CA – In the Matter of Mount Laurel II (Cranbury)

March 28, 1985

~~Petitioners~~ Brief and Appendix of Petitioner Twp of Cranbury / In Support of Application Pursuant to Original Jurisdiction to Stay All Litigation in Special Mount Laurel Cases

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TOWNSHIP OF CRANBURY, Petitioner, vs. URBAN LEAGUE OF GREATER NEW BRUNSWICK and GARFIELD AND COMPANY; CRANBURY LAND COMPANY; LAWRENCE ZIRINSKY; TOLL BROTHERS, INC., Respondents.	**SUPREME COURT OF NEW JERSEY** Docket No. _____ CIVIL ACTION IN THE MATTER OF MOUNT LAUREL II 92 N.J. 158 (1983)

PETITIONER'S BRIEF AND APPENDIX IN SUPPORT OF APPLICATION PURSUANT TO ORIGINAL JURISDICTION TO STAY ALL LITIGATION IN SPECIAL MOUNT LAUREL COURTS OR, ALTERNATIVELY, TO RECONSIDER THE USE OF THE STATE DEVELOPMENT GUIDE PLAN, THE BUILDER'S REMEDY AND THE EFFECT ON URBAN AREAS

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PROCEDURAL HISTORY

Petitioner, the Township of Cranbury, New Jersey ("Cranbury") was named as a defendant-respondent in an action entitled Urban League of Greater New Brunswick et al v. The Mayor and Council of the Borough of Carteret et al (A-4) which case was heard together with a number of others, all of which were remanded for further proceedings pursuant to the decision of this Court in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"). By its Petition Cranbury seeks, inter alia, a stay of the remanded action as well as all other Mount Laurel II related litigation. Respondents herein are all plaintiffs in actions against Cranbury pending before the special Mount Laurel courts.

PRELIMINARY STATEMENT

The Mount Laurel II decision reaffirmed a constitutional doctrine promulgated in the first Mount Laurel case, (at 67 N.J. 151 (1975), "Mount Laurel I") assuring low and moderate income groups of their fair share of housing. Cranbury does not seek in the instant application to attack that doctrine. Two years have transpired, however, since the Mount Laurel II decision. Cranbury's petition is addressed to problems which have risen from the implementation of the Mount Laurel doctrine, in particular the system of special courts established to deal with zoning matters, which matters had previously been dealt with by the New Jersey State Legislature (the "Legislature") and by municipalities pursuant to legislative direction.

In the Mount Laurel II decision, this Court itself expressed concern that problems might arise from the novel remedy it was fashioning and discussed related acts (e.g. revision of the State Development Guide Plan ("SDGP") and provision for governmental subsidies), which were necessary for the successful implementation of the Mount Laurel doctine, but could come only from legislative action. The following select sentences from the Court's opinion, while not in the order or specific setting in which they appear in the decision are, we believe, representative of the Court's concern and culminate in an invitation to parties in the case to seek revision or refinement:

> [W]e agree that the matter is better left with the Legislature ... We note that there has been some legislative initiative in this field. We look forward to more...[92 N.J. at 212]... [C]onstruction of lower income housing is practically impossible without some kind of governmental subsidy [id. at 263; 444] ... In order for it to remain a viable remedial standard, we believe that the SDGP should be revised no later than January 1, 1985 [id. at 242; 433]... In the absence of executive or legislative action to satisfy the Constitutional obligation underlying Mount Laurel, the judiciary has no choice but to enforce it itself. Enforcement, to be effective, will require firm judicial management [id. at 252; 438] ... If events indicate, however, that this new direction given to the Mount Laurel doctrine is somehow inadequate, or needs further revision or refinement, the Court remains open to any party to advance such a contention. [id. at 243; 433]

Respondents herein, in addition to the Urban League of Greater Brunswick, Cranbury's adversary in Mount Laurel II, are four real estate developers which have sued Cranbury in actions now pending in the special Mount Laurel courts. The jurisdictional bases for this Petition, in addition to the retained jurisdiction implicit in this Court's invitation for revision or refinement quoted above, stem from Article 6, Section 5, Paragraph 3 of the New Jersey Constitution; Rule 2:10-5 of the New Jersey Rules Governing Appellate Practice; Article 6, Section 2, Paragraph 3 of the New Jersey Constitution; and this Court's inherent equitable power to modify its judgments in the interests of justice.

