order) is respectfully sought pursuant to authority of R. 2:2-4, providing, in pertinent part, that the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order, if that order would be appealable as of right pursuant to R. 2:2-3(a). Piscataway respectfully submits that the Order falls into that category of orders with respect to which interlocutory appeals are appropriate. Piscataway further respectfully contends that the interests of justice strongly mandates the grant of the requested leave to appeal.

As pointed out in the Certification appended hereto, the existing judgment against Piscataway rendered by Judge Serpentelli would require Piscataway to rezone to permit the construction of 2,215 dwelling units affordable by low and moderate income households.* This number was derived by reviewing the physical capacity of Piscataway, in terms of available and suitable vacant land which would permit residential development, in conjunction with

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* Hereinafter referred to as "Mt. Laurel units".

the trial court's view of the mandate reflected in South Burlington NAACP v. Mt. Laurel Township, 92 N.J. 158 (1983), so as to insure that Piscataway would rezone to provide a reasonable opportunity for the development of its fair share of such dwellings. The judgment entered on September 17, 1985, directs Piscataway to comply with the 2,215 number by October 23, 1985; as the accompanying Certification demonstrates, compliance with that number may well mean the rezoning of every piece of vacant land available for residential development within the Township.

No to submit a plan

In reviewing the within application for leave to appeal the interlocutory order, this Court should endeavor to strike a balance between (a) the inconvenience and expense of piecemeal review and the public interest in favor of complete trials, and (b) the "dangers of individual injustices which may result from the denial of any appellate review until after final judgment at the trial level." In re Appeal of Pennsylvania Railroad Co., 20 N.J. 398, 404 (1956).

The Appellate Division has itself addressed the subject of interlocutory appeals in the following manner:

> We will not grant leave to appeal in order to correct minor injustices, such as those commonly attendant on orders

> erroneously granting or denying interrogatories or discovery. Redress for such grievances can be had only through an appeal from the final judgment, providing the judgment results from the interlocutory orders complained of. [citation omitted]. However, we may grant leave to appeal where some grave damage or injustice may be caused by the order below, ...[emphasis added]. Romano v. Maglio, 41 N.J. Super. 561, 567-568 (A.D., 1956).

Unlike orders regarding discovery, or orders addressing an incidental legal question arising during trial, the Order directs Piscataway to proceed at court, despite the clear preference of the Supreme Court of New Jersey that Mt. Laurel matters be legislatively addressed and responded to, and despite the existence of a clear and specific legislative response to the Mt. Laurel mandate.

Section 16 of the Fair Housing Act (P.L. 1985, Chapter 222) addresses exclusionary zoning cases instituted more than 60 days before the effective date of the Act [July 2, 1985]. It empowers any party to the litigation to file a motion with the Court seeking a transfer of the case to the Affordable Housing Council and directs the Court to consider "whether or not the transfer would result in a manifest injustice to any party to the litigation." The concept of "manifest injustice" will be addressed separately in this brief. It is quite clear, however, that the effect of the denial of Piscataway's transfer motion is to segregate

Piscataway [and other municipalities similarly situated] from those municipalities which have not yet been sued under Mt. Laurel grounds, and to perpetuate a forum ill suited and ill adapted to the technical niceties of land use planning. The Order effectively creates two separate authorities within the State of New Jersey which have virtually co-equal authority to adjudicate Mt. Laurel compliance, although quite clearly employing different standards in their respective approaches.

For example, the Affordable Housing Council is specifically directed to adopt criteria and guidelines for the determination of a municipal fair share "after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard... " Section 7(c)(1). Although Piscataway has within its borders approximately 3,400 garden apartment units, of which the uncontradicted evidence shows that more than 2,200 are affordable by low and moderate income households according to generally accepted income criteria, the position of the trial court has been that no consideration is to be given for existing housing which was constructed prior to 1980. Piscataway has endeavored to point out at trial that this view substantially prejudices those municipalites which permitted high density dwelling during the decades of the 1960's and 1970's, as did Piscataway, and would require an undue

and inappropriate portion of the land area of the town to be devoted to high density uses. Piscataway has further pointed out at trial that the population density of the Township slightly exceeds 2,200 persons per acre; that, further, the population density of the State of New Jersey as a whole is slightly over 935 persons per acre; and that that state-wide population density, exceeded in Piscataway by approximately 2 1/2 times, is the highest population density of any State within the United States.

