CA Cranbury 4-10-84

Original of Affidavits by:
Eric Neisser, Alan Mallach and
John Payne, and Urban League
Plaintiffs' Memorandum of
Law in Opposition to Defendant'
Cranbury's Motion for Recusal

pgs 67

Notes: Eric Neisser, John Payne of Constitutional
Litig. Clinic, Rutgers Newark Law

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April 10, 1984

Mr. Lewis Bambrick
Clerk
Superior Court of New Jersey
Hughes Justice Complex
Trenton, New Jersey

Re: Urban League of Greater New Brunswick, et al. vs. The Mayor and Council of the Borough of Carteret, et al.
Docket C 4122-73

Dear Sir:

Enclosed please find for filing the original of Affidavits by Eric Neisser, Alan Mallach and John Payne and Urban League Plaintiffs' Memorandum of Law in Opposition to Defendant Cranbury's Motion for Recusal of Trial Judge. Pursuant to Judge Serpentelli's oral direction, a copy of all these papers is being served by hand this afternoon upon William Moran, Esq., attorney for the movant defendant Cranbury, and upon Judge Serpentelli in Toms River and all other counsel are being served by regular mail. Additional copies will be available for counsel at the argument on the motion scheduled for Wednesday, April 11, 1984 at 1:30 P.M. in Toms River.

Sincerely yours,

Eric Neisser

Eric Neisser

encls

cc/Judge Eugene Serpentelli
William Moran, Esq.
All Counsel

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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

URBAN LEAGUE PLAINTIFFS' MEMORANDUM OF LAW

IN OPPOSITION TO DEFENDANT CRANBURY TOWNSHIP'S MOTION

SEEKING RECUSAL OF THE TRIAL JUDGE

Defendant Township of Cranbury seeks to have the trial judge disqualify himself because of his efforts to structure an efficient pre-trial procedure for this sprawling and ancient Mount Laurel action. The motion is nothing short of a direct attack on the procedural core of Mount Laurel II itself.

Defendant's actual complaints are very narrow. It concedes, as it must, the utility of the court having its own independent expert (Defendant's Brief, unnumbered p.2), and it concedes that the attempt to work out a consensus methodology was undertaken by the court in good faith as a way to manage this "extremely difficult and vexatious problem." (Brief, pp. 6,7.) The trial judge's efforts in this regard were clearly consistent with and responsive to the concerns expressed by the Supreme Court in Mount Laurel II:

> Each of the three [Mount Laurel] judges will become more and more adept in handling Mount Laurel litigation, in defining and narrowing the issues early in the litigation, in expediting the case, in determining when an expert should be appointed by the court and when a master should be named . . . 92 N.J. at 255, 456 A.2d at 440.

Defendant also apparently concedes (although it expresses this point less clearly) that the court's effort to encourage consensus has failed. The "so-called consensus report" (Brief, p.4) is signed only by the court's own expert and, while acknowledging the contributions of the parties' planners in the three consensus meetings, does not purport to commit any specific planner to any specific part of the

report, or to the report as a whole, accurately recording only that they were "involved" in the process leading up to the report.

As a formal matter, then, the consensus report represents only the court-appointed expert's view of how consensus might be achieved. It is a proposal for consensus, rather than an expression of consensus itself. At the pretrial conference held on March 16, 1984, none of the defendant municipalities accepted the consensus approach, and the plaintiff Urban League, while indicating its general acceptance, also reserved the right to question certain aspects of the methodology through the testimony of its independent expert. As confirmed by the affidavit of Eric Neisser, co-counsel for plaintiff Urban League, the trial judge made no effort to impose stipulation of the consensus report at the pre-trial conference, and the parties have since proceeded with depositions of experts and other trial preparations on the assumption that a full, adversarial exploration of methodology would be necessary.

Thus, the actual state of affairs is this: the trial judge attempted an innovative pre-trial process consistent with the premises of Mount Laurel II, but the process failed to achieve what was hoped for it. Given this undeniable factual setting, defendant's arguments for recusal boil down to two extraordinarily thin contentions: first, that its expert's thinking has been compromised by his participation in the planners' joint meetings, and second that the judge's limited involvement in the process creates an appearance of unfairness (although not, apparently, unfairness in fact). Neither of these con-

tentions deserves serious consideration, either in isolation or when weighed against the premises of the Mount Laurel doctrine.

Compromising the expert. In light of the actual litigation history of the case, it is difficult to find any evidence that defendant's expert has felt unable "to disassociate himself from the [consensus] process." (Brief, p.7) Perhaps the most important aspect of the effort to achieve consensus was the rejection of the 1978 Department of Community Affairs data on vacant, developable land as unreliable, and the substitution therefor of a novel measure based on total acreage in the growth zone, whether developed or not. It is irrelevant at this juncture whether this technique should be accepted by the court, a matter to be contested at trial. What is significant is that defendant's expert, Mr. Raymond, unhesitatingly dissassociated himself from this methodology in his expert's report filed after the consensus analysis was announced.

Moreover, at his deposition taken on March 27, 1984 (a transcript of which is not yet available but which is summarized in relevant part by the affidavit of John M. Payne, co-counsel for plaintiff), Mr. Raymond vigorously expanded this position to assert that any land factor is inappropriate in an allocation formula. In this, he seems to be setting himself at odds with nearly all of the other planners involved in the case, who have agreed that vacant land data, if reliable, should be used in the future. Again, plaintiffs emphasize that the correctness of these positions is not in issue now; that they will be in issue at trial wholly refutes the contention that Mr.

Raymond's advice has been neutralized.

Implicitly conceding this analysis, defendant's brief suggests that Mr. Raymond would have recommended a fair share number even lower than he actually did had he not been "chilled." As evidence, the defendant points to a preliminary fair share number of 322 units for Cranbury, which is asserted to be Mr. Raymond's first recommendation, and which is considerably lower than the 599 units that Mr. Raymond ultimately advised in his separate report filed after the consensus process had been completed. (Brief, p.8) The implication is that Mr. Raymond abandoned the 322 figure because of an obligation to stick by the consensus.

Defendant's argument is difficult to follow, in part because its motion and brief are couched in very general terms without specific factual allegations, supporting affidavits, or references to the voluminous factual record in this case. The only place that plaintiff is aware of Cranbury being assigned a fair share number of 322 is in the court-appointed expert's preliminary report of February 3, 1984. As explained in the Neisser affidavit, however, this report consists solely of a mechanical application of the Warren Township methodology to the Urban League defendants, without committing any of the parties to its utility as a fully considered approach to their case.

Moreover, there is no indication in the present record that Mr. Raymond had any hand in developing this methodology, and its use of a land factor in its allocation formula is, as indicated above, incon-

sistent with Mr. Raymond's own closely-reasoned methodological approach. As an experienced and respected planner, involved in other Mount Laurel cases, Mr. Raymond may have had some opportunity unknown to plaintiffs to express an opinion on the Warren Township methodology, but such speculative and secondary opportunities can hardly "prove" that Mr. Raymond had, on February 3, a fully-reasoned fair share analysis for Cranbury that was later distorted by the effort to explore consensus solutions.

Not only do all of the circumstances indicate the continuing vigor of Mr. Raymond's advice to his client, but they also fail to disclose any significant loss of opportunity for counsel to monitor and guide his participation in the pre-trial process. Counsel had an initial opportunity to decline participation in the planners' joint meetings, and a further opportunity before each continuation of the meeting to refuse further participation. Not participating might, of course, have entailed potential costs, but such tactical decisions are an everyday part of counsel's responsibilities. Moreover, as defendant's brief indicates, such potential costs were offset to a significant degree by defendant's initial belief that it might be favored by the process. Indeed, the fact that the three days of meetings were spread over several weeks afforded ample opportunity for interim consultation between counsel and his expert.

In addition, although a legitimately debatable point of discretion in any specific litigation setting, permitting the planners to meet without counsel present is certainly not inconsistent with Mount

Laurel II. The Supreme Court repeatedly noted the failure of the evidentiary process that had developed under Mount Laurel I. Speaking of Mount Laurel Township's "blatantly exclusionary ordinance," for instance, the Court described it as "papered over with studies, rationalized by hired experts . . ." 92 N.J. at 198, 456 A.2d at 410. The court continued:

> The waste of judicial energy involved at every level is substantial and is matched only by the often needless expenditure of talent on the part of lawyers and experts. The length and complexity of trials is often outrageous, and the expense of litigation is so high that a real question develops whether the municipality can afford to defend or the plaintiffs can afford to sue. 92 N.J. at 200, 456 A.2d at 410-11.

A Mount Laurel II trial judge, empowered by the Supreme Court to employ "firm judicial management," id. at 252, 456 A.2d at 438, "in defin[ing] and narrow[ing] the issues early in the litigation," id. at 255, 456 A.2d at 440, and to have the services of an expert not retained by the parties, could conclude that Mount Laurel objectives were being served by initially asking the planners to meet separately. Defendant, by contrast, ignores the unhappy experience of the Mount Laurel I era, which all too often led to "rationalizations" and "papering over."

Moreover, the temporary and partial separation from counsel which occurred during the planners' meetings in fact preserved the experts' ability to take an adversarial position at trial should they (and their counsel) find it necessary to do so. As defendant notes (Brief, p.7), "at this point in time, we are not even aware as to what extent

that [consensus] methodology represents the independent thinking of any single planner who was a party to the process." To the extent that this is so, the planners' tentative (and unsuccessful) effort to find consensus does not bind them at all, since the informality of the proceedings leaves no trace of their individual views that could be held against them in the subsequent trial. Like a more conventional settlement conference, the court and the parties had much to gain and little to lose by the process.