Cranbury petitions the Court at this time because there are proposals now being considered by the Legislature which promise to solve the problems created by the litigation now pending in the Mount Laurel courts, while providing a realistic opportunity for housing of the low and moderate income people of this State. The stay, which

would last for the duration of the current session, would give the Legislature an opportunity to take two actions which have been called for by this Court: the revision of the SDGP and the provision for appropriate governmental subsidies. In addition, curative legislation can bring relief from the administrative chaos and gross inequities which have risen from the implementation of the Mount Laurel II decision. In the event that this Court should grant a stay but the Legislature does not act, or in the event that the requested stay should be denied, Cranbury, in the alternative, requests that the Court immediately establish a briefing schedule and set down for hearing a reconsideration of the builder's remedy which it has promulgated and the mandated use by the Mount Laurel courts of the SDGP as the primary determinant of the prospective need obligation. In addition, Petitioner requests that should legislative action not be forthcoming, this court review the effect which the implementation of the Mount Laurel decision has had on residents of urban areas.

Both houses of the Legislature have passed bills to address the problems created by implementation in the Mount Laurel courts of the Mount Laurel II decision. Although the Governor has announced that he will conditionally veto the bill in its present form (which varies somewhat in the versions passed by each chamber), the Legislators are now meeting informally to attempt to draft a bill which the Governor will sign. Newark Star-Ledger, March 8, 1985, Pa 112a. Given sufficient time, the Legislature should be able to develop an appropriate bill in the current session. Legislation may

well provide that the SDGP be revised, pursuant to the Mount Laurel II decision, and that appropriate subsidies be furnished. In the meantime, the public interest will best be served if the wasteful and counterproductive litigation pending in the special courts is stayed.

STATEMENT OF FACTS

Cranbury is a rural community in Middlesex County consisting of 13.5 square miles of mostly agricultural land. Affidavit of Alan Danser dated March 25, 1985 ("Danser Aff.") Pa 1a. In 1980, approximately 1,927 people (8.7% of whom were black) lived in Cranbury; Cranbury's population increased by only about 600 people in the 40 years since 1940. Danser Aff. ¶¶ 3,4, supra, Pa 1a. Currently, there are approximately 750 dwelling units in Cranbury, many of which are in the village area of Cranbury which is designated as a National Historic District in the National Register of Historic Places. Danser Aff. ¶¶ 8,9, supra, Pa 6a.[1]

The 1980 SDGP identifies approximately 65% of Cranbury as a "growth area." This area consists of Cranbury's village area and the easterly portion of the Township. The remainder, or approximately 35% of Cranbury, is identified in the 1980 SDGP as a "limited growth area." Danser Aff. ¶ 5, supra, Pa 2a. In January of 1980, the staff of the Division of State and Regional Planning made recommendations to the cabinet committee responsible for the review of the SDGP which

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1. In pertinent part, the statement attached to Cranbury's designation in the National Register of Historic Places summarizes Cranbury's historic significance as follows:

> "Cranbury is the best preserved nineteenth century village in Middlesex County. Its collection of fine frame buildings ranging from the late eighteenth century to the early twentieth century, project an excellent portrayal of the nineteenth century. While there are many small nineteenth century crossroad villages or small milltowns in New Jersey, few are in such an undisturbed environment as that of Cranbury."

would have altered the aforementioned designations. The staff recommended reducing the growth area of Cranbury and classifying the remainder of the township -- about 45% -- as agricultural. These recommendations were never adopted because the cabinet committee disbanded without acting upon them. Danser Aff. ¶ 6, supra, Pa 2a.

Currently, there are five Mount Laurel actions pending against Cranbury, all of which have been consolidated, including one action that was before this Court in Mount Laurel II.[2] In May 1984, in Garfield & Company v. Township of Cranbury, et als., supra, the special Mount Laurel court held that Cranbury's fair share of low and moderate income housing was 816 units. This is more than the number of housing units currently in Cranbury. Assuming that builders were awarded a Mount Laurel builder's bonus to construct Cranbury's entire fair share, constructing one unit of low or moderate income housing for every four units of market value housing built (i.e., a 20% set-aside), Cranbury would grow by 4,080 housing units -- an astounding 544% increase -- from the housing stock which it currently has.

