

CA

Pro Se + amay

5-1-84

NOM ~~for~~ for leave to
file Amended Complaint &
Temp RO.

- w/ Amended Complaint
- w/ Affidavit of Bruce Gelber
- w/ Affidavit of Maybach
- w/ proposed order
- w/ memo in support of NOM

Pgs. 42

CA 002453N

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ATTORNEYS FOR PLAINTIFFS

URBAN LEAGUE OF GREATER
 NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION-MIDDLESEX COUNTY

Docket No. C 4122-73

Civil Action

NOTICE OF MOTION FOR LEAVE TO FILE
 AMENDED COMPLAINT AND FOR TEMPORARY
 RESTRAINING ORDER AND INTERLOCUTORY
INJUNCTION

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

Mr. Lewis Bambrick
 Clerk
 Superior Court
 Trenton, New Jersey

All Counsel

Chris A. Nelson, Esq.
 Attorney for Piscataway Planning Board

Harry E. Bernstein, Esq.
 Attorney for 287 Associates

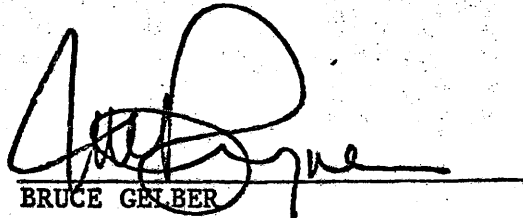
Michael F. DeCapua, Esq.
 Attorney for Halocarbon Products Corp.

Lawrence A. Vastola, Esq.
 Attorney for Algin, Inc.

PLEASE TAKE NOTICE that on Monday, May 7, 1984 at 9:30 A.M. or as soon thereafter as counsel may be heard, plaintiffs in this action will move for an order granting leave to file an Amended Complaint and restraining the Planning Board of the Township of Piscataway from granting preliminary approval or taking other action on three pending applications and directing the Planning Board to provide the plaintiffs with two weeks notice of any intended action affecting vacant land in Piscataway.

In support of this motion, plaintiffs rely upon the Affidavits of Bruce Gelber and Alan Mallach, the Amended Complaint, and Plaintiffs' Memorandum of Law in Support of Motion for Leave to File Amended Complaint and For Temporary Restraining Order and Interlocutory Injunction. A proposed Order is attached.

Dated: May 1, 1984



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] AMENDED COMPLAINT

INTRODUCTION

1. This is a Mount Laurel action, originally commenced against defendant municipalities in 1974. In order to obtain complete and adequate relief against defendant Township Council of Piscataway, the complaint is amended as set forth herein to join the Planning Board of the Township of Piscataway as a necessary party and to state additional Mount Laurel claims against it.
2. The Complaint filed in this action on July 24, 1974, is hereby incorporated and made a part of this Amended Complaint as Count I thereof.
3. The Complaint is amended by adding the following allegations and

prayer for relief.

COUNT II

PARTIES

4. The Planning Board of the Township of Piscataway is empowered by the Municipal Land Use Law to make recommendations concerning zoning ordinances and zoning ordinance amendments to the municipal governing body.

N.J. Stat. Ann. 40:55D-64. The Planning Board is further authorized to approve applications for subdivision approval. N.J. Stat. Ann. 40:55D-37. Once a subdivision application receives preliminary approval, the applicant acquires substantial vested rights to develop the property as specified in the approval. In particular, the Planning Board and the Township Council may not thereafter rezone the property so as to prevent the approved development from proceeding. N.J. Stat. Ann. 40:55D-49.

FACTS

5. On July 9, 1976, this Court issued a judgment holding the zoning ordinance of the Township of Piscataway to be unconstitutional and directing appropriate rezoning.

6. On January 20, 1983, the Supreme Court of New Jersey affirmed this holding of unconstitutionality and remanded to this Court for a determination of region, regional need, and township fair share, and also whether any municipal actions since the time of the first trial placed the defendant in compliance with the obligations of Mount Laurel II. Trial of the remanded action commenced on April 16, 1984.

7. Defendant Township Council currently has zoned 243 vacant acres for multi-family housing. This represents only 2% of the township's acreage of 12,063. This zoning is sufficient to produce no more than approximately 500-600 units

of low and moderate income housing.

8. The Township of Piscataway's fair share obligation is in excess of 3,000 units of low and moderate income housing.

9. There is presently insufficient, vacant developable land in Piscataway Township suitable to meet the Township's full fair share obligation. To meet this fair share number it is therefore necessary that Piscataway rezone all suitable vacant land for high density residential use.

10. From 1976 to 1984, significant vacant acreage suitable for low and moderate income housing was permitted by Piscataway Township to be developed for other residential and commercial uses.

11. On September 27, 1983, plaintiffs informed defendants by letter, a copy of which was filed with the Court, of its conclusion that Piscataway's then-existing land use ordinances did not comply with the decision of the Supreme Court in Mount Laurel II, and that plaintiffs would contest any claim of compliance at the retrial of this action.

12. In December 1983, as part of revisions to its Master Plan, and with full knowledge of its ongoing obligation to provide low and moderate income housing opportunities, defendant Planning Board of the Township of Piscataway recommended rezoning, and defendant Township Council of the Township of Piscataway rezoned Block 497, Lot 3 from R-20 Residential to LI-5 Light Industrial.

13. This rezoning occurred at the request of the contract purchaser of the subject property.

14. The subject property consists of approximately 50 acres, and is currently used as a farm.

15. This site is suitable for high density residential development.

16. The action of the Planning Board of the Township of Piscataway recommending rezoning of Block 497, Lot 3, from R-20 to LI-5 in December 1983 was in specific violation of its constitutional obligation to provide realistic opportunities for the construction of low and moderate income housing. The rezoning prevents vacant land, which is suitable for high density residential development and needed to fulfill the township's fair share obligation, from being used for that purpose.

17. In light of Piscataway's substantial fair share obligation, and its limited vacant land, the subject property must be rezoned to residential use if Piscataway is to meet its fair share obligation.

COUNT III

18. Paragraphs 1 through 17 are hereby incorporated and made a part of this Count.

Block 497, Lot 3

19. In March 1984, an application for classification and preliminary subdivision approval was filed with the Piscataway Planning Board to subdivide Block 497, Lot 3 for development of corporate office buildings. The application was ruled complete on March 22, 1984.