To compel a town which has provided handsomely for a variety of housing affordable to lower income persons to zone every remaining acre suitable for residential development is to substantially ignore its past activities and to create a manifest injustice. Those communities which staunchly resisted the encroachment of modern concepts of planning and zoning by zoning only for development by the wealthy re rewarded. This is most inconsistent with the doctrines of Mt. Laurel, which directs that the Court shall determine a "fair" share for each municipality. Based upon the application of the consensus methodology, the fair share allocation of low and moderate income housing units attributable to Saddle River, for example, is 75. Saddle River, and other communities similar to it, have virtually no multi-family housing within its borders and have no single family housing that are affordable by even moderate income households.

Therefore, the denial of Piscataway's application to transfer its litigation to the Affordable Housing Council does not permit Piscataway to recieve consideration for its existing housing stock, in any meaningful sense, and is substantially prejudicial. If Piscataway is compelled to proceed in court with the compliance hearing, and to either adopt ordinances conforming with Judge Serpentelli's judgment or to have the Court adopt other means of enforcement, Piscataway will have received an allocation substantially in excess of what the Legislature of the State of New Jersey determined would be fair and equitable for municipalities within the State, because it will not have received consideration for what it did in the past.

No showing that AHC will order less.

Piscataway is a municipal corporation of the State of New Jersey, empowered with certain statutory authority to act as a governmental entity. This Court is undoubtedly well aware of the signal controversy created by the Mt. Laurel II decision and its subsequent implementation. In effect, municipalities have been deprived of their roles as legislators in the land use area. Substantial legal and constitutional questions are presented by both the Mt. Laurel doctrine, and, more specifically, the manner in which that doctrine has been implemented by the trial courts. The questions raised go to the very heart of the democratic process in a republican system of government and

are of substantial and compelling public importance.

Piscataway, like other municipalities similarly situated, should not be compelled to wait until an unreasonable and untenable zoning plan has been forced upon it by the trial court. For these reasons, Piscataway respectfully contends that it is appropriate to request, and to receive, leave to appeal this proceeding, immediately, so that a determination by an Appellate court, reviewing the statutory language and the legislative history of the Fair Housing Act, and the actions previously taken by the trial courts in Mt. Laurel litigation, can determine whether Judge Serpentelli's view of Section 16 of the Fair Housing Act is appropriate.

POINT II

THE WITHIN APPEAL IS NOT BARRED OR PRECLUDED BY THE UNUSUAL PROCEDURE MANDATED BY THE SUPREME COURT OF NEW JERSEY IN MT. LAUREL II.

The Mt. Laurel II decision specifically addressed the manner in which appellate review of the trial court's adjudications could be invoked:

> ...in most cases after a determination of invalidity, and prior to final judgment and possible appeal, the municipality will be required to rezone, preserving its contention that the trial court's adjudication was incorrect. If an appeal is taken, all facets of the litigation will be considered by the appellate court including both the correctness of the lower court's determination of invalidity, the scope of remedies imposed on the municipality, and the validity of the ordinance adopted after the judgment of the invalidity. The grant or denial of a stay will depend upon the circumstances of each case... 92 N.J. 158 at 218. The municipality may elect to revise its land use regulations and implement affirmative remedies 'under protest'. If so, it may file an appeal when the trial court enters final judgment of compliance. Until that time there shall be no right of appeal, as the trial court's determination of fair share and non-compliance is interlocutory.

This application should not be construed as an appeal of the trial court's determination of fair share and non-compliance, although Piscataway intends to avail itself of those remedies of appeal relating to it as to

those issues. What is presented here before this Court is an appeal of an Order depriving Piscataway of access to a legislative remedy formulated by the State Legislature of New Jersey, in great depth and complexity, specifically seeking to address the problem of providing housing affordable to lower and moderate income families. Obviously, the New Jersey Supreme Court, having decided Mt. Laurel II on January 2, 1983, could not have envisioned that the State Legislature would enact a response to that decision on July 2, 1985. Therefore, the restrictions imposed upon traditional rights of appeal as reflected in the above excerpts, should not be interpreted to preclude Piscataway's questioning of the propriety of the October 11, 1985 Order.