Cranbury is not alone in suffering the massive problems which have been created by the implementation of Mount Laurel II. In

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2. That action is Urban League of Greater New Brunswick, et als. v. Township of Cranbury, et als., Superior Court, Chancery Division, Docket No. C-4122-73. The other Mount Laurel actions currently pending against Cranbury are: Garfield & Company v. Township of Cranbury, et als., Superior Court Law Division Docket No. L 055956-83 P.W.; Cranbury Land Company v. Cranbury Township, et als., Docket No. L 070841-83; Laurence Zirinsky v. Township of Cranbury, et als. Docket No. L 079309-83 P.W.; Toll Brothers v. Township of Cranbury, Docket No. L005652-84. Danser Aff. ¶ 7, supra, Pa 3a-6a.

support of its instant petition, Cranbury submits in the public interest affidavits from other communities with equal or greater problems.[3] By focusing only on the mechanistic determinations of a prospective need obligation and a numerical fair share, the special courts have brought on maladies which may destroy the communities involved. The courts have created more problems than they have solved. Left unchecked, they will yield only unfettered growth, inadequate water supply, insufficient sewer service, overcrowded schools, traffic congestion and devastation of the environment. And all of this at a litigation expense which far exceeds anything which these towns have known in the past.

Each of these points is developed in detail below.

A. GROWTH

We have already indicated the massive development to which Cranbury will be subject if it were ultimately determined that no countervailing circumstances exist and Cranbury is obligated to build all 816 fair share units indirectly subsidized by the builders' bonus. Cranbury is not alone in this problem; other New Jersey communities will also suffer massive growth. For example, as noted in the accompanying affidavit dated March 25, 1985 of John P. Wadington, Clerk of the Township of Holmdel ("Wadington Aff."), Pa 52a, according to the 1980 Census, Holmdel had approximately 2,305 housing

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3. These communities, like Cranbury, are members of the Mayor's Task Force on Mount Laurel II, a group of communities joined together by their profound concern over the implementation of the Mount Laurel II decision.

units. Wadington Aff. ¶ 3, supra, Pa 52a. However, in a Mount Laurel action currently pending against it, the Master appointed by the court found that Holmdel's fair share of present and prospective low and moderate income was 2,213 housing units.[4] Under the multiplier effect of the mandatory set aside for a builder's remedy, Holmdel would thus grow by in excess of 10,000 units -- approximately a five-fold increase from its present size. Wadington Aff. ¶¶ 4, 6, 7 and 13, supra, Pa 52a-55a.

Even communities whose prospective growth is not as great as Cranbury and Holmdel are nonetheless faced with significant increases in their numbers of dwelling units as a result of the builder's remedy. In the case of Warren, the increase is expected to be approximately 150%. Warren currently has approximately 3,100 housing units. Affidavit of Morrison O. Shuster, Jr., dated March 22, 1985 ("Shuster Aff.") ¶ 7, Pa 58a. On July 16, 1984, Judge Serpentelli issued an interlocutory opinion wherein Warren's fair share obligation was fixed at 946. As noted in the accompanying Shuster Affidavit: "Utilizing the set aside ratio of low and moderate income housing to market priced housing of 20 per cent, that figure escalates into 4,730 units." Shuster Aff. ¶ 6, supra, Pa 58a. Howell would be forced to almost double from its present size of approximately 8,315 dwelling units. "Based on the 20% set

4. That litigation is entitled Real Estate Equities, Inc., v. Holmdel Township, et al., Consolidated Docket No. L-15209-84 PW. In addition to this case, there are three other Mount Laurel actions pending against Holmdel. Wadington Aff. ¶¶ 4, 10, supra, Pa 52a-53a.

aside requirements, the total number of units to be constructed to satisfy this fair share need would be 8,940." Affidavit of Thomas A. Thomas dated March 26, 1985 ("Thomas Aff.") ¶¶ 7, 2, Pa 86a, 84a.

Thus, the combined effect of the fair share obligation and the builders' remedy on the above and other New Jersey communities can only be described as shocking. Over a short period, many of these towns will be expected to double in size, and in some cases the required growth will be even greater.

Rapid, unfettered growth exacts a staggering price from any community. Leading New Jersey planner Robert Burchell, a member of the Rutgers faculty, agrees with the objectives of the Mount Laurel II decision. Affidavit of Robert W. Burchell dated March 21, 1985 ("Burchell Aff.") ¶ 2, Pa 18a. But he faults the implementation of Mount Laurel in the special courts because no consideration is given to the use of existing housing (by renovation, for example) in the fair share formula, nor is the present SDGP adequate without revision to serve as a proper guide to the courts. Burchell predicts that if the formula adopted by the court in AMG Realty Corp. v. Township of Warren, Docket No. L-232777-80 PW, is applied generally by the Mount Laurel courts, and coupled with the current 4:1 set aside ratio, "it could mean the building of hundreds of thousands of unnecessary units in the state of New Jersey". Burchell Aff. ¶ 9, supra, Pa 22a.