20. If the application for Block 497, Lot 3 is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval, and may preclude rezoning of the tract for residential use as part of a remedy in this case.

21. Therefore, if the Planning Board is permitted to grant preliminary approval, plaintiffs will be unable to obtain the relief they have requested against the Township Council. Plaintiffs will suffer irreparable injury, and will have no adequate remedy at law.

Block 413, Lot 3

22. The tract identified as Block 413, Lot 3 is a vacant, approximately 30 acre tract, located to the east of Possumtown Road, north of the Port Reading Railroad. The tract is currently zoned LI-1 Light Industrial.

23. A substantial portion of this site is suitable for residential development.

24. In February 1984, an application for subdivision approval was filed with respect to Block 413, Lot 3. The application was ruled complete on February 17, 1984.

25. If the application for Block 413, Lot 3 is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval, and may preclude rezoning of the tract for residential use as part of a remedy in this case.

26. Therefore, if the Planning Board is permitted to grant preliminary approval, plaintiffs will be unable to obtain the relief they have requested against the Township Council. Plaintiffs will suffer irreparable injury, and will have no adequate remedy at law.

Block 560, Lot 5A

27. The tract identified as Block 560, Lot 5A, is a vacant, 4 acre site located on the north side of Hillside Avenue between River Road and Beatty Street. The tract is currently zoned R-10 Residential.

28. This site is suitable for multifamily residential development.

29. In April 1984, a request was filed with the Piscataway Planning Board for classification of an application to subdivide Block 560, Lot 5A into twelve lots to construct single family residences. The application was ruled complete on April 10, 1984.

30. If the application for Block 560, Lot 5A is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval and may preclude rezoning of the tract to permit multifamily or higher density residential development as part of a remedy in the case.

31. Therefore, if the Planning Board is permitted to grant preliminary approval, plaintiffs will be unable to obtain the relief they have requested against the Township Council. Plaintiffs will suffer irreparable injury, and will have no adequate remedy at law.

32. Because any action by the defendant Planning Board in granting preliminary or final approval or otherwise considering applications for subdivisions, site plans, or other use of existing vacant land in Piscataway would prevent the defendant Township Council from meeting its Mount Laurel obligations, joinder of the Planning Board is necessary to provide complete relief to the plaintiffs. R. 4:28-1(a).

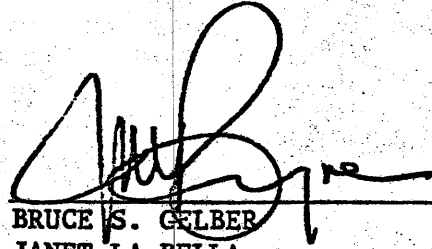
PRAYER FOR RELIEF

1. That this Court enjoin the Planning Board of the Township of Piscataway, from granting preliminary or final approval or taking any other action upon applications to develop any vacant land in the Township of Piscataway, until such time as this Court enters judgment confirming that a zoning ordinance meeting the Township of Piscataway's Mount Laurel obligation has been enacted.

2. That this Court direct the Planning Board of the Township of Piscataway to make recommendations to the Township Council concerning zoning ordinance amendments, pursuant to N.J.S.A. 40:55D-64 necessary

to meet the Township's Mount Laurel obligations.

Dated: May 1, 1984

A large, stylized handwritten signature in black ink, likely belonging to Bruce S. Gelber, is written over a horizontal line.

BRUCE S. GELBER

JANET LA BELLA

ERIC NEISSER

JOHN PAYNE

15 Washington Street

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CHANCERY DIVISION-MIDDLESEX COUNTY

Docket No. C 4122-73

Civil Action

AFFIDAVIT OF BRUCE GELBER

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

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

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

2. I submit this affidavit in support of the Urban League Plaintiffs'
Motion for Leave to File an Amended Complaint and for a Temporary Restraining

Order and an Interlocutory Injunction.

3. The computer printout, attached hereto as Exhibit A, was obtained from the Township of Piscataway, during the course of discovery, in response to a request for information about vacant parcels in the Township.

4. The tract identified as site 30 on Exhibit A's map index is a vacant, 50.28 acre tract, known as Block 497, Lot 3 and located east of South Randolphville Road in Piscataway Township. (Exhibit A)

5. According to both the Township Planner and plaintiffs' planning expert, site 30 is suitable for high density residential development. (See excerpts of deposition of Lester Nebenzahl, taken on March 21, 1984 and attached hereto as Exhibit B, p. 111; see also accompanying affidavit of Alan Mallach.)

6. In December 1983, as part of the Master Plan revisions undertaken by the Township, site 30 was rezoned from R-20 Residential to LI-5 Light Industrial. (Exhibit B, pp. 109-110)

7. In March 1984, an application for classification and preliminary subdivision approval was filed with the Piscataway Planning Board by 287 Associates to subdivide site 30 for development of corporate office buildings. (Exhibit B, p. 110) The application was ruled complete on March 22, 1984. (See April 25, 1984 Agenda of Piscataway Planning Board Site Plan/Subdivisions Meeting, items 23-24, attached hereto as Exhibit C.) On information and belief, a public hearing on the application has been scheduled for May 9, 1984, at which time the application may be acted upon.

8. If the application for site 30 is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval and may preclude rezoning of the tract for residential use as part

of a remedy in this case.

9. Due to the lack of vacant land elsewhere in the Township appropriate to meet the Township's fair share obligation, and in light of the suitability of this tract for that purpose, plaintiffs move for an order enjoining approval of the preliminary subdivision application pending disposition of this litigation.

10. The tract identified as site 8 on Exhibit A's map index is a vacant, 35.6 acre tract known as Blocks 408-410, various lots, and Block 413, Lots 1 and 3, and is located to the east of Possumtown Road, north of the Port Reading Railroad. The tract is currently zoned LI-1 Light Industrial. (Exhibit A)

11. According to plaintiffs' planning expert, a substantial portion of site 8 is suitable for high density residential development. (See accompanying affidavit of Alan Mallach.)