Rule 1:12-1: Defendant's argument from the rule contains two parts: that the judge has given his opinion in the matter, and that an appearance of unfairness and bias has been created.

Prior judicial opinion: As to the first contention, defendant misapplies the law of recusal. Rule 1:12-1 explicitly states that "[p]aragraphs (c), (d) and (e) shall not prevent a judge from sitting because he had . . . given his opinion on any question in controversy in the pending action in the course of previous proceedings therein . . ." (emphasis added).

It is apparent from the foregoing language that a judge who expresses an opinion during pre-trial proceedings is explicitly protected from disqualification to sit at trial. Furthermore, it is evident that the trial judge in the present case has never given an "opinion" within the meaning of R.1:12-1(d). The cases construing this section make it apparent that a judicial "opinion" requiring disqualification is one going to the substantive merits of the case,

such that the judge could not thereafter be expected to approach the evidence with an open mind. In Biddle v. Biddle, 166 N.J. Super. 1, 398 A.2d 1297 (App.Div., 1979), for instance, the trial judge was disqualified from hearing plaintiff's suit after having previously denied her motion to intervene in another suit on the same matter. Similarly, in In re Guardianship of R.,G.,& F., 155 N.J.Super. 186, 382 A.2d 654 (App.Div., 1977), the trial judge erroneously granted an involuntary dismissal when plaintiffs had established a prima facie case, and was held disqualified from rehearing the case on remand because his decision demonstrated that he had prematurely formed an opinion about the credibility of plaintiffs' witnesses.

Contrasted with these cases, in which the judge's disqualification required both an ultimate opinion and the unusual circumstance of a second trial proceeding, the trial judge in the instant case has repeatedly emphasized his unwillingness to make a decision on any part of the fair share methodology, including the "consensus" proposal offered by his own expert, until all of the parties have presented all of their proofs at trial. See Neisser Affidavit, paragraph 13. His limited participation in the planners' meetings has been consistent with these assurances, as demonstrated by the affidavit of plaintiffs' planning expert, Alan Mallach. That the judge has involved himself to some extent in the pretrial development of issues is, as noted previously, an intended component of the "strong judicial management" required of him by the Supreme Court in Mount Laurel II.

Moreover, Rule 1:12-1 has been tested in a setting quite similar to that in the present case. Sinahopoulos v. Villa, 92 N.J. Super.

514, 224 A.2d 140 (App.Div., 1966), demonstrates that judicial remarks made in advance of trial need not be disqualifying, if consistent with sound judicial administration of a particular statutory or constitutional policy. In Sinahopoulos, a workers' compensation judge made comments during a pretrial settlement conference allegedly demonstrating prejudgment. In concluding that no bias had been indicated, the court stated that:

> Settlement conferences, particularly in workmen's compensation proceedings, have become a necessary part of judicial administration. In such a conference it frequently becomes necessary for the judge to discuss the probability of a party's chances of success with respect to a claim or defense, and more often than not to discuss the dollar value of the case. This is not without some risk, because once such a conference has taken place it is possible, in the eyes of one or more of the litigants or lawyers, that the apparent impartiality of the judge may be somewhat impaired. Nevertheless, the mere fact that the judge participated in a pretrial conference with a view to possible settlement of the case does not and should not indicate prejudgment. Id. at 517, 224 A.2d at 142.

Although "not without some risk," Judge Serpentelli's approach to an open-minded encouragement of the search for a workable consensus methodology is well within a fair understanding of the "necessary judicial administration" that is of unique importance in the Mount Laurel cases.

Appearance of unfairness or bias. In cases construing R.1:12-1(f), the courts have determined that situations much more redolent of judicial bias than the case at hand do not require recusal. In State v. Flowers, 109 N.J.Super. 309, 263 A.2d 167 (App.Div., 1970), for

instance, the court held that a sentencing judge could hear a defendant's petition for post-conviction relief, and in Zucker v. Silverstein, 134 N.J.Super. 39, 338 A.2d 211 (App.Div., 1975), the court stated in dictum that a trial judge would not be required to recuse himself where he had previously drawn a deed for a non-party grantor, even though the same land was an asset whose status figured in the case before him. See also Clawans v. Schakat, 49 N.J. Super. 415, 420, 140 A.2d 234, 237 (App.Div., 1958)(alleged cause for recusal must be known by the judge to exist or be proven to be true in fact). Cf. United States v. Dansker, 537 F.2d 40, 53 (3d Cir.), cert. denied, 429 U.S. 1038 (1976)(recusal must be based upon facts in an affidavit, and must go to the personal, rather than judicial, bias of the judge). And where bias is thought to be a problem, the objection should be raised promptly, In re Hague, 103 N.J.Eq. 505, 143 A.836 (E.&A.,1928), rather than after an opportunistic delay such as in the case at bar.

To demonstrate the appearance of unfairness, defendant can point only to the asserted reaction of its governing body. Such self-serving "testimony" is of little persuasive value, if any, under any circumstances, even if properly placed in evidence. The "testimony" rings particularly hollow from a defendant such as this one that was first adjudged in non-compliance eight years ago, can point to no intervening steps that have encouraged the development of low and moderate income housing, and whose own expert has conceded in his deposition testimony that the existing Cranbury ordinance will require modification to come into compliance, whatever the fair share number.

(See Payne Affidavit.) It is precisely to avoid such self-serving argument that the rule requires counsel to believe that unfairness or bias exists, and here counsel concedes the trial judge's "good faith." (Brief, p.7)

In this case, Judge Serpentelli has shown no bias, actual or apparent, other than a wholly proper desire to implement the still-new contours of the Mount Laurel II decision in a manner consistent with that opinion.

Recusal and Mount Laurel Principles. As against these slender claims of prejudice said to require recusal of the trial judge, the Mount Laurel II opinion offers strong arguments. Mount Laurel II is a bold judicial effort to redress an unconstitutional condition that all concerned realize would be better solved by appropriate legislative action:

> The judicial role, however, which could decrease as a result of legislative and executive action, necessarily will expand to the extent that we remain virtually alone in this field. In the absence of adequate legislative and executive help, we must give meaning to the constitutional doctrine in the cases before us through our own devices, even if they are relatively less suitable. That is the basic explanation of our rulings today. 92 N.J. at 213-14, 456 A.2d at 417-18.

In this "unique" setting, 92 N.J. at 252, 456 A.2d at 438, the Supreme Court indicated its awareness of the interplay between substance and judicial procedure:

> We intend to administer the Mount Laurel doctrine effectively. It is complex. Its administration is important

> not simply to those seeking lower income housing, but to municipalities as well. We have no desire to deprive municipalities of their right to litigate each and every determination affecting their interests, but we believe that the present procedures, allowing numerous appeals, retrials, and ordinarily resulting in substantial delay in meeting the obligation, do not strike the proper balance. While we cannot totally satisfy both the plaintiffs' and the defendants' interests, we think the procedures required above come closer than those that have existed in the past to achieving a just balance of all the policies involved.
>
> * * *
>
> Judicial management of a Mount Laurel trial, however, is as important to the constitutional obligation as our substantive rulings today. Confusion, expense and delay have been the primary enemies of constitutional compliance in this area. This problem needs the strong hand of the judge at trial as much as the clear word of the opinion on appeal. 92 N.J. at 291, 292, 456 A.2d at 458, 459.

Determined to give the Mount Laurel doctrine the necessary "steel," 92 N.J. at 200, 456 A.2d at 410, the court backed up substance with a novel procedure: a precise numerical approach to fair share was required, but the court acknowledged its inability to define the necessary methodology as a matter of law, even on the massive records before it. Instead, a small number of Mount Laurel judges were assigned the task of developing the necessary methodology out of the cases to come before them, aided by court-appointed experts and masters who are to function independently of the litigating parties. The court, moreover, assumed that the three judges' expertise would grow with time:

> We anticipate that after several cases have been tried before each judge, a regional pattern for the area for which he or she is responsible will emerge. Ultimately,

> a regional pattern for the entire state will be established, as will a fairly consistent determination of regional needs on both an area and statewide basis. Given that only three judges are involved, it is also not unreasonable to assume that the method for determining the municipality's fair share of the regional need will be consistent within the judge's area and tend to promote consistency throughout the state. 92 N.J. at 254, 456 A.2d at 439.

The procedural essence of Mount Laurel II, therefore, is its open-ended commitment to the evolving expertise of the three Mount Laurel trial judges. The procedure followed by Judge Serpentelli in this case, in turn, is based on a fair reading of the difficult and delicate task assigned to him by the Supreme Court. By facilitating a process upon which consensus might have been built, the judge was responsive to Mount Laurel II's concern that the battle of the experts not get out of hand. By suggesting that the parties consider carefully a methodology that at the time appeared to hold promise in another case (that involving Warren Township), the judge was following through on the Mount Laurel premise of evolving expertise; it would hardly be consistent with the pragmatic spirit of that premise for the judge to isolate his experience in the Warren Township case simply because it had not gone to judgment, while the far-larger Urban League case proceeded irrevocably through its pretrial development. By carefully and repeatedly emphasizing his intention to hear all the trial testimony before reaching any conclusions, he provided appropriate recognition that this matter remains in adversarial litigation and has to be resolved on that basis.

Defendants ask that the case begin anew with a new judge, that it be heard without "influence or interference by the court," following

the rules of the adversary system as they have "existed in this country for hundreds of years." (Brief, p.9) Defendant seems not to have perceived yet that Mount Laurel II is a novel approach to a novel doctrinal venture, one which calls for the classic adapability of the common law adversary system. Plaintiffs are not fully satisfied with the process to date: it is for this reason that they have reserved the right to challenge aspects of the court-appointed expert's report when it is presented formally in court. It may well be that, from the perspective of hindsight, the unknown territory of this early attempt at a Mount Laurel methodology may require remapping in future cases. Plaintiffs, for example, have gone on record in their belief that further involvement of counsel in the "consensus" process would have been feasible and desirable. See Neisser Affidavit paragraph 10. (Ironically, only plaintiffs have done so, although defendant uses our formal request to the judge as support for its after-arising concern about participation.)