B. WATER

Cranbury obtains its water from a municipal water system constructed in the early 1900's. Presently, the system is "at capacity and any enlargement of the system would require significant capital expenditure." Danser Aff. ¶ 12, supra, Pa 8a. While this poses a significant problem for Cranbury, other New Jersey municipalities face even greater problems. Two of these communities are Marlboro and Howell, both of which are in Monmouth County and obtain their water supply from a regional aquifer. As noted in the accompanying Thomas Affidavit:

> Most of the present housing stock in [Howell's] growth area utilizes wells for water service. An increase in development in the growth area will render some of the existing wells useless. Although increase in development will raise a demand for delivery of water by public water systems, the ability to deliver such water is seriously questioned at this time in Monmouth County. *** Recently the Department of Environmental Protection has cut back and limited the ability of water companies, both public and private to divert waters from the aquifier for water systems. Since Monmouth County has no reservoir system, it is difficult at this time to determine whether or not sufficient water supply exists for intensive development not only in the growth area of Howell Township, but in other surrounding municipalities of Monmouth County. While a reservoir is presently proposed in Howell, the completion of that project and the ability to deliver water from the reservoir is several years away.

Thomas Aff. ¶ 9, supra, Pa 87a-88a. Similarly, the accompanying affidavit of Saul G. Hornick dated March 26, 1985 ("Hornick Aff."), Pa 46a, Mayor of Marlboro, succinctly describes Marlboro's water problem: "Simply stated, there is insufficient water to meet available housing needs, let alone to provide for increased usage

that would be created by the additional construction mandated in Mount Laurel." Hornick Aff. ¶ 8, supra, Pa 49a.[5]

C. SEWER

Cranbury's sewer system simply does not have the capacity to serve the number of housing units which will likely built as a result of Mount Laurel. As noted in the Danser Affidavit:

> In 1978 Cranbury Township constructed its first sewer system. The sewer system has a present capacity for approximately 900 additional dwelling units. Any development beyond that point would require substantial capital expenditure and renegotiation of an existing contract with the Township of South Brunswick and the Middlesex County Utilities Authority for transmission and treatment of sewage.

Danser Aff. ¶ 11, supra, Pa 8a.

Other communities have similar limitations on sewer capacity. For example, Warren Township is in the process of completing a project known as the "Middlebrook Sewer." This federally financed project was built to federal specifications and does not provide for "excess capacity beyond that required to service the area under existing zoning (zoning not influenced by the Mount Laurel II decision)." Shuster Aff. ¶ 14, supra, Pa 62a-63a. If Warren allocated the sewer capacity which it is building to only two of the plaintiff builders now suing it, the Township "would remove almost

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5. Marlboro estimates its fair share obligation to be 822 units, which, given the builder's remedy formula, would result in the construction of over 4,000 units to satisfy Marlboro's Mount Laurel obligation. Currently, there are estimated to be 6,000 housing units in the Township. Hornick Aff. ¶¶ 7, 3, supra, Pa 49a, 46a.

all other developable land from the ability to be developed now or at any foreseeable time in the future." Id.[6]

D. SCHOOLS

At the present time, Cranbury has one elementary school, and the its high school students are bused to Lawrence Township, approximately 15 miles away. If Cranbury must build additional school facilities to accommodate the potential influx of Mount Laurel residents, Cranbury estimates that it will incur approximately $35 million (1984 dollars) in capital expenditures. Danser Aff. ¶ 10, supra, Pa 8a. Of course, in addition to such capital costs there would be large increases in Cranbury's school budget to cover increased staff, operating and maintenance costs.

Again, Cranbury does not stand alone in the likely effect that Mount Laurel will have the efforts of New Jersey municipalities to educate their children. For example, Marlboro already suffers from crowding in its middle school and its high school. One of the most significant impacts upon the Township that the sudden introduction of a large number of additional housing units would have would be upon Marlboro's ability to adequately educate its children. Hornick Aff. ¶ 11, 12, supra, Pa 50a.[7]

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6. The lack of adequate sewer capacity is also a problem for Holmdel and Marlboro. See Wadington Aff. ¶ 14, supra, Pa 55a, and Hornick Aff. ¶ 9, supra, Pa 49a.