12. In February 1984, an application for subdivision approval was filed by Halocarbor Products Corp. with respect to a substantial portion of site 8, known as Block 413, Lot 3, comprising approximately 30 acres. The application was ruled complete on February 17, 1984. (Exhibit C, item 4) On information and belief, a public hearing on the application has been scheduled for May 9, 1984, at which time the application may be acted upon.

13. If the application for site 8 is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval, and may preclude rezoning of the tract for residential use as part of a remedy in this case.

14. Due to the lack of vacant land elsewhere in the Township appropriate to meet the Township's fair share obligation, and in light of the suitability of this tract for that purpose, plaintiffs move for an order enjoining approval of the subdivision application pending disposition of this litigation.

15. The tract identified as site 75 on Exhibit A's map index is a vacant, 4-acre tract, known as Block 560, Lot 5A, and is located on the north side of Hillside Avenue between River Road and Beatty Street. Site 75 is currently zoned R-10 Residential. (Exhibit A)

16. According to plaintiffs' planning expert, site 75 is suitable for multifamily residential development. (See accompanying affidavit of Alan Mallach.)

17. In April 1984, a request was filed with the Piscataway Township Planning Board by Algin, Inc. for classification of an application to subdivide site 75 into twelve lots to construct single family residences. The application was ruled complete on April 10, 1984. (Exhibit C, item 29) On information and belief, the application was classified as a major subdivision on April 25, 1984 and a public hearing on the application for preliminary subdivision approval was scheduled for June 13, 1984, at which time the application may be acted upon.

18. If the application for site 75 is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval and may preclude rezoning of the tract to permit multifamily or higher density residential development as part of a remedy in the case.

19. Due to the lack of vacant land elsewhere in the Township appropriate to meet the Township's fair share obligation, and in light of the suitability of the site for that purpose, plaintiffs move for an order enjoining approval of the subdivision application pending disposition of this litigation.

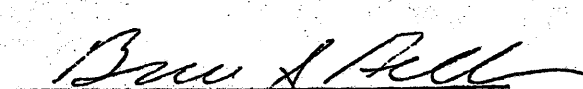
20. Because all vacant developable land in Piscataway will be needed for high density residential development to satisfy its fair share obligation, it is essential that the Planning Board take no further action that might limit the availability of such land for these purposes. Plaintiffs at this time

do not know of any other pending applications that would affect availability of land suitable for high density residential development. However, it is crucial that plaintiffs be given adequate notice of any further anticipated Planning Board action so that they can determine whether the proposed action would affect suitable land necessary to satisfy the Township's fair share and thus whether to request further interim relief.

21. Because of Piscataway's large fair share number, the lack of sufficient vacant land suitable for high density residential development, and the substantial vesting of rights that would occur upon preliminary approval of the three applications described herein or of other applications affecting the availability of vacant land for residential development, plaintiffs would suffer irreparable injury if denied injunctive relief and plaintiffs have no adequate remedy at law.

SWORN TO before me this
1st day of May, 1984.