This is particularly demonstrated by the strong preference expressed in Mt. Laurel II that the Legislature address the problem of affordable housing for all New Jersey citizens. Repeatedly, Mt. Laurel II expresses the strongest preference for the legislative mode of resolution:

> ... A brief reminder of the judicial role in this sensitive area is appropriate, since powerful reasons suggest, and we agree, that the matter is better left to the Legislature. We act first and foremost because the Constitution of our State requires protection of the interests involved and because the Legislature has not protected them. We recognize the social and economic controversy (and its political consequences) that has resulted in relatively little legislative action in this field.

> We understand the enormous difficult of achieving a political consensus that might lead to significant legislation enforcing the constitutional mandate better we can, legislation that might completely remove this court from those controversies.... While we have always preferred legislative to judicial action in this field, we shall continue - until the Legislature acts - to do our best to uphold the constitutional obligation that underlies the Mt. Laurel doctrine. 92 N.J. at 212, 213.

The Supreme Court further adds:

> Although the complexity and political sensitivity of the issue now before us make it especially appropriate for legislative resloution, we have no choice, absent that resolution, but to exercise our traditional constitutional duty to end an abuse of the zoning power. Footnote 7, 92 N.J. at 213.
>
> We note that there has been some legislative initiative in this field. We look forward to more. ... Our deference... legislative and executive initiative can be regarded as a clear signal of our readiness to defer further to more substantial actions.
>
> ... In the absence of adequate legislative and executive help, we must give meaning to constitutional doctrine in the cases before us through our own devices, even if they are relatively less suitable. 92 N.J. 213, 214.

The Supreme Court concluded the Mt. Laurel II opinion by reiterating, in places, verbatim, the earlier expression of its preference:

> As we said at the outset, while we have always preferred legislative to judicial action in this field, we shall continue

> - until the Legislature acts - to do our best to uphold the constitutional obligation that underlies the Mt. Laurel doctrine. That is our duty. We may not build houses, but we do enforce the Constitution. 92 N.J. at 352.

It is difficult to imagine how the Supreme Court could have expressed its preference in clearer or more telling terms. Arguably, the Supreme Court may have intended its opinion as a prod to the State Legislature to produce meaningful and comprehensive laws which would prevent future exclusion and seek to remedy past exclusion. Whether true or not, there is no question but that the Supreme Court viewed the Legislature as the more appropriate body to address local and regional zoning questions, in accordance with the Legislature's traditional role.

Considering this unambiguous expression of intent, the Township of Piscataway respectfully contends that this application, seeking leave to appeal from an interlocutory order, is not barred by the Mt. Laurel II procedures delineated above, and deserves the immediate attention of this Court, in the interests of all the citizens of the State of New Jersey.

POINT III

THE TRIAL COURT HAS FAILED TO FOLLOW THE LEGISLATIVE INTENT REGARDING TRANSFER, AS EXPRESSED IN THE FAIR HOUSING ACT, BY INCLUDING CRITERIA SPECIFICALLY EXCLUDED FROM THE STATUTE

The Fair Housing Act was enacted by the Legislature in response to the Supreme Court's rulings in Mt. Laurel I and Mt. Laurel II that municipalities in growth areas have a constitutional obligation to provide, through land use regulations, a realistic opportunity for a fair share of its regional need for housing for low and moderate income families (Section 2(a)). In enacting the Fair Housing Act the Legislature devised a legislative method encouraged and preferred by the Supreme Court for satisfying this constitutional housing obligation (Section 2(b)).

To meet the constitutional requirement and to avoid the prospect of interminable litigation, the Legislature provided in Section 16 that,

> "[f]or 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." (emphasis added).