7. The Township of Howell estimates that it would have to construct two or three new schools to accommodate projected student enrollment from full Mount Laurel development. Thomas Aff. ¶ 11, supra, Pa 89a.

E. TRAFFIC

As noted above, Cranbury is the best preserved nineteenth village in Middlesex County. Cranbury's historic character, however, is threatened by the development mandated by Mount Laurel. As Mayor Danser notes in his Affidavit:

> Just one of the proposed developments by the plaintiff builders carries with it the estimated traffic volume of 10,000 vehicular movements a day. These kind of traffic movements, if located in close proximity to the village area, would have a devastating impact on the preservation of the historic nature of the village. Added to this traffic impact, must be included the traffic which would be generated by developments proposed or under construction in neighboring municipalities including over twenty million square feet of office, research and industrial development and 36,000 housing units in the neighboring municipalities. Many of these housing units are proposed in order for those towns to meet their Mt. Laurel obligations.

Danser Aff. ¶ 13, supra, Pa 9a. Howell, too, presents a traffic problem:

> Since the designated growth area runs along the route 9 corridor in the Township of Howell it is anticipated that any Mt. Laurel development would also occur along the Route 9 corridor. However, the Route 9 corridor has significant problems handling the present volume of traffic. Since 50% of the Township's population live within one mile of the Route 9 corridor and its intersection of Aldrich road, any further development would exacerbate an already serious traffic problem. In fact, the present expansion of Route 9 from a two-lane to a four-lane highway will be significantly outdated by the time it is completed.

Thomas Aff. ¶ 10, supra, Pa 88a-89a.

F. ENVIRONMENT

The major environmental impact of Mount Laurel II upon Cranbury is likely to be increased pressure upon the agricultural lands in the Township. Mayor Danser notes:

> In terms of land devoted to a business enterprise, farming remains by far the number one business enterprise in Cranbury Township. This continues the historic relationship between the town and its agricultural roots. Agriculture and immediately adjacent residential uses are not compatible. No matter how well intentioned residents of a development may be, eventually the noise of helicopters spraying at 5:30 in the morning, the smells of fertilizer being applied, the dust generated from fields being plowed, all contribute to an innate hostility between the farmer and the resident. Given the demand for prime agricultural land which is also prime developable land, inevitably agricultural land becomes the loser. The Township's present zoning ordinance was designed in such a way as to preserve the most valuable of Cranbury's farmland, to separate it from proposed development and still provide between 350 to 400 low and moderate income housing units. At the time of the beginning of these lawsuits, neither Cranbury Township nor any of the plaintiffs had any concept that Cranbury's fair share would ultimately be determined to be 816 units. In fact, 816 units is larger than the number of units assigned to Cranbury by any of the individual expert reports prepared for this case.

Danser Aff. ¶ 14, supra, Pa 9a-10a.

Howell is another New Jersey community with significant environmental concerns. These concerns stem from the fact that over 90% of Howell is contained within the Pinelands physiographic area. Within Howell's designated growth area (which comprises 40% of the Township), these environmentally sensitive lands stretch like ribbons, rather than being clustered in large contiguous areas. Thomas Aff. ¶ 4, supra, Pa 85a. This fact means that "any development of

LEGAL ARGUMENT

POINT I

THE SUPREME COURT OF NEW JERSEY HAS JURISDICTION TO HEAR THIS APPLICATION

Having barred interlocutory appeals from the Mount Laurel process, 92 N.J. 290-291 (and inferentially any actions in lieu of prerogative writs, which must be commenced in the lower courts, Article 6, Section 2, Paragraph 3 of the New Jersey Constitution), the Court nonetheless invited parties to Mount Laurel litigation to seek remedial relief directly from this Court in the event that the actions of the special Mount Laurel courts, including their utilization of the SDGP, proved inadequate. In addition to this implicit retention of jurisdiction, it is clear that pursuant to the original jurisdiction expressly granted by the New Jersey Constitution and this Court's inherent equitable power to mold or change a remedy to comport with present circumstances, this Court has jurisdiction over the instant Petition.