An Attorney at Law, State of New Jersey


BRUCE S. GELBER

AP INDEX	LOCATION		AREA(AC.)	ZONE	REMARKS
#	BLOCK	LOT (S)			
1	68	35-51, 51A	10.70	R-75	50% FLOODPLAIN
2	116	1			
	188	1, 1A, 2	125.10	LI-5	15 ACRES IN FLOODPLAIN- ADJACENT TO STEEL PLANT
3	228	134	24.90	SC	
4	229A	2 (PART)	10.00	LI-5	ADJ. TO HEAVY INDUSTRY
5	229A	1A, 1B	40.00	R-75	SEVERE ENVIRON. CONSTRAINTS
6	317	6A, B, 9, 9A, 9B, 9C, 11A 11B, 11C			
	319	1A	55.62	R-20	TRAFFIC, RAILROAD
7	389, 390, OTHERS		88.00	R-10A	PRD
8	408, 409 OTHERS		35.60	LI-1	
9	502	1, 2(PART)	55.00	R-10	
10	502	2(PART)			
	502A	2(PART), 6	34.00	R-15	PROPOSED PARK 8 ACRES
11	421	5(PART), 6, 8	26.70	BP-1	ADJ. TO CHEMICAL PLANT
12	502	2(PART)	34.00	R-20	
13	421; 442B	7A(PART); 1B	26.00	LI-5	ADJ. TO CHEMICAL PLANT
14	503	1	66.25	R-20	ADJ. TO INTERSTATE
15	452	8A, 56B	6.50	R-10	FLOOD PLAIN
16	456; 457A	1; 1	14.29	M-5	ADJ. TO RAILROAD, INDUSTRY
17	457B	1, 2, 3A	17.21	M-5	ADJ. TO IND., FLOODPLAIN
18	457A	7A	7.83	M-5	ADJ. TO INDUSTRY
19	457B	14A	7.79	M-5	ADJ. TO INDUSTRY
20	457B	7, 8, 9	25.00	M-5	ADJ. TO INDUSTRY
21	461	3A	14.54	M-5	ADJ. TO INDUSTRY
22	503E	2B	5.00	LI-5	ADJ. TO INDUSTRY
23	457C	8C	28.79	LI-5	ADJ. TO INDUSTRY, FLOODPLAIN
24	462	4A	10.74	LI-5	ADJ. TO INDUSTRY, INTERSTATE
25	462	5	8.00	LI-5	
26	495	1, 4C, 10, 11, 11A, 11B	40.98	LI-5	NOT CONTIGUOUS
27	497A	6B, 9B, 10A	31.00	LI-5	INDUSTRIAL PARK, FLOODPLAIN
28	499	2A	6.35	R-15	PARTIAL FLOOD PLAIN
29	499	4	1.09	R-15	FLOODPLAIN
30	497	3	50.58	LI-5	
31	497	4	10.90	R-20	
32	496	1A	43.62	LI-5	POWERLINE EASEMENT (2.75APPROX)
33	496	2, 11	63.85	R-20	(3.70APPROX)
34	496	12	14.30	R-20	(1.32APPROX)
35	495	46	74.65	R-20	
36	495; 661A	17, 72A, 73A	2.17	BP-II	PIPELINE EASEMENT, NOT CONTIGUOUS
37	676	27E	7.82	R-10, G3	
38	710, 712, OTHERS		48.00	R-10A	PRD
39	730	8(PART)	7.80	GB	
40	734	44L	29.18	SC	POWER LINES
41	734	45, 46, 49, 54A, 55, 59C			
	734A	44, 44G, 44F, OTHERS	55.96	LI-1	INDUSTRIAL PARK
42	735E	27A, 28A	32.40	R-20	HISTORICAL FARM
43	647B	21	14.70	R-20	
44	745	3, 4, 4C, 4E	20.00	R-15A	PRD
45	744	2A	40.94	R-20	
46	744	2	55.64	R-20A	PRD
47	743	1	9.40	R-20	
48	737	8-11	6.16	R-20	
49	845	1A, 2, 9B, 10	17.29	R-20	TWO TRACTS
50	593	24	2.88	R-15	
51	829	10			
	834C	1-3	4.30	BP-1	NON-CONTIGUOUS
52	829	1, 2, 6, 11, 12			
	834C	4, 19-24, 28, 29	12.77	R-15	NON-CONTIGUOUS
53	760, 761, 762, 763	ALL	9.40	SCH	SR. CITIZEN HOUSING
54	797	1	6.20	R-15	
55	835	10, 2(PART)	105.90	E-R	RUTGERS UNIVERSITY
56	835	2 (PART)	16.00	HC	RUTGERS UNIVERSITY
57	872	2, 3(PART)	40.00	R-20A	PRD
58	495	11D	0.62	G-B	ADJ. COMMERCIAL, INDUSTRY
59	498	1, 20	29.27	LI-5	BISECTED BY CENTENNIAL, ADJ. TO IND.
60	SEE MAP	BLOWUP	49.70		
		MUNICIPAL	18.69	VARIOUS	SEE MAP BLOWUP
		PRIVATE	13.29		
		BD. OF ED			
61	735A	24	10.42	R-20	DEDICATED OPEN SPACE
62	736	49	6.63	R-20	DEDICATED OPEN SPACE
63	737	4, 5	2.85	R-20	MUNICIPAL
64	39	1, 2	1.65	M-1	ADJ. TO IND, RAILROAD
65	146	6	4.80	M-1	FLOODPLAIN
66	146	4	3.50	R-75	SUBDIVISION, FLOODPLAIN
67	115	25A	3.40	R-75	FLOODPLAIN
68	228	21-32	2.81	R-75	
69	417	1-127, 132-144	6.53	LI-1	VARIOUS OWNERS, ADJ. FIRE TRAINING
70	458	2	9.10	M-5	RAILROAD, HEAVY IND.
71	460B	8	5.00	LI-5	ADJ. TO INDUSTRY
72	460D	6	5.10	LI-5	ADJ. TO INDUSTRY
73	497A	1	6.99	LI-5	FLOODPLAIN, ADJ. TO IND.
74	500	9	3.80	BP-1	ADJ. TO INDUSTRY
75	560	5A	4.00	R-10	
76	561	8A-22, 25-36, 39, 40			
	564	18-37	6.54	R-10	NON-CONTIGUOUS, VARIOUS OWNERSHIP
77	647	67A	6.45	R-20	
78	698	16	2.99	R-10	SUBDIVIDED
79	711	27			

Copies

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY
DOCKET NO. C-4122-73

URBAN LEAGUE OF
GREATER NEW BRUNSWICK,
et al.,

Plaintiffs,

v.

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

Defendants.

CIVIL ACTION

DEPOSITION OF:
LESTER NEBENZAHL

TRANSCRIPT of deposition taken by and before MARY
LUKENSOW, a Certified Shorthand Reporter, and Notary
Public of the State of New Jersey, at the offices of
PISCATAWAY MUNICIPAL BUILDING, 455 HOES LANE,
PISCATAWAY, NEW JERSEY, on WEDNESDAY, MARCH 21, 1984,
commencing at 9:30 a.m.

APPEARANCES:

BRUCE GELBER, ESQ.
733 15th Street, N.W.
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Attorney for Plaintiffs

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Constitutional Litigation Clinic
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15 Washington Street
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Attorney for Plaintiffs

KIRSTEN, FRIEDMAN & CHERIN, ESQS.
BY: PHILLIP LEWIS PALEY, ESQ.
17 Academy Street
Newark, New Jersey 07102
Attorneys for Defendant Township of
Piscataway

1 MR. GELBER: Yes, environmental,
2 physical, topographical point of view.

3 A. Well, I would suggest to you that if the
4 land is capable of handling office use, that it's
5 certainly capable of handling residential use.

6 Q. Okay.

7 A. In terms of its environmental --

8 Q. Okay. Now, in answer to 27E and F, you have
9 a second project identified. What is the nature of
10 that project?

11 A. That is one of the lots in the midst of an
12 industrial park, which has been under construction for
13 approximately 10 years.

14 Q. Have there been any, since 1976 -- strike
15 that.

16 Since January of 1983, have there been any
17 rezonings from residential to non-residential use?

18 A. Since January of '83? One comes to mind,
19 the Miele farm.

20 Q. Why don't we identify that with a Roman
21 numeral six?

22 A. Something like that.

23 Q. How large a tract is that?

24 A. Approximately 50 acres.

25 Q. Is it still being used as a farm?

1 A. To this day, I think it is, although
2 applications were filed in our offices last week.

3 Q. What is the status of the application?

4 A. I have yet to review it for determination as
5 to completeness. Application has been made for
6 preliminary -- classification and preliminary
7 subdivision approval.

8 Q. When do you anticipate that that, the
9 application will go before the planning board?

10 A. April or May of this year.

11 Q. And what does the application call for, just
12 general --

13 A. I haven't reviewed it yet. I have only seen --

14 Q. Just --

15 A. The cover form itself. I haven't even
16 looked at the map. I am sure it's going to encompass
17 lots for the construction of large office --
18 industrial park type of atmosphere.

19 Q. When was the rezoning approved, roughly
20 speaking?

21 A. 1984. Along with the other --

22 Q. Was that part of the December '83 --

23 A. I am sorry, December '83, along with the
24 other zoning.

25 Q. Was consideration given to developing this

1 site for higher density residential?