Language that would have required the court to consider whether the transfer was "likely to facilitate and expedite the provision for a realistic opportunity for law and moderate income housing" was specifically deleted from the enactment [Senate Committee Substitute For 1985 Senate Nos. 2046 and 2334]. Overruling this deletion, in effect, Judge Serpentelli has improperly incorporated this excluded language and other criteria into his formulation of whether to grant transfer to the Council on Affordable Housing. In so doing, the Court failed to give proper deference to the legislative determination as to how best to achieve a remedy to meet the constitutional requirement articulated in Mt. Laurel II. New Jersey Sports & Exposition Authority v. McCrane, 61 N.J. 1, app. dism. 409 U.S. 943 (1972).

Piscataway and each of its sister defendant municipalities seek a review and an interpretation of Section 16, as enacted, without the addition of factors specifically excluded by the legislature. There is nothing to suggest that Piscataway's request for transfer would result in a failure to meet its constitutional obligations;* and

No bar to consideration other factor. Simply not required

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* Particularly where, as here, an Order exists restraining non-Mt. Laurel development on virtually each vacant parcel of land suitable for residential development. That Order was entered on December 11, 1984.

Section 26 provides for reversion to the Court in those cases where a municipality fails to file a housing element and fair share plan with the Fair Housing Council within the time specified by the statute. Simply, any reliance by the plaintiffs on the orders entered below is not "so deleterious and irrevocable" as to conclude that transfer would result in any manifest injustice to them. Gibbons v. Gibbons, 86 N.J. 515, 523-524 (1981). Rather, it is manifestly unjust to add language to Section 16 which was not enacted and, indeed, specifically deleted by the legislature. To do so evades the purpose of the statute to end litigation and to formulate fair and appropriate remedies through a detailed administrative process.

A court has no discretion but to "apply the statute in effect at the time of its decision." Kruvant v. Mayor of Cedar Grove, 82 N.J. 435, 440 (1980). A court's duty in construing a statute is to determine the legislative intent and implement it. See AMN, Inc. v. So. Bruns. Twp. Rent Level Bd., 93 N.J. 518, 525 (1983). The trial court has failed to do so and its failure must be reversed by this Court.

POINT IV

THE FAILURE OF THIS COURT TO GRANT AN INTERLOCUTORY INJUNCTION PENDING FULL REVIEW BY THE APPELLATE DIVISION AND CONSIDERATION OF THE MERITS OF THE APPEAL WILL EFFECT SUBSTANTIAL PREJUDICE TO PISCATAWAY, A MUNICIPALITY WHICH MAYBE PLACED IN JEOPARDY OF MUNICIPAL WIDE REZONING IN ORDER TO ACCOMODATE ITS "FAIR SHARE", AND WILL SUSTAIN IRREPERABLE DAMAGE AS A RESULT.

It is the function of the reviewing court upon appeal to maintain unchanged, as far as practicable, the status or condition of the subject matter of the controversy during pendency of the lawsuit. Christiansen v. Local 680 of Milk Drivers and Dairy Employees of New Jersey, 127 N.J. Eq. 215 (E.&A. 1940). This was emphasized by our Supreme Court in Zaleski v. Local 401, United Elec., etc., Workers of America, 6 N.J. 109 (1951):

> Unless the res be preserved, the final judgment might well be rendered ineffective and the consitutional review denied... The protection of the res is the very essence of the right of review; a review would be futile if the superintending tribunal were bereft of the power to render an efficacious judgment by the destruction or impairment of the subject matter. If the appellate court loses by this means the faculty of fully vindicating such right and of remedying such wrong as may be found on review, the substance of the right is denied. (citations omitted)
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> * * *
>
> ... the subsistence the res pending final judgment may in the particular case relate to the substance of the

Consistent with this philosophy, the Supreme Court has criticized the Appellate Division for failing to stay a trial court's judgment declaring unconstitutional a statute which created a commission, with the result that the commission ceased to function prior to appellate review of the substantial constitutional issues there presented. Humble Oil & Refining Co. v. Wojtycha, 48 N.J. 562 (1967).