A. THIS COURT HAS ORIGINAL JURISDICTION TO CONSIDER THIS VERIFIED PETITION UNDER ARTICLE 6, SECTION 5, PARAGRAPH 3 OF THE NEW JERSEY CONSTITUTION

Pursuant to Article 6, Section 5, Paragraph 3 of the State Constitution,[9] this Court is empowered to pass upon all issues before

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9. Rule 2:10-5 of the Rules Governing Appellate Practice contains the same language as Article 6, Section 5, Paragraph 3 of the New

it which have been raised in any cause on review."[10] While this Court barred interlocutory appeals from the Mount Laurel II process, 92 N.J. 290-291, the Court nonetheless remained open to modifying the remedy which had been promulgated in Mount Laurel. Thus, speaking of the SDGP -- which forms the basis for all of the decisions of the special courts -- this Court noted:

> If events indicate, however, that this new direction given to the Mount Laurel doctrine is somehow inadequate, or needs further revision or refinement, the Court remains open to any party to advance such a contention.

92 N.J. at 243. We submit that this open invitation to relief from the implementation of Mount Laurel II in conjunction with the Court's recognition of the unusual remedy it was creating in Mount Laurel II, indicates that the Court intended to retain jurisdiction in the event that circumstances demanded its attention.

This Court's retention of jurisdiction is fully consistent with Article 6, Section 5, Paragraph 3 of the Constitution. In accordance with this constitutional provision, New Jersey appellate courts have consistently invoked original jurisdiction not only to fully resolve the case on review, but also to clarify the governing law. See Marlboro Township v. Freehold Regional High School

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Jersey Constitution and is therefore an additional ground for this Court's exercise of original jurisdiction.

10. Article 6, Section 5, Paragraph 3 of the New Jersey Constitution provides in relevant part:

> The Supreme Court and the Appellate Division... may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

District, 195 N.J. Super. 245, 251 (App. Div. 1984); Kelley v. Curtiss, 16 N.J. 265, 270 (1954) (per Brennan, J.); State Dept. of Environ. Protect. v. Ventron, 182 N.J. Super. 210, 221, (App. Div. 1981), aff'd, 94 N.J. 473 (1983); DiPietro v. DiPietro, 193 N.J. Super. 533, 540 (App. Div. 1984); Estate of Cosman, 193 N.J. Super. 664, 666 (App. Div. 1984); In Re No. Jersey Dist. Water Supply Comm'n, 175 N.J. Super. 167, 184 (App. Div. 1980); State v. Lawn King, Inc., 169 N.J. Super. 346, 353-359 (App. Div. 1979), aff'd, 84 N.J. 179, 216 (1980) (Pashman, J., concurring).[11]

The relevant considerations in deciding whether to exercise original jurisdiction under Article 6, Section 5, Paragraph 3 of the Constitution are: whether there are exigent circumstances which necessitate an immediate judicial decision, see Blasi v. Ehret, 118 N.J. Super. 501, 502 (App. Div. 1972); whether the public interest is implicated, see State v. Rose, 173 N.J. Super. 478, 485 (App. Div. 1980); avoidance of delay in deciding a matter, see Camp v. Lockheed Electronics, Inc., 178 N.J. Super. 535, 542-43 (App. Div. 1981); see also Sees v. Banber, 74 N.J. 201, 220-26 (1977); and avoidance of unnecessary expenses and expeditious resolution of remaining issues, see e.g., Esposito v. Esposito, 158 N.J. Super. 285, 291-92 (App. Div. 1978).

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11. In deciding a matter originally, appellate court panels occasionally permit the taking of evidence pursuant to their authority under Article 6, Section 5, Paragraph 3. See Goddard v. Kelly, 27 N.J. Super. 517, 518-19 (App. Div. 1953); Ballurio v. Castellini, 28 N.J. Super. 368, 373 (App. Div. 1953); State v. Ferrell, 29 N.J. Super. 183, 184-85 (App. Div. 1954).

The issues raised in this Petition plainly satisfy each of the above considerations. First, it cannot be disputed that the Mount Laurel doctrine goes to the heart of the public interest. Mount Laurel II, 92 N.J. 208-212. Virtually every aspect of municipal life in Cranbury and the other Mount Laurel municipal litigants has been or will be affected by the implementation of the doctrine.

Moreover, unless the special courts are curbed immediately, the areas which entail predominant legislative action (e.g., revision of the SDGP) or demand state legislative action (e.g., provision for governmental subsidies) will be needlessly skewed by courts which have demonstrated in the past two years that they are not the proper vehicle to redress these problems of towering public import.