2 A. I don't believe serious consideration was
3 given to that. There was a request by the contract
4 purchaser for rezoning to what it is now zoned.

5 Q. And who is the contract purchaser?

6 A. Sudler Construction.

7 Q. From a physical, environmental and
8 topographical standpoint, is that tract suitable for
9 high density residential?

10 A. Yes.

11 Q. What about from a planning standpoint?

12 A. Could be done.

13 Q. Any other rezonings from residential to non-
14 residential use since January of '83?

15 A. Residential to -- none come to mind.

16 Q. Are there any other rezonings from
17 residential use to non-residential use involving a
18 vacant parcel since 1976, that you can recall?

19 A. Residential to non -- I don't recall of any.

20 Q. How about any down zonings, by that I mean
21 rezoning from a higher density residential to a lower
22 density residential on a vacant parcel, since 1976?

23 A. I think I referred to that previously. From
24 a what to what? You are using the reverse -- reverse
25 term is residence in an area where --

PISCATAWAY PLANNING BOARD
SITE PLAN/SUBDIVISION MEETING
WEDNESDAY, APRIL 25, 1984 — 2:30 P.M.

1. CALL TO ORDER.

2. OPEN PUBLIC MEETINGS NOTICE.

3. ROLL CALL.

4. 84-PB-21 HALOCARBON PRODUCTS CORP. (CLASSIFICATION/SUBDIVISION)
82 Burlews Courts
Hackensack, N.J.
Block 413, Lot 3, Zone MI-1 and LI-1
Subdivide into two lots to sell lots only on
Possumtown Road

Ruled complete February 17, 1984.

Action to be taken prior to April 2, 1984.

Extension of time granted to May 31, 1984.

Middlesex County Planning Board approval was received.
See letter dated March 30, 1984.

Requires report from Environmental Officer.

At the March 14, 1984 meeting the applicant was advised to submit revised plans showing the correct zoning of the property.
Also the application was deferred to the May 9, 1984 meeting, in interim the applicant was advised to meet with the Township Engineer to iron out any discrepancy in the plan.

Attorney: Michael F. Decapua

5. 84-PB-34V LACKLAND BROS., INC. (VARIANCE)
6. 84-PB-35V 400 North Avenue (VARIANCE)
7. 84-PB-36 Dunellen, N.J. (CLASSIFICATION/SUBDIVISION*)
Block 401A, Lots 3A and 3B, Zone R-10
Subdivide into two lots on Baltimore Avenue to
construct houses for sale.

VARIANCE:

Lot 3A and 3B have insufficient width;
required is 100', proposed is 87.5 ' respectively.

Requires affidavit of publication and of service.
Requires proof of tax payment.

Ruled complete pending receipt of completed checklist
February 17, 1984.

Action to be taken prior to May 22, 1984.

• SITE PLAN/SUBDIVISION MEETING
PISCATAWAY PLANNING BOARD
WEDNESDAY, APRIL 25, 1984

*Lots are covered by Birch Run Development bonding.

Attorney: Edwin Kunzman

- 8. 84-PB-37V LACKLAND BROS, INC. (VARIANCE)
- 9. 84-PB-38V 400 North Avenue (VARIANCE)
- 10. 84-PB-39V Dumellen, N.J. (VARIANCE)
- 11. 84-PB-40 Block 401A, Lots 62A, 1A, and 1B (CLASSIFICATION)
- 12. 84-PB-41 Subdivide into three lots to construct (PRELIMINARY)
- 13. 84-PB-42 houses for sale on Mountain Avenue (FINAL/SUBDIVISION*)

VARIANCES:

Lot 62A - insufficient area and width; required is 10,000 square feet and 100 feet, proposed is 8,532.81 square feet and 86.67 feet.

Lot 1A - insufficient area and width; required is 10,000 square feet and 100 feet, proposed is 8,666 square feet and 86.66 feet.

Lot 1B - Insufficient area and width; required is 10,000 square feet and 100 feet, proposed is 8,667 square feet and 86.67 feet.

Requires affidavits of publication and of service.
Requires proof of tax payment.

Ruled complete pending receipt of completed checklist.
Action to be taken prior to May 22, 1984.

*Lot are covered by Birch Run Development bonding.

Attorney: Edwin Kunzman

- 14. 84-PB-43V LACKLAND BROS. INC. (VARIANCE)
- 15. 84-PB-44V 400 North Avenue (VARIANCE)
- 16. 84-PB-45V Dumellen, N.J. (VARIANCE)
- 17. 84-PB-46 Block 400A, Lots 37, 38 & 38A, Zone R-10 (CLASSIFICATION)
- 18. 84-PB-47 Subdivide into three lots to construct houses (PRELIMINARY)
- 19. 84-PB-48 for sale on Mountain Avenue. (FINAL/SUBDIVISION*)

VARIANCES:

Insufficient area and insufficient width; required is 10,000 square feet and 100 feet.

Lot 37 - proposed is 9,365 square feet (area).

Lot 38 - proposed is 95 feet (width).

Lot 38A - proposed is 95 feet (width).

SITE PLAN/SUBDIVISION MEETING
PISCATAWAY PLANNING BOARD
WEDNESDAY, APRIL 25, 1984

Requires affidavits of publication and of service.
Requires proof of tax payment.

Ruled complete pending receipt of a completed checklist
on February 17, 1984.
Action to be taken prior to May 22, 1984.

*Lots are covered by Birch Run Development bonding.

Attorney: Edwin Kunzman

20. 84-PB-51 RAYMOND BISOGNO (CLASSIFICATION/SUBDIVISION)
21. 84-PB-52V 419 Grove Avenue (VARIANCE)
22. 84-PB-53V Metuchen, N.J. 08840 (VARIANCE)
Block 453, Lots 28A - Lot 33A, Zone R-10
Subdivide into two lots to construct houses, for sale
on Third Avenue.

VARIANCES - Insufficient width on both lots; required is
100 feet, proposed is 75 feet.

Ruled Complete March 22, 1984.
Action to be taken prior to June 25, 1984.

Requires affidavits of publication and of service.
Requires Middlesex County Planning Board approval.
Requires proof of contract purchaser.

Attorney: John Wiley, Jr.