Surely, however, these are secondary quibbles. The judge's procedure was fair, promised no advantage or disadvantage to any party or interest, and comported with the Mount Laurel II philosophy of for-

ceful judicial administration. Defendant's labored effort to find fundamental error in these proceedings is wholly unpersuasive and could be accepted only by rejecting the central meaning of Mount Laurel II itself.

Respectfully submitted,

John M. Payne,
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Eric Neisser,
Attorneys for the Urban
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Dated: April 10, 1984

The assistance of Rachel Horowitz and Louie Nikolaidis in the preparation of this Memorandum of Law is gratefully acknowledged.

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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

STATE OF NEW JERSEY)
: ss.:
COUNTY OF ESSEX)

ERIC NEISSER, of full age, being duly sworn according to law, on oath, deposes and says:

1. I am one of the attorneys representing the plaintiffs in this action. I submit this affidavit in opposition to defendant Cranbury's Motion for Recusal of Trial Judge.

2. This action, originally filed in 1974, was remanded to this Court by the New Jersey Supreme Court in Southern Burlington Cty. NAACP v. Mt. Laurel Township, 92 N.J. 158, 456 A.2d 390 (1983), for determination of region,

regional need, and fair share allocation, and then appropriate revision of each defendant's zoning ordinance.

3. On July 21, 1983, this Court held the first case management conference after remand. At that time the Court established a schedule for production of expert reports and discovery, leading to a trial date of March 19, 1984. A copy of the Court's letter-order of July 25, 1983 setting forth the results of that conference is annexed hereto and made a part hereof as Exhibit A.

4. In August 1983, the Court appointed Carla Lerman, the Executive Director of the Bergen County Housing Authority, as the Court-appointed expert in this matter and directed her to prepare a report to assist the Court and the parties in the resolution of the issues of region, regional need, and fair share allocation. In November 1983, Ms. Lerman filed her first report, which allocated a fair share of 587 housing units to Cranbury. In December 1983, the Urban League plaintiffs filed the fair share report of their expert Alan Mallach, which allocated 577 units to Cranbury.

5. At a hearing on November 18, 1983, attended by counsel for all parties, including this affiant, the Court consolidated several actions brought by developers against the Township of Cranbury and issued a revised schedule calling for the production of expert reports by those plaintiffs as well. A copy of the letter-order of November 28, 1983 is attached as Exhibit B.

6. On January 24, 1984, a second case management conference was held attended by counsel for all parties, including this affiant. At that time the Court set up a final schedule for production of all expert reports and for completion of all discovery. The Court also informed counsel for all

parties of the approach proposed by several experts during the proceedings in AMG Realty & Timber Properties v. Warren Township, over which the Court has presided earlier that month. The Court informed counsel that it had directed Carla Lerman to apply the analysis developed in the Warren Township case to the municipalities before the Court on this action to determine whether it might be a useful methodology in this case. At the January 24 conference, Michael Herbert, counsel for Lawrence Zirinsky, one of the Cranbury developer plaintiffs, suggested that it might assist in the resolution of the case or simplification of the trial if all planners in the case, including the Court-appointed expert, could meet to discuss the issues and determine if any common ground could be found. The Court inquired of other counsel's willingness to have a joint planners' meeting. Although some questions were raised by various counsel, both for plaintiffs and defendants, it was ultimately agreed that a meeting along these lines would be beneficial. It was agreed that, after the planners met, the Court and counsel would meet with the planners jointly. Counsel for Cranbury did not at that time object to the procedure or raise any questions about the impact of the procedure upon the independence of his planner or upon the ability of the Court to make a judgment based solely upon the evidence presented at trial. The Court did not order the attendance of anyone and did not indicate what it thought would be the proper outcome of such a meeting. On January 30, the Court issued a letter-order confirming the results of the conference, which is annexed hereto as Exhibit C.

7. On February 3, 1984, Carla Lerman issued to all parties in this action a memorandum applying the methodology developed by three planners in the Warren Township case to this action. That methodology resulted in a total fair share for Cranbury of 322 housing units. Ms. Lerman explained

that "This memorandum does not offer an evaluation of the recommendations in the Warren Township case, but merely attempts to apply the dual regional definition for present need and prospective need determination and allocation." A copy of the first page describing the report and the last page summarizing the fair share allocations for the defendants in this action are attached hereto as Exhibit D. Counsel for Cranbury did not object at that time to the report or to the procedure of having the Court-appointed expert apply the methodology of other planners to this case nor did he raise any question as to the impact of this procedure or report upon the independence of its retained planner or upon the ability of the Court to make a judgment based solely upon the evidence at trial.

8. On February 7, 1984, the Court informed counsel that the planners would meet all day on February 7 and that the meeting with counsel would be delayed until February 9. A copy of the Court's letter of February 3 to that effect is attached as Exhibit E. On February 8, the Court informed counsel that the scheduled meeting of Court and counsel with the planners was postponed until February 14 in order to permit all of the experts to reconvene for a second day, on February 13, in order to pursue "their efforts at reaching a common approach to fair-share allocation." A copy of that Memorandum is attached hereto as Exhibit F. No counsel was present at either meeting of the planners. The Court informed counsel at the conference on February 14, see paragraph 9 infra, that the Court had met with the planners on those occasions to inquire as to their progress in achieving consensus on the regional issues.

9. On February 14, 1984, a special case conference was held, which was attended by all counsel, including this affiant, and a number of the planners involved in the prior meetings. At that meeting, Carla Lerman described the methodology which had emerged from the two days of meetings by the planners and handed out a four-page handwritten outline of the methodology.

That outline did not indicate the fair share allocations that would result from this methodology for the municipal defendants in this action. Counsel for all parties were offered the opportunity to ask Ms. Lerman questions about the proposed methodology. Counsel for Cranbury did not at that time object to the methodology or to the meeting of planners that had produced the methodology nor did he raise any questions as to the impact of the methodology or the procedure upon the independence of his retained planner or upon the ability of the Court to determine the issues based solely upon the evidence produced at trial.

10. On February 17, the Court-appointed expert sent all planners involved in the meetings, including George Raymond, the expert retained by Cranbury, a copy of an initial draft of her proposed report in light of the planners' meetings. A copy of the first two pages, describing the report, is attached as Exhibit G. Ms. Lerman suggested to the Court that a third planners' meeting would be useful to discuss questions, comments and additional ideas of the various participants. As a result, the Court rescheduled the pretrial conference in this action, originally scheduled for March 2, and asked the planning group to meet at that time instead. The Court's Memorandum of February 24, 1984 to that effect is attached as Exhibit H. Counsel for parties in this action were not invited to attend; only Urban League plaintiffs had requested the opportunity to do so. The Court did not meet or communicate with the planning group on this occasion.

11. On March 7, Carla Lerman issued a report summarizing the methodology discussed at the three planners' meetings. As explained in the Preface to that report, a copy of which is attached as Exhibit I, the report, although informed by the discussions of the planners, is that of the Court-appointed expert.
That report stated that Cranbury's fair share allocation under this methodology would be 796. On March 13, 1984 as a result of a suggestion of several planners who were not satisfied with the approach initially presented, Ms. Lerman prepared a brief additional report, copy attached as Exhibit J, that set forth the use of an additional allocation factor, median household income. With that modification, Cranbury's fair share allocation became 822.

12. On March 12, 1984, the Court sent all counsel a Memorandum, a copy of which is attached as Exhibit K, asking them to discuss the "report fully so that we may address the fair share allocation method proposed." The Memorandum ended with the statement:"Please be prepared to advise the Court whether the resulting fair share allocation can be stipulated."

13. On March 16, 1984, the Court held the pretrial conference in this action, attended by counsel for all parties, including this affiant. At that time the Court asked Ms. Lerman to explain the household income factor set forth in her March 13 memorandum, and permitted all counsel the opportunity to ask questions and to comment upon the analysis. The Court then inquired of all counsel which parties would not object to or would stipulate to the approach proposed by Ms. Lerman as a result of the planners' meeting. None of the defendants, including Cranbury, indicated an acceptance of that methodology. Counsel for Cranbury did not at that time raise any objection to the procedure used, or suggest that the procedure had compromised the independence of his planner, or the ability of the Court to make a judgment

based upon the evidence presented at trial. The Court stated again that it had not yet decided on the appropriateness of the approach set forth in Ms. Lerman's report and indeed might have approached some issues differently, although declining to indicate those issues or the reasons the Court might have for questioning the approach.

14. In the afternoon of March 16, the Court held a case management conference attended by counsel for North Brunswick, Old Bridge and plaintiffs, including this affiant. At that time the Court described the approach taken by the Court-appointed expert after the planners' meetings, provided copies of the March 7 and 13 documents to counsel for North Brunswick and Old Bridge, and at the joint request of all parties there present, directed the Court-appointed expert, to apply the methodology to those two towns and provide counsel by March 23 with the results of that effort. Counsel were directed to state by April 6 whether they could stipulate to this approach. A copy of the Court's letter-order resulting from that conference is attached as Exhibit L.

15. On March 19, 1984, George Raymond, Cranbury's expert, issued his revised report on behalf of Cranbury. The report critiques the Lerman methodology for incorporating the "growth area" factor and presents a different allocation system based solely on employment and household income factors. This methodology produced a total fair share allocation for Cranbury of only 599 units. A copy of the cover page and pages 5 and 7-10 of Mr. Raymond's report with his main critiques of the "consensus" approach is attached as Exhibit M.