This Court's exercise of its original jurisdiction fully comports with the principle of judicial economy. As this Court noted in Mount Laurel II, there has been a tremendous waste of time, energy and resources fleshing out and judicially implementing the Mount Laurel doctrine. See Mount Laurel II, 92 N.J. 198-200. Unfortunately, the problems of judicial efficiency that this Court attempted to correct in Mount Laurel II not only remain, but have been exacerbated by a flood of new builders' remedy lawsuits. Cranbury, like many New Jersey municipalities, is defending not one, but several Mount Laurel litigations and has been forced to expend a significant portion of its municipal budget to defend its municipal planning scheme.[12]

Notwithstanding this Court's admonition in Mount Laurel II that the builder's remedy should reward good faith behavior, see 92 N.J. 218, 279-281, pending Mount Laurel actions are being brought by developers which do not have even rudimentary development plans and which have not made any attempt to obtain municipal approval for a project prior to the filing of their lawsuit. A detailed review of the builders' actions now being defended by Cranbury is set forth in Point IV, infra. This review shows that the complaints are bereft of necessary descriptive material. This fact, combined with the burdensome legal expenses that these actions generate, establishes that in builders' litigation, judicial economy is badly served. Thus, the exercise by the Court of jurisdiction under Article 6, Section 5, Paragraph 3 will serve the principle of judicial economy. See Kelly v. Curtiss, supra. 16 N.J. at 270.[13]

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12. The recent wave of new Mount Laurel suits may have been encouraged by the January 3, 1985 decision in the consolidated builder's remedy litigation against Franklin Township, J.W. Field Co., Inc., et. als. v. Township of Franklin, et. als., Docket No. L-6583-PW-84. In Franklin Township, the court decided how to allocate priorities for the builder's remedy when awarding it to all 11 plaintiffs would exceed the fair share of the municipality. The court held, inter alia, that a major consideration in awarding the builder's remedy among competing plaintiffs is the order in which the developer filed his Mount Laurel complaint. See J.W. Field v. Franklin Township, opinion at p. 13. Accordingly, the Franklin Township holding encourages the commencement of litigation, since the developer who files early is in a better position to get the builders' remedy.

13. Case law interpreting similar constitutional and statutory provisions from other jurisdictions supports the proposition that the Court has jurisdiction over this Petition. See Industrial Welfare Com'n v. Superior Court, 166 Cal. Rptr. 331, 335, 613 P.2d 579, 582-83, appeal dismissed and cert. denied, 449 U.S. 1029, 1034 (1980), (California Supreme Court held it had original jurisdiction to hear pending lower court challenges to state administrative labor

B. THE COURT HAS ORIGINAL JURISDICTION OVER THIS PETITION UNDER ARTICLE 6, SECTION 2, PARAGRAPH 3 OF THE NEW JERSEY CONSTITUTION

This Court has a separate basis for original jurisdiction over this Petition, pursuant to this Court's authority under Article 6, Section 2, Paragraph 3 of the Constitution which authorizes it to "make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts."[14] Cf. In re LiVolsi, 85 N.J. 576, 582-84 (1981); In re Gaulkin, 69 N.J. 185, 188 (1976).[15]

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rules affecting a large number of employees in view of the differing results being reached by the lower courts and the large numbers of people involved). See also, Council on Judicial Complaints v. Maley, 607 P.2d 1180, 1182-83 (Okla. 1980) (Oklahoma Supreme Court assumed original jurisdiction to decide a case of first impression which involved a matter of grave public interest -- the integrity of state judicial administration); Hubbard v. District Ct. for County of Arapahoe 192 Colo. 98, 101, 556 P.2d 478, 480 (1976) (Colorado Supreme Court invoked original jurisdiction to reach a plain, speedy and adequate remedy); State ex rel. Link v. Olson, 286 N.W.2d 262, 266-268 (N.D. 1979) (North Dakota Supreme Court will exercise original jurisdiction to decide significant public issues and as the exigencies of the situation require).

14. Article 6, Section 2, Paragraph 3 provides in full:

> The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

15. While both In re LiVolsi and In re Gaulkin involved this Court's inherent constitutional power to regulate the Bar of this State, the principle that under Article 6, Section 2, Paragraph 3 this Court has "original jurisdiction over challenges to the methods by which [the Court] exercises its constitutional authority," In re Livolsi, supra, 85 N.J. at 582-84, logically applies as well to this Court's power to administer the courts of this State.