23. 84-PB-59 287 ASSOCIATES, A LIMITED PARTNERSHIP (CLASSIFICATION)
24. 84-PB-60 32 Commerce Street (PRELIMINARY SUBDIVISION)
Newark, N.J. 07102
Block 497, Lot 3, Zone LI-5
Subdivide into nine lots to construct additional phase of
Corporate Park 287 on Randolphville Road.

Ruled complete March 22, 1984.
Action to be taken prior to May 6, 1984.
Extension of time granted to June 13, 1984.

Requires affidavits of publication and of service.
Requires Middlesex County Planning Board review and approval.

Attorney: Harry Bernstein

25. 84-PB-61 HAROLD L. & M. JACQUELYN HESCOCK (CLASS./SUBDIVISION)
155 Blackford Avenue
Piscataway, N.J. 08854

Block 350A, Lot 9 and 10, Zone R-10
Subdivide into two lots on Blackford Avenue to construct
house for self on Lot 10.

Ruled complete April 2, 1984.
Action to be taken prior to May 17, 1984.

Requires Middlesex County Planning Board approval.

Attorney: Mark L. Stanton

26. 84-PB-62 MARIE PICIRILLI (CLASSIFICATION/SUBDIVISION)
27. 84-PB-63V ADMINISTRATRIX (VARIANCE)
28. 84-PB-64V 10 Curtis Avenue (VARIANCE)
Piscataway, N.J. 08854
Block 125, Lots 10 and 11; 24 and 25, Zone R-7.5
Subdivide into two lots to retain lot on Curtis Avenue with home
and sell lot on Grove Street.

VARIANCES - Lots 24 and 25 - have insufficient area and insufficient
width; required is 7500 square feet and 75 feet, proposed is
5000 square feet and 50 feet.

Lots 10 and 11 have insufficient area; required is 7500 square
feet; proposed is 5000 square feet.

Ruled complete April 3, 1984.
Action to be taken prior to July 7, 1984.

Requires affidavits of publication and of service.
Requires Middlesex County Planning Board approval.

Attorney: Edward Santora

29. 84-PB-65 ALGIN, INC. (CLASSIFICATION ONLY)
223 Park Avenue
Scotch Plains, New Jersey
Block 560, Lot 5-A, Zone R-10
Classification to subdivide into twelve lots on Hillside Avenue and
Beatty Street to construct houses for sale.

Ruled Complete April 10, 1984.
Action to be taken prior to May 25, 1984.

Requires list of stockholders.
Requires proof of tax payment.

**SITE PLAN/SUBDIVISION MEETING
PISCATAWAY PLANNING BOARD
WEDNESDAY, APRIL 25, 1984**

Requires variance on proposed lot 1 for insufficient area and insufficient width; required is 10,000 square feet, and 100 feet, proposed is 9000 square feet and 90 feet.

30. 84-PB-66 AMERICAN PRIORITY ENTERPRISES, INC. (PREL. & FINAL SITE PLAN)
135 Fleming Street (REQUESTING WAIVERS)
Piscataway, New Jersey 08854
Block 255A, Lot 1 -5, Zone LI-1
Change of use on property (parking for present use).
On Fleming Street - 1150 square foot building.

Waiver - Applicant is requesting a waiver from the strick requirements of the site plan ordinance.

Requires authorization from the owner of property.
Requires proof of tax payment

Applicant submitted an Environmental Assessment Questionnaire.

Determination of completeness pending Board's action on the requested waivers.

Attorney: Howard Gran

31. 84-PB-67 GEERLING GREENHOUSES INC. (PRELIMINARY AND FINAL SITE PLAN)
496 William Street
Piscataway, N.J. 08854
Block 349, Lots 3 and 26, Zone R-20
Construct a 43,366 addition to existing building on William Street

Ruled incomplete on April 18, 1984.
Requires Conditional Use permit.
Requires proof of ownership.
Requires stockholders list.
Requires affidavits of publication and of service.

32. 84-PB-68 GEORGIA PACIFIC CORPORATION (PREL. AND FINAL SITE PLAN)
P. O. BOX 929
Bound Brook, New Jersey
Block 442-B, Lot 1-B
Block 436-A, Lot 65
Zones M-5, LI-5, R-10 and M-5

Construction of a 2800 square foot building, boiler and fuel oil tank on Normandy Drive.

Ruled complete April 18, 1984
Action to be taken prior to July 22, 1984.

SITE PLAN/SUBDIVISION MEETING
PISCATAWAY PLANNING BOARD
WEDNESDAY, APRIL 25, 1984

Requires proof of tax payment.

Attorney: Bertram E. Busch

33. 84-PB-69 THOMAS MERNAGH AND NANCY WEAVER (CLASS./SUBDIVISION)
140 Mountain Avenue and 22 Dunbar Avenue
Piscataway, N. J. 08854
Block 740, Lot 15, Zone R-20
Classification and subdivision approval to subdivide into
two lots to construct a house for applicant's residence.

Ruled complete April 18, 1984.

Action to be taken prior to June 1, 1984.

Requires Middlesex County Planning Board Review.
Requires proof of Tax payment.

Attorney: Peter Lederman

34. 84-PB-18 S AND A ASSOCIATES (CLASSIFICATION/SUBDIVISION)
35. 84-PB-19 LIMITED PARTNERSHIP (PRELIMINARY & FINAL SITE PLAN)
100 RING ROAD WEST (REQUESTING WAIVERS)
GARDEN CITY, N.Y. 11530
Block 460C, Lot 5A, Zone M-5
Subdivide into two lots to construct office building
and appurtenant parking on lot with the proposed four
story office building.

SITE PLAN- Construction of a four story, 200,000 square
foot building on the corner of South Randolphville Road and
Colonial Drive.

Ruled complete February 17, 1984.

Action to be taken prior to May 22, 1984.

Applicant is requesting waivers of certain parking stall sizes.

Requires affidavits of publication and of service.

At the Site Plan/Subdivision Meeting of February 22, 1984
the applicant was advised that off tract improvements will be
required.

At applicant's request, application was taken off of the April 11,
1984 meeting and rescheduled for May 9, 1984 meeting.