16. On April 2, 1984, Carla Lerman issued her final Fair Share Report, reflecting the most current and complete data and incorporating the wealth factor described in her March 13 memorandum. The preface, a copy of which

is attached as Exhibit N, again states that, although the methodology is a result of the planners' meetings, she takes responsibility for the report. This report also shows a fair share allocation of 822 for Cranbury. It was at this point that Cranbury's counsel filed his Motion for Recusal.

17. Throughout the period described herein, Urban League plaintiffs' counsel, including this affiant, have repeatedly met with and spoken by telephone with their retained planning expert, Alan Mallach. He has continued to provide vigorous and forthright counsel to us. He has not indicated to us, nor in our opinion is there any evidence, that his participation in the planners' sessions has compromised his professional judgment.

ERIC NEISSER

SWORN TO and SUBSCRIBED
before me this 10th day
of April, 1984.

Frank Askin
Attorney at Law, State of New Jersey

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI
929-2176

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

July 25, 1983

Jeffrey E. Fogel, Esq.
American Civil Liberties Union
38 Walnut Street
Newark, N. J. 07102

William C. Moran, Jr.,Esq.
Hugg and Moran, Esqs.
Cranbury - South River Road
Cranbury, N. J. 08512

Bertram Busch, Esq.
Busch and Busch, Esqs.
99 Bayard Street
New Brunswick, N. J. 08903

Joseph L. Stonacker, Esq.
41 Leigh Avenue
Princeton, N. J. 08540

Joseph Benedict, Esq.
247 Livingston Avenue
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Bruce S. Gelber, Esq.
National Conference Against
Discrimination in Housing
1425 H Street N W
Washington, D. C. 20005

Phillip Paley, Esq.
Bernstein, Hoffman & Clerk, Esqs.
336 Park Avenue
Scotch Plains, N. J. 07076

Patrick Diegnan, Esq.
1308 Durham Avenue
South Plainfield, N. J. 07080

Thomas R. Farino, Jr., Esq.
Applegate & Half Acre Road
Cranbury, N. J. 08512

Re: Urban League of Greater New Brunswick v. Carteret - Middlesex County -C-4122-73

Gentlemen:

This will summarize the results of the case management conference held on Thursday, July 21, 1983.

1. It is understood that Plainsboro, South Brunswick, East Brunswick, Piscataway and Cranbury shall immediately provide copies of their amended zoning ordinances together with any related Master Plan Studies or other documents to the plaintiff and to the Court. The plaintiff shall review the submissions and attempt to advise each defendant within 30 days of receipt of the documents whether the amendments would constitute the basis for dismissal as adopted and if not, what modifications the plaintiffs would find acceptable.

EXHIBIT A

TO: All Attorneys July 25, 1983

Re: Urban League of Greater New Brunswick v. Carteret

2. It is the Court's intention to appoint an expert to assist the Court and the parties in the determination of region, regional need and fair share. I request that counsel consult the list of names which is enclosed and make an effort to agree on the selection of an expert. If agreement is not possible, each counsel shall have the right to advise the Court with respect to any name specifically objected to and the Court will thereafter designate an expert from the list. In light of the fact that I will commence my vacation on August 5, I request that all counsel advise me no later than August 1 with respect to the list. I would ask that the plaintiff's counsel submit to me under the five day rule, an order providing for the appointment of an expert to assist the Court and the parties concerning the issues indicated above, leaving a blank space for the name and address of the expert. This will make it possible for me to issue the order before leaving on vacation.

3. It is understood that the Court appointed expert shall be asked to make any necessary projection through the year 1990. The order submitted by plaintiff's counsel shall contain such language. It was also agreed at our meeting that all expert reports obtained by the parties shall be based upon the 1990 projection.

4. In accordance with our discussion, I would ask each counsel to submit to me within 30 days, positions which each municipality and the plaintiff will take concerning the definition of region as it affects your client.

5. With regard to discovery, we have agreed upon the following time schedule:

a. obtaining and exchanging of experts reports within 120 days.
b. depositions of experts within 60 days of the submissions of their reports.
c. all discovery to be completed within 180 days.
d. the plaintiff's expert or experts shall be deposed jointly by the defendants as opposed to individual sessions.

6. Each defendant has leave to file an amended answer without the necessity of motions within 30 days from the date of this letter.

7. Bruce S. Gelber, Esq. shall be admitted pro hac vice as co-counsel

TO: All Attorneys July 25, 1983

RE: Urban League of Greater New Brunswick v. Carteret

for the plaintiff. An order is to be submitted and no consent is necessary since all counsel agreed at our meeting.

8. A combined case management and pretrial conference shall be held on Tuesday, February 21, 1984 at 10:30 a.m. in Court Room 1 of the Ocean County Court House. Pretrial memos shall be submitted in accordance with the Rules of Court.

9. Trial is hereby scheduled for Monday, March 19, 1984 at 9:00 a.m. in Toms River unless the parties are advised otherwise.

10. It is understood that the State Development Guide Plan may have been amended as to its concept maps as it affects South Brunswick, Plainsboro and Cranbury. I will make an effort to verify that fact and, if possible, provide counsel with copies of the amended map. However, counsel should also alert their experts to this situation so that their reports might reflect any changes.

11. Insofar as possible, all conferences and motions will be heard by means of telephone conference unless counsel request otherwise.

Finally, I wish to commend all counsel on their spirit of cooperation and the demonstrated desire to resolve as many of the issues involved in this case as possible. I urge you to work towards resolution of each dispute. I reiterate my availability to assist in that regard.

Very truly yours,

Eugene D. Serpentelli

EDS:RDH Eugene D. Serpentelli, J.S.C.

POTENTIAL COURT APPOINTED EXPERTS

URBAN LEAGUE v. CARTERET

1. Carl Hintz
Pennington, N. J.
737-0305
23 East Delaware Ave
08534

2. Clark and Caton
Trenton, N.J.
393-3553
342 West State St
08648

3. Candeub, Fleissig and Associates Inc.
Newark, N. J.
643-3919
744 Broad St
Suite 1913, Newark 07102

4. Dorram Associates, Inc.
Totowa, N. J.
256-6699
265 A Route 46
07413

5. Dean Borman and Associates
Montclair, N. J.
33 Fullerton Ave
07042
744-8?

6. Peter Abeles
New York, N. Y.

7. Carla Lerman
Hackensack, N. J.
Bergen County Housing Auth.
190 Moore St
07601
64?-8??

8. Ronald Schiffman
Pratt Institute
Brooklyn, N. Y.

9. Jan Krasnowiecki
University of Pennsylvania
Philadelphia, Pa.

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

November 28, 1983

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Rutgers Law School
15 Washington Street
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15 Washington Street
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National Conference Against
Discrimination in Housing, Inc.
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William C. Moran, Jr., Esq.
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Joseph Benedict, Esq.
247 Livingston Avenue
New Brunswick, N. J. 08902

Philip Lewis Paley, Esq.
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17 Academy Street
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Patrick Diegnan, Esq.
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Applegate and Half Acre Road
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Cherry Hill, N. J. 08034

Richard Schatzman, Esq.
P. O. Box 2329
Princeton, N. J. 08540

Peter A. Buchsbaum, Esq.
Warren, Goldberg, Berman and Lubitz,
P. O. Box 645
Princeton, N. J. 08542

Lawrence Litwin, Esq.
10 Park Place
Morristown, N. J. 07960

Re: Urban League of Greater New Brunswick
v. Carteret - Middlesex County - C-4122-73

EXHIBIT B

This will serve to confirm the results of a conference held on Friday, November 18, 1983 which was brought about by virtue of the motion brought by Mr. Moran to consolidate the suits of Garfield Company, Joseph Morris and Robert Morris, Browning-Ferris Industries et al and Cranbury Development Corp. with the Urban League v. Carteret action. I have also treated the motion as seeking to consolidate the Cranbury Land suit brought by Mr. Bisgaier.

I have decided to permit the consolidation of the five cases mentioned above subject to the conditions of the case management procedures which follow:

1. With regard to Garfield, Morris, Browning Ferris and Cranbury Development and Cranbury Land, (hereinafter "new cases"), all experts reports shall be filed on or before January 23, 1984.

2. With regard to the new cases, all interrogatories, except those relating to the new cases experts reports, shall be propounded within 60 days of November 18, 1983.

3. With regard to the new cases, depositions and interrogatories concerning the experts reports shall be completed by February 21, 1984.

4. An additional case management conference shall be held on Tuesday, January 24, 1984, at 10:30 a.m.

For the purpose of trial, the issues involved in this litigation shall be handled in the following order:

1. Determination of region and fair share.

2. Compliance hearings concerning each municipality. The order of proceeding as among the municipalities shall be decided at the time of pretrial or at the case management conference.

3. As to Cranbury's compliance hearing, the order of proofs shall be as follows:

   a. A summary hearing on the validity of the TDC aspects of the ordinance.

   b. Notwithstanding the Court's ruling as to validity of the TDC, there shall be a hearing following the summary hearing which shall determine whether the TDC is arbitrary and capricious as applied to the individual plaintiffs who challenge it.

   c. There shall follow a hearing as to whether the zoning ordinance, aside from the TDC aspect, is arbitrary and capricious as applied to the plaintiffs.

d. That hearing will be followed by a hearing as to whether the zoning ordinance, including its TDC aspect, complies with Mount Laurel II.

e. The issues concerning the alleged section 1983 violations shall be severed and heard at a date to be set by the Court.

f. In the event the Court finds the TDC aspect of the ordinance to be ultra vires, the Court will consider the severing of the Morris action so that an appeal may be immediately pursued.