In the case sub judice, Piscataway has been ordered by Judge Serpentelli to rezone sufficient acreage to accomodate 2215 Mt. Laurel dwelling units, or 11,075 units at an average density of 10 to 12 units per acre, by October 23, 1985. The pending appeal to review the denial of Piscataway's application to transfer this matter to the Affordable Housing Council could well result in reversal of the lower court decision and the ultimate nullity of the ordered rezoning.

Should this Court fail to issue a stay, the "res", in this case the property ordered rezoned, would be "destroyed",* which would produce foreseeable and nonforeseeable economic, developmental and social consequences

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* At least six Piscataway property-owners have indicated a profound willingness to develop their properties at densities consistent with Judge Serpentelli's Opinion.

which could well render appellate review vain, even if such review results in reversal of the lower court. Zaleski, supra at 116.

A stay of the lower court's rezoning order is necessary (a) to prevent irreparable harm to Piscataway's residents and the Township's zoning plan; (b) to permit the Appellate Division to interpret and evaluate the constitutionality of a new statutory scheme and to provide guidance to the trial courts; (c) because the appeal has a reasonable probability of ultimate success on the merits based on the intent of the legislature as expressed in the language of Section 16 of the Fair Housing Act;* and (d) because the relative hardship of the denial of a stay decisively falls on Piscataway's side of the hardship ledger. Crowe v. De Gioia, 90 N.J. 126 (1982).

Piscataway seeks an immediate stay on two bases. First, Judge Serpentelli's Opinion was rendered on July 23, 1985. In that Opinion, the Court made reference to a "master", thus implying that a master had been previously appointed. The function of the master, pursuant to Mt. Laurel II, is extraordinarily broad. Factually, however,

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* That is to say, Judge Serpentelli's view that "manifest injustice" must be interpreted primarily to protect rights of moderate income persons, despite the Legislature's modification of Section 16 of the Act to specifically exclude that factor, raises substantial doubt as to the validity of the Order.

the trial court was in error in concluding that a master had then been appointed. This error was pointed out by an objection to the form of Order and Judgment submitted by the plaintiff Urban League; Piscataway also objected to the proposed 90 day period for compliance, which the form of Order and Judgment reflected as running from July 23, 1985. In correspondence with the Court, Piscataway pointed out that, with vacation schedules during the summer, as well as the absence of a full time planner on staff at that juncture, it would be unlikely, to put it mildly, that Piscataway could reasonably be expected to produce any meaningful response to the Court's Order by October 23, 1985.

On September 17, 1985, the Court executed a revised form of Judgment, but made no change in the termination of the time period for compliance. Therefore, from the date of the Judgment until the date for compliance, Piscataway was afforded between five to six weeks to effect compliance. It should be noted that other municipalities in this very litigation, who received fair share numbers in July, 1984, have been given substantial extensions of time within which to attempt voluntary compliance with the mandates of Mt. Laurel II and the determinations of Judge Serpentelli. Judge Serpentelli's Opinion of July 23, 1985, clearly expresses his opinion that Piscataway will not be so liberally treated. This, despite the complexity demonstr-

ably unique to Piscataway which compelled the Court to take substantial extra time to mold a modification of the consensus methodology which would not require Piscataway to provide more low and moderate income housing than it possesses the physical capacity for. In short, Piscataway has been penalized for its complexity. On this basis alone, this Court should favorably consider Piscataway's application for a stay to permit some additional time available to it.

Second, and more particularly addressing the instant application, the denial of the transfer motion puts Piscataway at substantial jeopardy and peril of being compelled to rezone every acre of vacant land within the Township which maybe suitable for residential housing to accomodate housing of a high density, averaging 10 to 12 units per acre.

The effects of such extensive rezoning on Piscataway will be profound in every area of municipal governance, including education, traffic, drainage, sanitary waste disposal and finance, among others. In addition to these patent and visible effects, a more subtle effect is that the role of the elected officials of the municipality in land use planning will have been virtually, if not completely, supplanted by the Court. Piscataway has

sought to communicate its concern for the consequences of this effect throughout the trial of this matter. Clearly, courts should not legislate, particularly where a legislative mechanism is now established and incipient. Until the appellate courts can review the action of the trial court in denying the transfer, and address the legal and political consequences of its decision, Piscataway, and other municipalities similarly situated, should not be compelled to face the uprooting of its present zoning and, in substantial part, its system of government.