Attorney: Jerome A. Vogel

36. COMMUNICATIONS.

SITE PLAN/SUBDIVISION MEETING
PISCATAWAY PLANNING BOARD
WEDNESDAY, APRIL 25, 1984

37. ADJOURNMENT.

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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY

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

Plaintiffs,)

vs.)

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

Defendants)

Docket No. C-4122-73

Civil Action

AFFIDAVIT OF ALAN MALLACH

OCEAN COUNTY)

NEW JERSEY)

:ss:

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

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

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

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

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

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

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

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

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

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

- a. Block 497, lot 3, located on South Randolphville Road, and referred to as Site 30 in Exhibit A;
- b. Blocks 408-410, various lots and Block 413, lots 1 and 3, on Possumtown Road (Site 8 on Exhibit A); and
- c. Block 560, lot 5A, on Hillside Avenue (Site 75 on Exhibit A).

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

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

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

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

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


ALAN MALLACH

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


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ATTORNEYS FOR PLAINTIFFS

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY

Docket No. C 4122-73

Civil Action

ORDER

Plaintiffs Urban League having moved for leave to file an amended complaint and for a temporary restraining order and interlocutory injunction and having filed in support thereof Affidavits of Bruce Gelber and Alan Mallach, an Amended Complaint, and a Memorandum of Law in Support, and having served those papers upon all counsel, as well as counsel for the Piscataway Township Planning Board, and counsel for the three affected applicants, and the Court having reviewed all papers submitted and having heard all interested parties in open court,

IT IS HEREBY O R D E R E D, this 7th day of May, 1984, that

(1) Plaintiffs' motion for leave to file an amended complaint is granted, the Amended Complaint served with the motion is ordered filed forthwith, and the service of the motion and Amended Complaint previously made upon all counsel in this action and upon the counsel for the Piscataway Township Planning Board is deemed adequate service of the Amended Complaint.

(2) Defendant Piscataway Township Planning Board is hereby enjoined, until further order of this Court, from granting preliminary or final approval or taking any other action with regard to the pending applications filed by 287 Associates, Halocarbon Products, and Algin, Inc. concerning Block 497, Lot 3, Block 413, Lot 3, and Block 560, Lot 5A, respectively.

(3) Defendant Piscataway Township Planning Board is directed to provide Urban League plaintiffs' counsel with a minimum of 14 days' written notice, addressed to Bruce Gelber, Esq., at 733 Fifteenth Street, NW, Suite 1026, Washington, D.C. 20005, and Eric Neisser, Esq., at 15 Washington Street, Newark, New Jersey 07102, of the filing, placement on any agenda, or other action regarding any application concerning any parcel of vacant land in Piscataway, and plaintiffs are hereby granted permission to file a motion for further relief concerning other parcels of vacant land in Piscataway on 5 days' notice to counsel for the Township of Piscataway, the Piscataway Township Planning Board, and any affected applicant.

EUGENE D. SERPENTELLI, J.S.C.

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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Docket No. C 4122-73

Plaintiffs,

vs.

Civil Action

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

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT AND FOR TEMPORARY RESTRAINING ORDER
AND INTERLOCUTORY INJUNCTION

In this motion, the Urban League plaintiffs seek to preserve their opportunity for adequate and appropriate relief against the defendant Township of Piscataway, by restraining the township's Planning Board from taking action that might irrevocably divert vacant and developable land in the township to non-Mount Laurel purposes. Such action is threatened as early as May 9, 1984.

Background. Both the court-appointed expert, Carla Lerman, and the plaintiffs' expert, Alan Mallach, have determined that Piscataway's fair share obligation is in excess of 3,000 units of low and moderate income housing. Affidavit of Alan Mallach, ¶ 2. There is insufficient vacant and developable land in Piscataway to completely satisfy an obligation of this magnitude. Mallach Affidavit, ¶ 4.

Notwithstanding these facts, and despite the township's frequent assertion of its inability to meet the experts' fair share numbers, the township has undergone substantial growth in the recent past, and continues to experience substantial growth at this time. None of this growth has provided low and moderate income housing opportunities; indeed, by concentrating on commercial and office structures, it has served to exacerbate the need for affordable housing in the township. The township's growth policy, which has required the active participation of the governing body and the planning board, vividly demonstrates Piscataway's insensitivity to its Mount Laurel obligations.

The Planning Board of the Township of Piscataway now has before it several development applications that concern vacant and developable land suitable for low and moderate income housing development. Affidavit of Bruce Gelber, Esq., ¶¶ 7, 12 & 17. The planning board has scheduled public hearings for May 9 and June 13 involving one or more of these applications, and could act upon the applications as soon as the hearing has occurred.

Against this background, the Urban League plaintiffs submit that

approval of the pending applications will cause it irreparable harm. They ask that the Court restrain all action with respect to these applications pending the completion of the Urban League trial, and that the complaint in this action be amended to add the Piscataway Planning Board as a necessary party, R. 4:28-1(a), in order to achieve this just and equitable result.

Temporary restraints. The familiar standard which plaintiffs must meet in order to obtain the temporary relief sought was recently restated by the Supreme Court in Crowe v. DeGioia, 90 N.J. 126, 447 A.2d 173 (1982). Plaintiffs must show:

1. A valid legal theory and a "reasonable probability of ultimate success on the merits", id. at 133, 447 A.2d at 177; and
2. Irreparable harm, not adequately redressable by money damages; and
3. A relatively greater harm to the plaintiff if relief is denied than to the defendant if relief is granted.

Plaintiffs amply meet these tests.

Probability of success. Even in this disputatious litigation, it presumably goes without saying that plaintiffs' Mount Laurel theory is legally valid. It is virtually as certain, moreover, that plaintiffs will prevail on the merits after trial and that Piscataway will be found still to be in non-compliance with Mount Laurel II. The township has acknowledged, indeed has vigorously asserted, that it has very little land available to satisfy low and moderate income housing needs. Both the court-appointed expert and plaintiffs' expert have concluded that Piscataway's numerical fair share obligation is in excess of 3,000 units, a number so large that any modifications in the fair share methodology are highly unlikely to result in a number so much lower that it would relieve Piscataway of all further compliance obligations.

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

Approval of the pending applications will for all practical purposes make these parcels unavailable for Mount Laurel purposes.