4. In the event of a finding of invalidity of any of the zoning ordinances of the seven municipalities involved, any plaintiff, whether or not the plaintiff has raised a Mount Laurel claim, shall have the right to participate in any subsequent proceedings which involve the appointment of a master in connection with the zoning ordinance revision.

Mr. Moran is hereby requested to submit a simple order merely stating that his motion for consolidation, which is deemed amended to include the Cranbury Land suit, is granted subject to the terms and conditions set forth in the Court's letter of November 28, 1983. The order need not recite the terms of the letter.

A copy of this letter is being sent to Ms. Carla Lerman so that she is aware of the developments in this matter and also so that she may provide a copy of her report to the four new plaintiffs currently involved (Messrs. Bisgaier, Schatzman, Litwin and Buchsbaum - Mr. Farino has previously received a copy of the report). It was agreed at the conference that any party shall have 30 days from receipt of Ms. Lerman's report to submit to the Court any questions relating to that report for which clarification is sought from Ms. Lerman.

An additional copy of this letter is being sent to Frank Petrino, Esquire who has written to the Court on behalf of Ziransky by letter of November 15, 1983 indicating that an additional complaint is about to be filed on behalf of Mr. Ziransky which will somewhat track the pleadings in Garfield and Cranbury Land. Presuming that such a complaint is promptly filed with the Court, and assuming Mr. Petrino's willingness to abide by the terms and conditions of this letter, I would direct Mr. Petrino to file, both his complaint and an order for consolidation under the five day rule, which order would recite that the application is granted subject to compliance with the terms and conditions of this letter. I would, of course, entertain any objections to the proposed order which may be appropriate.

I wish to commend all counsel in this matter for the professional manner in which they have approached this difficult litigation and the cooperation that they have evidenced at our conference. I reiterate my willingness to be available to assist in any settlement efforts and my desire to deal with the problems which may develop in meeting the deadlines set forth in this letter.

Very truly yours,

Eugene D. Serpentelli, J.S.C.

EDS:RDH
CC: Carla Lerman
Frank Petrino, Esquire

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

Rec'd 2/7

January 30, 1984

m e m o r a n d u m

to

Richard Schatzman, Esq.
Ronald Berman, Esq.
Thomas R. Farino, Jr., Esq.
Lawrence B. Litwin, Esq.
Bruce S. Gelber, Esq.
John M. Payne, Esq.
Bertram Busch, Esq.
Patrick J. Diegnan, Jr.,Esq.
Joseph J. Benedict, Esq.
Phillip L. Paley, Esq.
William C. Moran, Jr., Esq.
Carl S. Bisgaier, Esq.
Joseph L. Stonacker, Esq.
Michael J. Herbert, Esq.
Ms. Carla Lerman
Mr. Philip M. Caton

Re: Urban League et als v. Carteret et als

This will confirm the results of the case management conference held on Tuesday, January 24.

The following represents the principal time deadlines and other issues addressed.

1. All fair share reports shall be submitted by January 31 except for the reports for Cranbury, S. Plainfield and Plainsboro which will be submitted by February 7.

2. All interrogatories as to the "old" cases shall be in hand by February 7.

3. All interrogatories concerning the "new" cases shall be in hand by February 21.

4. All depositions will be completed on or before March 2. Any party wishing to depose either the Court appointed expert or Mr. Mallach must advise the Court within 7 days of being supplied with Ms. Lerman's analysis of the Warren Township methodology so that a single deposition date may be set for the experts. Alternatively, any party shall have the right to submit questions to the Court for Ms. Lerman within 7 days of the submission of her analysis. It is also understood that Ms. Lerman will submit her responses to the questions already posed to her within 7 days.

5. It was agreed that there would not be strict compliance with the notice requirements concerning depositions and that any depositions to be taken

would be in the vincinity of New Brunswick.

6. It was also agreed that subpoenas as to experts for trial, would be waived.

7. It was agreed that the planners representing all parties together with Ms. Lerman and Phillip Caton will meet on Tuesday, February 7 at 9:00 a.m. in my Court Room to discuss possible resolution of the fair share issue. At 1:30 on the same date counsel for the parties, the planners and the Court will hold a case management conference.

I would like to emphasize that the time requirements shall be adhered to strictly and that the case will be pretried on Friday, March 2 and trial will commence on Monday, March 19, as previously scheduled.

I am most grateful for the cooperation of everyone involved in this matter and the professional attitude which has been displayed.

EDS:RDH

Eugene D. Serpentelli

Eugene D. Serpentelli, J.S.C.

CARLA L. LERMAN
413 W. ENGLEWOOD AVENUE
TEANECK, NEW JERSEY 07666

To: All participants in Urban League of Greater New Brunswick v. Carteret et al.

Date: February 3, 1984 rev'd 2/7

Re: Chadwick-Coppola-Moskowitz Memo of 1/30/84

A memo regarding "Mt. Laurel II" Fair Share Computations by John Chadwick III, Richard T. Coppola and Harvey S. Moskowitz (1/30/84) has been circulated to all planners involved in the Urban League of Greater New Brunswick v. Carteret, and closely retated cases.

Following the considerable effort of these three planners (experts in the AMG Realty and Timber Properties v. Township of Warren consolidated cases) to reach a consensus on certain basic Mt. Laurel issues, Judge Serpentelli requested that the conclusions reached in that case be applied to the Middlesex County case, Urban League of Greater New Brunswick v. Carteret et al.

This memorandum does not offer an evaluation of the recommendations in the Warren Township case, but merely attempts to apply the dual regional definition for present need and prospective need determination and allocation. For purposes of comparison, the same factors for measuring Present Need which were used in the Lerman Fair Share Report were used in this analysis.

PRESENT NEED

Lerman's Fair Share report for the Court in this case used an expanded metropolitan region of the thirteen counties to determine the overall level of present need. This large region was then broken down into two sub-regions resembling housing markets. The excess need in the Core Area (Hudson County and the City of Newark) was reallocated to the north and south sub-regions in proportion to their economic growth and vacant land Growth Areas (SDGP). A new level of present need was then calculated for the sub-regions which included the reallocated excess. This new present need percentage was then applied to all municipalities in the case. Their own indigenous need was increased by the number required to bring their present need rate to that of the sub-region.

EXHIBIT D

FAIR SHARE ALLOCATIONS OF PRESENT AND PROSPECTIVE NEED

Comparison of Lerman and C C M Allocations

	Lerman	CCM
Cranbury		
Present	41	44
Prospective	514	278
East Brunswick		
Present	638	694
Prospective	1028	1356
Monroe		
Present	329	357
Prospective	440	288
Piscataway		
Present	701	763
Prospective	2912	4940
Plainsboro		
Present	174	190
Prospective	314	513
South Brunswick		
Present	310	337
Prospective	1370	1578
South Plainfield		
Present	355	
Prospective	1427	386
		2026

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

rec'd 2/7

February 3, 1984

MEMORANDUM

TO

Richard Schatzman, Esq.
Ronald Berman, Esq.
Thomas R. Farino, Jr., Esq.
Lawrence B. Litwin, Esq.
Bruce S. Gelber, Esq.
John M. Payne, Esq.
Eric Neisser, Esq.
Bertram Busch, Esq.
Patrick J. Diegnan, Jr., Esq.
Joseph J. Benedict, Esq.
Phillip L. Paley, Esq.
William C. Moran, Jr., Esq.
Carl S. Bisgaier, Esq.
Joseph L. Stonacker, Esq.
Michael J. Herbert, Esq.

Re: Urban League et als v. Carteret et als

This will confirm my secretary's conversation of this date.

I am advised that the planners expect to use a full day in their deliberations on February 7 and that time will not be available to meet with counsel or the Court. Therefore, I am requesting that counsel appear on February 9, at 9:30 a.m. at which time the Court and counsel will be advised of the results of the planners deliberations.

Each of the planners are being notified of this arrangement through Ms. Lerman's office. However, I would ask that you confirm the new schedule with your planner if he or she was scheduled to attend.

Eugene D. Serpentelli

ED:SRDH

Eugene D. Serpentelli, J.S.C.

EXHIBIT E

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

February 8, 1984

M E M O R A N D U M

TO

Richard Schatzman, Esq.
Ronald Berman, Esq.
Thomas R. Farino, Jr., Esq.
Lawrence B. Litwin, Esq.
Bruce S. Gelber, Esq.
John M. Payne, Esq.
Eric Neisser, Est.
Bertram Busch, Esq.
Patrick J. Diegnan, Jr., Esq.
Joseph J. Benedict, Esq.
Phillip L. Paley, Esq.
William C. Moran, Jr., Esq.
Carl S. Bisgaier, Esq.
Joseph L. Stonacker, Esq.
Michael J. Herbert, Esq.

Re: Urban League et als v. Carteret et als

This will confirm a telephone notice which you received from my law clerk on February 8 with regard to the above matter.

The meeting of the experts and counsel scheduled for February 9 has been cancelled in order to permit all of the experts to reconvene on Monday, February 13 to complete their efforts at reaching a common approach to fair-share allocation. Counsel should not attend the meeting of February 13.

A meeting will be held on Tuesday, February 14, at 9:30 a.m. with all counsel and all experts for the purpose of reviewing the results of the experts deliberations.

EDS:RDH

Eugene D. Serpentelli

Eugene D. Serpentelli, J.S.C.