It is peculiarly ironic for Piscataway to be placed in this position. Piscataway is not a town, as previously indicated, which boasts a substantial median household income, by any standard. Piscataway is not a town which has limited residential zoning to three acre estates (or even one acre single family houses). The area of Piscataway which borders Plainfield, for example, historically known as the Arbor section, is characterized by homes on 50 foot wide lots, built substantially in the 1930's and 1940's, a considerable proportion of which are both occupied by, and affordable by, moderate income households. Other neighborhoods in their entirety may be fairly characterized in similar fashion.

Piscataway is not a town historically known as a refuge for the wealthy. Other than one area comprising

perhaps 25 houses, there is no neighborhood accurately describable as wealthy in the municipality. Nearly one-third of Piscataway's occupied dwelling are garden apartments, of which, according to the testimony at trial, approximately 60% are affordable by moderate income households. To any observer, as reflected by Judge Serpentelli's opinion, Piscataway has produced a variety of housing affordable by all economic classes during the past 30 years. One would think that this pattern of development evidences an inclusionary character, not an exclusionary character.*

Indeed, the greatest asset of Piscataway Township is its diverse population. Prior to Mt. Laurel, Piscataway was generally recognized as a leader in the field of accomodating limited lands to a variety of uses, all consistent with proper land use planning. For example, when the State of New Jersey determined that Route 287 should bisect the Township, the Town officials then decided that the appropriate development of lands appurtenant to Route 287 would be for light industrial uses - clean industry, office buildings, and the like. As a result of this foresight, Piscataway has attracted substantial numbers of employers,

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* Within Piscataway's existing zoning plan, sufficient land has been voluntarily set aside to accomodate more than 700 low and moderate income households.

and has created tens of thousands of jobs for New Jersey citizens within the past two decades. Would the State be better off if Piscataway had elected in the early 1960's to restrict its zoning to agricultural uses (the predominant form of land use prior to 1950)? Would the State have preferred that those areas now zoned for light industrial use be zoned for plush, multi-acre housing in the 1960's? Should a community whose location is ideal for the development of industrial and educational uses be prejudiced because it acted consistent with that view? Lastly, should the citizens of the Township who chose a middle class diverse community, well planned by any objective standard; now face a virtual doubling of their population within the next four to five years merely because of the adoption of a construct which produces an unreasonable, impractical, and absurd result?

Piscataway respectfully contends that the answers to these questions are self-evident. While Mt. Laurel II may have intended that communities no longer exclude the poor, it is not reasonable to implement that opinion by zoning all vacant acreage to high density uses. Mt. Laurel II repeatedly reaffirms the necessity for Mt. Laurel development in accordance with sound and traditional planning standards, which includes a diversity of uses. In light of this position, Piscataway respectfully contends that it will suffer egregious and permanent harm from the continuation of

the jurisdiction of the trial court, pending appellate review of the motion in chief, and most respectfully urges this Court to stay further proceedings at trial pending such review.

CONCLUSION

For the foregoing reasons, defendant, Township of Piscataway, respectfully requests this Court (a) to grant it leave to appeal an interlocutory order dated October 11, 1985, issued by the Superior Court of New Jersey, Middlesex/ Ocean counties, denying Piscataway's application to transfer litigation presently pending in this matter before the Honorable Eugene D. Serpentelli, J.S.C., to the Affordable Housing Council, (b) staying further proceedings pendent in the trial court until the resolution of the within appeal, and (c) consolidating this appeal with appeals brought or to be brought by other municipalities similarly situated, including, but not limited to, Cranbury, Warren, Monroe, South Plainfield, Holmdel and Bernardsville.

Respectfully submitted,

KIRSTEN, FRIEDMAN & CHERIN
A Professional Corporation
Attorneys for Defendant,
TOWNSHIP OF PISCATAWAY

By: PHILLIP LEWIS PALEY

Dated: October 22, 1985