CA - Piscataway 6/19/84

Letter in lieu of memorandum in opposition to motion for summary judgment filed on behalf of Twp of Piscataway by Mr. Paley

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1. Premature - no resolution
no repose
M has right to pursue claims
2. M will become moot
there's insuff. VOL - if land environ suitable, land will be rezoned regardless of
3. Entitlement to builder's remedy entitlement
(a) Did not succeed
Did not participate
(b) need a "project"

Honorable Eugene D. Serpentelli
CN 2191
Ocean County Court House
Toms River, New Jersey 08754

Re: Gerickont v. Piscataway Township
Docket No. L-032501-84 P.W.
Consolidated with
Urban League v. Carteret
Docket No. C-4122-73

Dear Judge Serpentelli:

Please consider this letter as a memorandum in opposition to the motion for summary judgment filed on behalf of the Township of Piscataway by Mr. Paley.

The motion for summary judgment seeks the dismissal of the plaintiffs' complaint. It is the position of the Township, as asserted in Mr. Paley's certification, that the opinion of the Supreme Court in Mount Laurel II automatically precludes prerogative writ litigation seeking to contest the zoning ordinance of a township once the issues of fair share and region have been tried. The writer can find no language in Mount Laurel II to support that proposition. There is language in the opinion of the Court with respect to the presumptive validity to be given to the Court's holding with respect to such issues and there is also language with respect to the ability of the Court to grant an order of repose upon a determination of compliance. No presumptive validity has been given to any opinion of the Court since the Court has not rendered an opinion. Furthermore, no order of repose has been issued to Piscataway Township since Piscataway has undertaken no specific action to rezone the Township in order to comply with

an ultimate determination of the Court. If the reasoning of Mr. Paley were to be accepted, then the mere filing and trial of the issues of fair share and region would serve to bar all litigation, presumably on some principle of res judicata. In creating the concept of "presumptive validity" the Supreme Court specifically recognized that this would not be the result. The Court clearly provided that the presumption could be attacked by other litigants. At p. 255, the Court said, "It is possible, of course, that the presumptively valid region and regional need determinations may be seriously contested, but we doubt it." Counsel for Piscataway Township confuses the order of consolidation and the limitations placed upon the order of consolidation with the right of the plaintiff to file a lawsuit against Piscataway Township and to have its day-in-court against Piscataway Township. The plaintiffs Gerickont are satisfied to be bound by the Court's determination on the issues of region and fair share, the only issues tried in these consolidated cases. An acceptance of that limitation on the order of consolidation is not an admission that no basis exists for the complaint itself. Furthermore, even assuming that Piscataway Township were to comply with an ultimate order of the Court and receive an order of repose, it would not be absolved of all zoning litigation. The Court contemplates that compliance will satisfy Mount Laurel obligations. For that purpose, the doctrine of repose is advanced to avoid unnecessary re-litigation of Mount Laurel issues. Other zoning limitations, however, may be attacked for other reasons of invalidity:

> "For instance, a municipality having thus complied, the fact that its land use regulations contain restrictive provisions incompatible with lower income housing, such as bedroom restrictions, large-lot zoning, prohibition against mobile homes, and the like, does not render those provisions invalid under Mount Laurel. Obviously, if they are otherwise invalid - for instance, if they bear no reasonable relationship to any legitimate governmental goal - they may be declared void on those other grounds." Mount Laurel II at p. 260.

For the reasons stated, it is respectfully requested that the motion be denied.

A copy of this letter memorandum has been furnished to Mr. Paley and to counsel for the Urban League.

Respectfully yours,

Raymond R. Trombadore

RRT/ljk