EXHIBIT F

DRAFT

TO: The Hon. Eugene D. Serpentelli

FROM: Carla L. Lerman

DATE: February 17, 1984

On February 7 and February 13, 1984, day-long sessions were held with planners who are involved directly or indirectly in the case of the Urban League of Greater New Brunswick vs. Carteret to determine if concensus could be reached on the most appropriate methodology for determining region and fair share. These two sessions reviewed all aspects of the fair share methodologies that had been used to date in fair share reports, and evaluated their appropriateness. The participants also reviewed the Rutgers study, Mt. Laurel II: Challenge and Delivery of Low Cost Housing, prepared by the Center for Urban Policy Research. The meetings were attended by the following planners:

Peter Abeles	Philip Caton
John T. Chadwick, IV	Richard Coppola
David H. Engel	James W. Higgins
Carl Hintz	Lee Hobaugh
Carla L. Lerman	John J. Lynch
Alan Mallach	Harvey S. Moskowitz
Michael Mueller	Lester Nebenzahl
William Queale, Jr.	George Raymond
Robert E. Rosa	Richard B. Scalia
Paul F. Szymanski	Peter Tolischus
Geoffrey Wiener	

Center for Urban Policy Research; (Robert W. Burchell & David Listokin)

Drs. Robert Burchell and David Listokin were invited to address the first meeting with a presentation of the methodology

and findings of the Rutgers study. There was an opportunity for the planners to present questions Following questioning, Dr. Burchell and Dr. Listokin left the meeting.

Determining Region

Two distinct approaches to region have been noted to date in fair share reports: the use of a large metropolitan region, consisting of 8, 9 or 13 counties, and the use of smaller "commutershed" regions which relate to a specific municipality. The use of these two types of regions is supported in different ways in different sections of the opinion. For example, definition of region in Oakwood vs. Madison, indicated that a region should be "that general area which constitutes, more or less, the housing market of which subject municipality is a part, and from which the prospective population of the municipality would be drawn, in the absence of exclusionary zoning." 92 NJ 158 at 256

The court further states in Mt. Laurel II that Justice Pashman's opinion in Mt. Laurel I should be considered in determining a definition for region: 92 NJ 158 at 256

- the area included in the interdependent residential housing market;
- the area encompassed by significant patterns of commutation;
- the areas served by major public services and facilities; and,
- the area in which the housing problem can be solved.

These two definitions of region, expressed by Justice Furman and Justice Pashman, indicate a strong connection in the

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

February 24, 1984

MEMORANDUM

Richard Schatzman, Esq.
Ronald Berman, Esq.
Thomas R. Farino, Jr., Esq.
Lawrence B. Litwin, Esq.
Bruce S. Gelber, Esq.
John M. Payne, Esq.
Eric Neisser, Esq.
Bertram Busch, Esq.
Patrick J. Diegnan, Jr., Esq.
Joseph J. Benedict, Esq.
Phillip L. Paley, Esq.
William C. Moran, Jr., Esq.
Carl S. Bisgaier, Esq.
Joseph L. Stonacker, Esq.
Michael J. Herbert, Esq.
Leslie Lefkowitz, Esq.
Michael Noto, Esq.
Henry Hill, Jr., Esq.
Ms. Carla Lerman, P.P.

RE: Urban League et als v. Carteret et als

This will confirm our telephone call of Friday, February 24 relative to the above referenced matter.

The pretrial scheduled for March 2 at 11:00 has been adjourned to March 9, at 10:00. The case management conference involving Old Bridge and North Brunswick is rescheduled for March 9 at 2:00.

The pretrial is adjourned in order to allow the Planning Advisory Group to meet on Friday March 2 to review the preliminary report which should now be in your planner's possession, and the figures generated by the proposed methodology. The one week delay will allow also for input as to the methodology from the participants in Mount Laurel litigation. The decision will be made on March 9 as to whether the trial date should be advanced by one week. For the present, please assume that trial will proceed on March, 16. 19.

All planners have also been notified by telephone of the revised schedule. However, may I ask that you confirm the contents of this memorandum with any planner who may have been retained by you.

EDS:RDH

Eugene D. Serpentelli

Eugene D. Serpentelli, J.S.C.

EXHIBIT H

FAIR SHARE REPORT

URBAN LEAGUE OF GREATER NEW BRUNSWICK
v.
CARTERET ET AL.

PREFACE

During February and March, 1984, three day-long sessions were held with planners who are involved directly or indirectly in the case of Urban League of Greater New Brunswick v. Carteret to determine if consensus could be reached on the most appropriate methodology for determining region and fair share as set forth in the New Jersey Supreme Court decision known as Mt. Laurel II.

These three sessions provided the opportunity to review all aspects of the fair share methodologies that had been used to date in fair share reports, and to evaluate their appropriateness. The participants also reviewed the Rutgers study, Mt. Laurel II : Challenge and Delivery of Low Cost Housing, written by the Center for Urban Policy Research. Drs. Robert Burchell and David Listokin were invited to address the group at its first session.

The results of those meetings, as well as many hours of telephone conferences, and total cooperation and sharing in the data-gathering effort, are summarized in this report. Appendix A explains the methodology in detail and includes the tables containing most of the basic data for the fair share numbers.

The formula for prospective need set forth in this report utilizes three factors: current employment, employment growth, and amount of land designated as Growth Area in the State Development Guide Plan. There has been in the discussions substantial interest (and not complete concurrence) in the use of an economic factor in the formula for allocating prospective need. A subcommittee of the planners' group involved in developing this consensus has been established and is working on various alternatives which will be presented to the larger group within the next two weeks. At that time some amendment to the formula may be proposed.

All of the planners involved have felt that the lack of reasonably accurate data on land availability presents a serious problem. There was general agreement that as soon as this information is available, a re-evaluation of all formulas would be in order.

This report has been limited to the issues of region, regional need, allocation and fair share methodology. It has not addressed issues of compliance, although there has been

considerable discussion of many aspects of that subject, and acknowledgement of its great importance in achieving any of the goals of Mt. Laurel II. Clearly, when a municipality is assigned its fair share number, there will be need and opportunity to evaluate that share in light of particular conditions within that town; that will be the appropriate time to raise questions of feasibility, previous efforts and accomplishments, staging and alternative means of meeting goals.

Although the participating planners are listed below, and their participation and contributions are an integral part of this report, I assume full responsibility for the accuracy and validity of materials and information presented herein.

Carla L. Lerman, P.P.
March, 1984

Peter Abeles
Philip Caton
John T. Chadwick, IV
Richard Coppola
David H. Engel
James W. Higgins
Carl Hintz
Lee Hobaugh
Carla L. Lerman
John J. Lynch
Alan Mallach
Harvey S. Moskowitz
Michael Mueller
Lester Nebenzahl
Anton Nelessen
William Queale, Jr.
George Raymond
Robert E. Rosa
Richard B. Scalia
Paul F. Szymanski
Peter Tolischus
Geoffrey Wiener

CARLA L. LERMAN
413 W. Englewood Avenue
Teaneck, New Jersey
07666

MEMORANDUM

TO: The Honorable Eugene D. Serpentelli

FROM: Carla L. Lerman

DATE: March 13, 1984

SUBJECT: Amendment to Fair Share Report, 3/7/84, based on report of subcommittee of Planners' Group

The subcommittee appointed at the last planners' meeting met several times, and considered the alternative methods for applying an economic factor to the consensus formula, given the available data.

Full consideration, including "running the numbers" on several factors, was given to the following: 1) use of equalized valuation per capita; 2) 1970-1980 change in percentage of lower income households within a subject municipality; and 3) current median household income. In each case, the methodology that might be used to relate that characteristic on a municipal level to a regional level was evaluated in terms of available data and reasonable comparability between jurisdictions.

The use of valuation per capita in the allocation formula presented several important problems. The revised formula had the potential of increasing allocations to towns that could not realistically absorb additional units, and decreasing allocations to towns that have less development and ample amounts of vacant land. The relatively low value of essentially open, undeveloped land resulted in a lower valuation, while highly developed municipalities with substantial improvements indicated high valuations. Even with the difference in population, the result was to give a higher allocation factor to the bulit-up community, and a lower allocation factor to the undeveloped community.

Additionally, the variables that contribute to valuation might be expected to give rise to considerable disagreement regarding the validity of assigning a higher fair share number to municipalities with higher per capita valuation. The mere fact of higher per capita valuation could reasonably be argued not to justify a higher Mt. Laurel obligation, as the residents themselves might not be capable of absorbing an increase in municipal expenditures related to providing opportunities for lower income households.

The change in the proportion of low and moderate income households in a given municipality was considered as a potential

fair share allocation factor. A major limitation which precluded the use of this factor was the lack of comparable data available for 1970 and 1980. The breakdown of households by income was not available in 1970 for comparison with 1980. The family income data that is available for both census years would exclude single person households from the comparison. The exclusion of these households, which comprise a significant portion of the lower income households, would result in an inaccurate portrayal of increase or decrease in lower income households in the subject municipality.

The ratio of municipal median household income to regional median household income is a valid expression of financial capability that is readily available on a municipal and county level. In the sense that the Mt. Laurel decision is an economic one, the household income is a relevant factor in determining a municipality's fair share of lower income housing.

> ...if sound planning of an area allows the rich and middle class to live there, it must also realistically and practically allow the poor. slip op at 21

Use of median household income as a factor in determining fair share provides one means of measuring past efforts to provide affordable housing. Measuring these efforts has been of general concern to the planners' group. A municipality that has been relatively open to garden apartments, or one which has made efforts to develop assisted housing will have a relatively lower median household income than a municipality that has been more exclusionary.

Inaddition to reflecting past efforts, the median household income will broaden the formula in such a way that a town which has not sought to increase employment and ratables, but has been exclusionary in its residential zoning,will receive a relevant fair share allocation, in spite of its low employment.