N.J.S.A. 40:55D-49(a) provides:

a. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, any requirements peculiar to site plan approval pursuant to subsection 29.3 of this act; except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.

This language vests a developer's right to the approved "use," thus precluding a rezoning from commercial to residential, or from a single-family to multi-family, uses. It would also apparently preclude any revision of the approval to include low and moderate income housing as a component of the proposed developments or to require a financial contribution to other housing development elsewhere in the township in lieu thereof. Although the statute speaks to "general terms and conditions," this language has been interpreted to mean any basic or fundamental aspect of the project for which preliminary approval is granted. The theory is that the central purpose of

the vesting requirement is financial, and prohibits the municipality from upsetting the developer's legitimate investment expectations thereafter. See Hilton Acres v. Klein, 64 N.J. Super. 281, 165 A.2d 819 (App. Div., 1960), aff'd, 35 N.J. 570, 174 A.2d 465 (1961), (increase in minimum lot size prohibited). Although there is no case law directly in point, whether a proposed development is a Mount Laurel or non-Mount Laurel one would seem to fit within the Hilton Acres concept of a "basic" or "fundamental" aspect of the developer's thinking, since the Mount Laurel development ordinarily requires the developer's willingness to provide an internal subsidy to the below-market Mount Laurel units.

Plaintiffs recognize the "health and safety" exception to §49(a), and agree that a change in the conditions of preliminary approval, if justified on Mount Laurel grounds, could arguably fit within this exception, since Mount Laurel II establishes a general welfare obligation of constitutional dimension. Indeed, plaintiffs will vigorously join issue on this question at an appropriate time, if necessary, but submit that the novelty and difficulty of the question makes it inappropriate to decide in the context of the request for immediate and temporary relief that is now before the Court. There is no case law guidance on this issue, the facts are speculative at this time, and the issue deserves substantial briefing. It is manifestly inconsistent with the theory on which temporary relief is available to deny such relief because an as-yet untried theory might at some indefinite future time afford plaintiffs an alternate mechanism to avoid irreparable harm. Within any reasonable time frame, the harm done to plaintiffs should preliminary approvals now be granted and rights vest is harm that is manifestly irreparable.

Balancing of harms. The defendants, as public bodies, would suffer little, if any, harm should temporary relief be granted, since their role is that of a regulator rather than a principal. Their only possible claim would be that the failure to approve or disapprove the pending applications within the 45 or 95 day periods specified in the Municipal Land Use Law subjected them to the statutory sanction of mandatory approval. See N.J.S.A. 40:55D-48(c). This procedure was incorporated into the MLUL to prohibit municipalities from effectively denying applications by not acting on them, an abuse that had led to much difficulty under the prior laws. A court-mandated hiatus in the approval process would obviously not serve as a basis on which to invoke the automatic approval language of the MLUL.

Assuming that the developer-applicants are entitled to have the possible harm to them also considered in the balance, the balance still remains overwhelmingly in the plaintiffs' favor. As a matter of law, the applicants are not entitled to approval simply because their applications are complete and pending, and they could be disapproved by the planning board on grounds unrelated to the present action. More importantly, however, trial is already underway in this action and the temporary restraints are likely to last for at most a period of several months, until judgment is reached and a compliance order determined. While any delay represents a realizable cost when financial issues are at stake, plaintiffs submit that such harm is no more than a tiny fraction of the harm done by the total and complete destruction of plaintiffs' interest in securing the maximum degree of compliance with Piscataway's fair share obligation.

Plaintiffs thus submit that they fall amply within the requirements of Crowe, having shown a probability of success on the merits, irreparable harm,

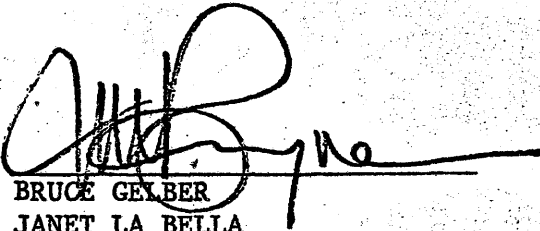
and a balancing of interest that is overwhelming in their direction.

In order to prevent the substantial injustice that Piscataway's pending approvals would create, it is necessary that the underlying Urban League complaint be amended to join the Planning Board of the Township of Piscataway as a necessary party pursuant to R. 4:28-1(a). While leave to amend is properly placed in the discretion of the Court, Kent v. Borough of Mendham, 111 N.J. Super. 67, 267 A.2d 325 (App. Div., 1970), leave should be liberally granted, Gibson v. 1013 North Broad Associates, 172 N.J. Super. 191, 195, 411 A.2d 711 (App. Div., 1980). Nor should the unusual length of time that has elapsed since the initial complaint in this matter deter a reasonable amendment.

"[The discretion of the court is to be] exercised in light of the factual situation actually existing at the time the application is made." Associated Metals v. Dixon Chemical, Inc., 52 N.J. Super. 143, 150-151, 145 A.2d 49, 53 (Ch. Div., 1983). "Thus, to enable the court to do complete justice, new matters existing at the time of filing the bill may be inserted, new parties added, irrelevant matter stricken out, and unnecessary parties omitted" Codington v. Mott, 14 N.J. Eq. 430, 432, 82 Am. Dec. 258 (Ch. Div. 1862). See also Jersey City v. Hague, 18 N.J. 584, 115 A.2d 8 (1955), "formal amendments in the prayer of the bill, to meet the exigency of the case, will be made up to and after the final hearing." Codington, supra, at 432. It is the very passage of time, in light of the protracted procedural history of this litigation, that makes it both necessary and equitable to now join the planning board as a party for the limited purpose of securing for the plaintiffs the relief to which they are amply entitled under the remand order in Mount Laurel II.

The planning board's status as a necessary party under Rule 4:28-1(a) is amply demonstrated by the Amended Complaint, the supporting affidavits, and the arguments in this Memorandum of Law. The necessity of temporary restraints is equally demonstrated by the pattern of indifference to its Mount Laurel obligations that Piscataway has shown.

Dated: May 1, 1984

A large, stylized handwritten signature in black ink, likely belonging to Bruce Gelber, is written over the printed names of the attorneys.

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