The methodology for including the municipal-to-regional ratio of median household income will establish that income ratio as a fourth factor for determining fair share of prospective need, and a third factor for determining the fair share of the reallocated excess of present need. The alternative method of applying an adjustment factor to the entire fair share number was considered, but was rejected in favor of the method that placed the income factor on a par with the other factors. This was part of a consensus reached by the subcommittee, which reflected flexibility on the parts of all involved.

The formula will be adjusted according to the methodology on the following page. It is presented in detail for one municipality, and summarized for the remaining six municipalities.

Methodology for Applying Median Household Income to Formula for Present Need

Where : "A" equals municipal employment as percent of regional employment

"B" equals municipal growth area as percent of regional growth area

"C" equals municipal employment growth 1972-1982 as percent of regional employment growth

"IR" equals ratio municipal median household income to regional median household income

"D" equals median income factor to be added to formula

"E" equals revised percent of reallocated excess

Cranbury : Present Need

$\frac{A + B}{2} \times IR = D$ $\frac{A + B + D}{3} = E$ E x 35,014 = Share of re-allocated excess

$\frac{0.298 + 0.961}{2} \times 1.07 = 0.674$

$\frac{0.298 + 0.961 + 0.674}{3} = 0.644 \times 35{,}014 = 226$

226 x 1.2(reallocation allowance) = 271

271 ÷ 3(staging periods) = 90 (present need to 1990)

90 x 1.03(vacancies) = 93

29(indigenous) + 93 (reallocated excess to 1990 incl. vacancies) =

Total Present Need of 122

Prospective Need

$\frac{0.634 + 0.934 + 0.401}{3} = 0.656 \times 1.13 = 0.741$

$\frac{0.634 + 0.934 + 0.401 + 0.741}{4} = 0.678 \times 83{,}506 = 566$

566 x 1.2 = 679 Prospective Need
679 x 1.03 = 700 Total Prospective Need

East Brunswick: Total Present Need (revised) 415
Total Prospective Need (revised) 1910

Monroe: Total Present Need (revised) 265
Total Prospective Need (revised) 585

Piscataway: Total Present Need (revised) 678
Total Prospective Need revised) 3087

Plainsboro: Total Present Need (revised) 99
Total Prospective Need (revised) 549

South Brunswick: Total Present Need (revised) 416
Total Prospective Need (revised) 1828

South Plainfield: Total Present Need(revised) 280
Total Prospective Need (revised) 1454

All Present Need calculations are based on the final excess need for the eleven county region: 35,014 units to be reallocated. This is a small increase over the first calculations which were estimated to be 95% complete. The final revision of the Fair Share Report will reflect this change, as well as several changes in non-growth municipalities about which some question had existed regarding their status in the SDGP.None of these changes will have any significant impact on the Fair Share allocations.

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

March 12, 1984

MEMORANDUM

Carla Lerman
Richard Schatzman, Esq.
Ronald Berman, Esq.
Thomas R. Farino, Jr. Esq.
Lawrence B. Litwin, Esq.
Bruce S. Gelber, Esq.
Eric Neisser, Esq.
Bertram Busch, Esq.
Patrick J. Diegnan, Jr. Esq.
Joseph J. Benedict, Esq.
Phillip L. Paley, Esq.
William C. Moran, Jr., Esq.
Carl S. Bisgaier, Esq.
Joseph L. Stonacker, Esq.
Michael J. Herbert, Esq.
Leslie Lefkowitz, Esq.
Henry A. Hill, Jr., Esq.
Jerome J. Convery, Esq.

Re: Urban League v. Carteret
1. Pretrial and Trial Date
2. Planner's Report

As you were advised the pretrial in the Urban League v. Carteret matter has been adjourned until Friday, March 16th at 10:00 a.m.

The conference in the matters involving Old Bridge and North Brunswick is adjourned to the same date at 2:00 p.m. The trial date is set back tentatively to Monday, March 26, 1984 at 9:00 a.m.

By the time you receive this memo, your planner should have already received the revised report of the planners group. I request that you discuss that report fully so that we may address the fair share allocation method proposed. The subcommittee of the planners group has suggested one adjustment to the fair share allocation criteria which will change each municipality's fair share number. The precise number including this adjustment will be given to your planner by March 13.

Please be prepared to advise the Court whether the resulting fair share allocation can be stipulated.

Eugene D. Serpentelli

EDS:rdh

Eugene D. Serpentelli, J.S.C.

EXHIBIT K

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

March 19, 1984

MEMORANDUM

Bruce S. Gelber, Esq.
Eric Neisser, Esq.
John M. Payne, Esq.
Leslie Lefkowitz, Esq.

Henry A. Hill, Jr., Esq.
Jerome J. Convery, Esq.
Ms. Carla Lerman
Robert J. Lecky, Esq.

Re: Urban League v. Old Bridge & North Brunswick Twps.
O & Y v. Old Bridge Twp.

This will serve to confirm the results of the case management conference held on Friday, March 16. The following items were agreed upon and shall constitute an order of the Court:

1. Ms. Carla Lerman shall supply the fair share number for both municipalities on or before March 23.

2. Each municipality shall advise the Court and other parties by April 6, whether the fair share number is acceptable and whether the issue of compliance will be litigated.

3. If litigation is to occur on either or both issues, the following schedule is established:

a. All interrogatories are to be served and answered by May 11.

b. All experts reports are to be filed by May 11.

c. All depositions, including experts depositions, are to be completed by June 1, 1984.

d. Pretrial is set for June 15, 1984 at 10:00 a.m.

e. Trial is set for Monday, July 2, 1984 at 9:30 a.m.

EXHIBIT L

March 19, 1984

Bruce S. Gelber, Esq.
Eric Neisser, Esq.
John M. Payne, Esq.
Leslie Lefkowitz, Esq.

Henry A. Hill, Jr., Esq.
Jerome J. Convery, Esq.
Ms. Carla Lerman
Robert J. Lecky, Esq.

I wish to thank all counsel for the cooperative manner in which the conference was conducted. I believe that in the spirit of compromise, this matter can be resolved without the necessity of lenghty litigation. In any event, I remain available for any inquiries at your convenience. You will recall that I requested that no motions be filed without prior consultation with the Court and counsel.

Finally, it should be noted that all parties have agreed to bear equally the cost of Ms. Lerman's services as to the determination of fair share number and any other service she may perform with the consent of counsel.

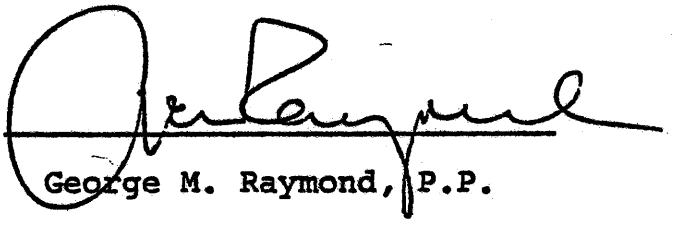
EDS:RDH

Eugene D. Serpentelli

Region, Housing Needs and Fair Share Allocation

for

Cranbury, New Jersey



George M. Raymond, P.P.

License No. 552

Prepared by
George M. Raymond, AICP, AIA, P.P.
Tarrytown, New York

Revised -- March 19, 1984

EXHIBIT M

housing supply to create mobility, thus providing the larger households with the opportunity of finding more appropriate quarters. This view of what needs to be done about standard but overcrowded units seems to be sanctioned by the Supreme Court's stress (cited above) on the inclusion of resident poor "who now occupy dilapidated housing" (emphasis supplied).

Given that, as detailed below, the satisfaction of Cranbury's Mount Laurel obligation will require a major amount of new construction, I do not believe it to be appropriate to consider the 28 units which represent that Township's indigenous need on a par with the fair share of its excess present need and its prospective need. The latter must, largely, be provided in the form of additional housing units. A remedy for Cranbury's indigenous need problem should be sought first through a municipal survey of the actual conditions and the mounting of a local rehabilitation or other program tailored specifically to the needs so identified. This is particularly appropriate in an instance where the total number of units involved is so small.

municipalities will lack sufficient vacant land to accommodate their fair share of present need (Lerman Report, p. 9) and prospective need (Lerman Report, p.20).

The inclusion of the "land in growth area" factor was suggested because of the absence of reliable data regarding the availability of vacant developable land, municipality by municipality. In my opinion, "land in the growth area" is a most inadequate surrogate for vacant developable land. As an example, let us assume that two municipalities have equal amounts of land in the growth area. In one of the two all of such land may be fully developed whereas in the other it may be substantially vacant.

The Supreme Court's concern with the growth area as delineated in the State Development Guide Plan is limited to assuring that "remedial solution(s)...impose the Mount Laurel obligation only in those areas designated as "growth areas" by the SDGP" (92 N.J. 236). Nowhere in Mount Laurel II does the court imply that a municipality which has a sufficient quantity of vacant developable land to satisfy its obligation has any right to pass it

on, in whole or in part, to another municipality simply because the latter has more of its land in the "growth area" or because it has more vacant developable land. In fact, the court very specifically stated that "there is (no) justification for allocating a particular regional need equally among municipalities simply because they have enough land to accommodate such equal division. There may be factors that render such a determination defensible, but they would have to be strong factors, and certainly not the simple fact that there is enough land there" (92 N.J. 350).

The devising of a formula that does not result in the shifting of responsibilities on unsupported grounds finds sanction in the Supreme Court's clear joining of employment growth with ratables in its instructions as to the proper fashioning of a fair share formula" "Formulas that accord substantial weight to employment opportunities, especially new employment accompanied by substantial ratables, shall be favored..." (92 N.J. 256)--(emphasis supplied). Even if it results in a heavy Mount Laurel responsibility, a formula which emphasizes employment growth will most probably affect municipalities which have favored

the influx of ratables but not of the workers which make them possible. Such a municipality should be permitted to shift its obligation onto others only upon conclusive proof that its fair share cannot be accommodated within its borders despite the use for this purpose of all the suitable vacant developable land in its growth area at the highest appropriate density.

As stated in the Lerman Report (p. 9), "[t]his method (the 20% addition-ed.) will preclude the (need for) upward adjustment of any municipality's allocation based solely on the unavailability of vacant land in another municipality." Thus, by including a 20% surcharge in anticipation of the probability that some municipalities will lack sufficient vacant land to accommodate their fair share, the formula assures that the accommodation of the entire regional need will not be thwarted by lack of vacant land.

(c) For the reasons stated above, since the "land in growth area" factor does not measure any municipal characteristics that are relevant to the fair allocation of housing responsibilities, I believe that it should not be made part of the allocation

formula. The elimination of the "growth area" factor would result in a formula which emphasizes recent job growth (which is a reliable indicator of need for housing) and currently existing jobs in the municipality (which is an equally reliable indicator of the relative breadth of job opportunities for lower income persons who might be moving into the new Mount Laurel-type housing). Such a formula would "accord substantial weight to employment opportunities, especially new employment" (92 N.J. 256) as the Supreme Court urged be done.

A third factor was developed to reflect the relative wealth of the municipality (Lerman Memorandum, p.3). This factor represents a reliable indicator of fiscal capacity in terms of ability of residents to assume any tax burdens that may be imposed by compliance with Mount Larel II.

(d) Cranbury's Fair Share of the Reallocated Excess Present Need. Based on the modification to the "consensus formula" discussed above, Cranbury's fair share of the reallocated excess present need in its region is as follows:

FAIR SHARE REPORT

URBAN LEAGUE OF GREATER NEW BRUNSWICK
v.
CARTERET ET AL.

Prepared for

Honorable Eugene D. Serpentelli
Superior Court
Ocean County, N.J.

Carla L. Lerman, P.P.

April 2, 1984

EXHIBIT N

FAIR SHARE REPORT

URBAN LEAGUE OF GREATER NEW BRUNSWICK
v.
CARTERET ET AL.

Prepared by Carla L. Lerman, et al.[1]

Preface

During February and March, 1984, three day-long sessions were held with planners and housing experts who are involved directly or indirectly in the case of Urban League of Greater New Brunswick v. Carteret to determine if consensus could be reached on the most appropriate methodology for determining region and fair share as set forth in the New Jersey Supreme Court decision known as Mt. Laurel II.

These three sessions provided the opportunity to review all aspects of the fair share methodologies that had been used to date in fair share reports, and to evaluate their appropriateness. The participants also reviewed the Rutgers study, Mt. Laurel II: Challenge and Delivery of Low Cost Housing, written by the Center for Urban Policy Research. Drs. Robert Burchell and David Listokin, who of the project leaders, were invited to address the group at its first session.

The results of those meetings, as well as many hours of telephone conferences, and total cooperation and sharing in the

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[1]See participant list in Preface.

data-gathering effort, are summarized in this report. Appendix A explains the methodology in detail; Appendix B includes the tables containing most of the basic data for the fair share numbers.

Although the methodology offers a well-conceived, reasonable and professional approach, given available reliable data, to devising a Fair Share number as required by the Court, no participant involved with this consensus methodology is forfeiting the opportunity to present to the Court, in any given case, reasoned evidence why unique situations in a town might not alter the approach, or why the existing conditions will have an impact on compliance.

All of the planners and housing experts involved have felt that the lack of reasonably accurate data on land availability presents a serious problem. There was general agreement that as soon as this information is available, a reevaluation of all formulas would be in order.

This report has been limited to the issues of region, regional need, allocation and fair share methodology. It has not addressed issues of compliance, although there has been considerable discussion of many aspects of that subject, and acknowledgement of its great importance in achieving any of the goals of Mt. Laurel II. Clearly, when a municipality is assigned its fair share number, there will be need and opportunity to evaluate that share in light of particular conditions within that

town; that will be the appropriate time to raise questions of feasibility, credit to be given for previous efforts and accomplishments, staging and alternative means of meeting goals.

Although the participating planners and housing experts are listed below, and their participation and contributions are an integral part of this report, I assume full responsibility for the accuracy and validity of materials and information presented herein.

Carla L. Lerman, P.P.

April 2, 1984

Peter Abeles
Philip Caton
John T. Chadwick, IV
Richard Coppola
David H. Engel
James W. Higgins
Carl Hintz
Lee Hobaugh
Carla L. Lerman
John J. Lynch
Alan Mallach
Harvey S. Moskowitz
Michael Mueller
Lester Nebenzahl
Anton Nelessen
William Queale, Jr.
George Raymond
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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

STATE OF NEW JERSEY)
: ss.:
COUNTY OF BERGEN)

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

1. I am a ~~professional planning~~ housing and development consultant retained by the Urban League plaintiffs to consult on the issues of fair share methodology and ordinance compliance.

2. I voluntarily participated in the three planners' meetings in this action held on February 7, 13 and March 2, 1984, because I believed that they might assist in resolution of the case or simplification of the complex issues

posed by the Mount Laurel II remand.

3. Carla Lerman, the Court-appointed expert in this action, chaired all three meetings, which were attended by approximately 20 planners, including those retained by parties to this action, several involved in some capacity in other Mount Laurel actions, and in one instance by two ~~planners from~~ staff members of the Rutgers University Center for Urban Policy Research. Ms. Lerman did not take the role of an advocate for any particular position but rather sought to elicit and explore the views of the various participants. The sessions involved a free-wheeling discussion among the planners present concerning all of the key issues raised by a regional fair share methodology. Disagreements were freely and vigorously voiced. No pressure was exerted to reach a consensus. It was apparent from the discussions and from the informal straw votes taken that each planner felt free to exercise and articulate his/her professional judgment on all issues.

4. Judge Serpentelli opened the first meeting by expressing his hope for a productive session and outlining the methodology proposed in the AMG v. Warren Township litigation, which he had already described to the counsel for all parties in this action at the case management conference on January 24, 1984. Judge Serpentelli was asked to rejoin the group near the end of the first day. After hearing some of the points covered by the group in that session, the judge sought to explore the reasoning behind various positions. The issue on which he focussed the most was the concept of a "commutershed" region for prospective need. In response to his questions, the planners supporting and opposing that concept explained their positions. Some discussion also occurred then about the vacant land factor and the problems with existing data.

5. At the second session on February 13, the planners spent most of the day working through the key issues concerning region and the allocation factors. There was extended, vigorous, and at times even acrimonious discussion concerning the vacant land, growth area, and wealth factors. The judge was again asked to join the group near the end of the day. At that time, the group described to the judge in some detail the concepts upon which consensus had tentatively been reached. The judge expressed concerns and asked a number of questions about the meaning and purpose of various concepts and the rationale for using or rejecting various factors. However, at no time did he indicate rejection of any concepts or direction that other concepts be incorporated or substituted.

6. The third session on March 2 was devoted primarily to a review of the draft report and to a discussion of a wealth factor, on which the group was almost evenly divided. A subcommittee was formed to develop a methodology for incorporating an appropriate wealth factor. To the best of my recollection, Judge Serpentelli did not participate at all in that session.

7. As I stated in my fair share report filed with this Court in December 1983, it is my opinion that there are a number of reasonable different approaches to the fair share issues posed by Mount Laurel II. I believe that the three planners' meetings helped to define better and to narrow the realm of reasonableness. In my judgment, the revised Court-appointed expert's report, dated April 2, 1984, which developed from those meetings, is generally a reasonable and acceptable methodology. Nevertheless, I continue to believe that the methodology presented in my original report is preferable in a number of technical respects, and would have no ~~hesitance~~ hesitation to so testify, if called upon

by plaintiffs' counsel. Although I participated voluntarily in the three planners' sessions, I did not then nor do I now feel pressured to accept or support any position that in my independent professional judgment is not sound.

ALAN MALLACH

SWORN TO and SUBSCRIBED
before me this 10th day
of April, 1984.

Eric F. Frizzell
An Attorney at Law, State of New Jersey

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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

STATE OF NEW JERSEY)
:ss.:
COUNTY OF ESSEX)

JOHN M. PAYNE, of full age, being duly sworn according to law, on oath, deposes and says:

1. I am co-counsel for the plaintiff Urban League in the above-captioned matter.

2. On March 27, 1984, the deposition of Mr. George Raymond, the designated planning expert for the Township of Cranbury in this matter, was taken at the offices of Huff, Moran and Balint in Cranbury, New Jersey. Present in addition

to Mr. Raymond, myself and the court reporter were William Moran, Esq., counsel for the Township of Cranbury, William Warren, Esq., counsel for plaintiff Garfield & Co., Carl Bisgaier, Esq., counsel for plaintiff Cranbury Land Co., Michael Herbert, Esq., counsel for plaintiff Lawrence Zirinsky, and Janet LaBella, Esq., co-counsel for plaintiff Urban League. The transcript of Mr. Raymond's deposition was ordered immediately but is not yet available to the parties.

3. In his deposition testimony, Mr. Raymond was asked whether he would include a vacant and developable land factor in his allocation methodology if he were persuaded that accurate data on this factor had become available. Mr. Raymond stated that he would not do so, and that he believed that no land factor of any sort should be included in the fair share allocation process.

4. In his deposition testimony, Mr. Raymond further stated that it was his opinion that the Cranbury ordinance was not now in compliance with Mount Laurel II and would have to be revised even to comply with the fair share number proposed in his own expert's report.

JOHN M. PAYNE

SWORN TO and SUBSCRIBED
before me his 10th day
of April, 1984.

Attorney at Law of New Jersey