In Mount Laurel II this Court reluctantly decided that it had to take extraordinary steps "to uphold the constitutional obligation that underlies the Mount Laurel doctrine." 92 N.J. 212-213. In carrying out its constitutional duty, the Court exercised expansive judicial powers to promulgate planning and zoning guidelines and set up a judicial apparatus to implement those guidelines. The constitutional authority relied upon to create the special Mount Laurel courts and to promulgate the special rules which govern the course of Mount Laurel litigation was Article 6, Section 2, Paragraph 3. Pursuant to this Court's decision in In re LiVolsi, it is clear that under this constitutional provision the Court has original jurisdiction to hear this Petition. 10

Moreover, four other specific provisions of the New Jersey Constitution which were utilized by the Mount Laurel II Court reinforce the independent jurisdictional basis given by Article 6, Section 2, Paragraph 3. These provisions generally empower the Supreme Court and the Chief Justice to administer the New Jersey court system through, inter alia, 1) the assignment of judicial personnel;[16] 2) the promulgation of court rules;[17] 3) the

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16. The Court draws this power from two express constitutional provisions. Article 6, Section 7, Paragraph 1 of the Constitution provides that: 11

> The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State....

Article 6, Section 6, Paragraph 2 of the Constitution provides in relevant part that:

> The Chief Justice of the Supreme Court shall assign Judges of the Superior Court to the Divisions and Parts of

establishment of specific jurisdictional and substantive "parts" of the Superior Court.[18] Together, these constitutional provisions authorized the creation of the three specific Mount Laurel courts, the assignment by the Chief Justice of specific judges to sit on these courts, and the establishment of special rules (including the broad authorization to appoint a special master to streamline Mount Laurel litigation). By exercising the authority granted by these constitutional provisions in Mount Laurel II, several independent constitutional bases now exist upon which this Court can exercise original jurisdiction and hear the instant Petition.

C. THIS COURT MAY CONSIDER THIS PETITION UNDER ITS GENERAL EQUITABLE POWERS

Because a court of equity may always review an earlier determination in light of changing circumstances, cf. General Leather Products Co. v. Luggage and Trunk Makers Union, Local No. 49, 119 N.J. Eq. 432 (Ch.), appeal dismissed, 121 N.J. Eq. 101 (E & A 1936),

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> the Superior Court, and may from time to time transfer Judges from one assignment to another, as need appears. . . .

17. See New Jersey Constitution, Article 6, Section 2, Paragraph 3 (reproduced at footnote 14). See also State v. Leonardis, 73 N.J. 360, 372-74 (1977) (holding that there is no prohibition against court rules affecting substantive rights.)

18. Article 6, Section 3, Paragraph 3 of the Constitution provides:

> The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division, which shall include a family part. Each division shall have such other parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court .... (emphasis in original)

this Court may exercise jurisdiction over this Petition under its broad equitable authority.[19] Such exercise of jurisdiction is especially appropriate here since the remedy promulgated in Mount Laurel II was predicated largely upon equitable considerations:

> We intend no discourse on the history of judicial remedies, but suspect that that which we deem "conventional" was devised because it seemed perfectly adequate in view of the obligation it addressed. We suspect that the same history would show that as obligations were recognized that could not be satisfied through such conventional remedies, the courts devised further remedies, and indeed the history of Chancery is as much a history of remedy as it is of obligation.... The scope of remedies authorized by this opinion is similar to those used in a rapidly growing area of the law commonly referred to as "institutional litigation" or "public law litigation."

Mount Laurel II, 92 N.J. at 287-89 (footnote omitted).

In sum, the well-known equitable maxim of "equity suffering no right to be without a remedy" pertains here. This maxim has been explained as providing a civil remedy when there has been a wrong; if the law does not provide one, then equity may take jurisdiction. See Britton v. Royal Arcanum, 46 N.J. Eq. 102, 112 (Ch. 1889), aff'd sub. nom. Royal Arcanum v. Britton, 47 N.J. Eq. 325 (E & A. 1890). Since the unavailability of interlocutory review in Mount Laurel II actions effectively precludes bringing the compelling issues in this Petition before this Court on appeal -- perhaps for years -- the only

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19. It is well-established in New Jersey that the absence of precedent does not preclude a court sitting in equity from granting relief when the circumstances require it. See Briscoe v. O'Connor, 115 N.J. Eq. 360, 364-65 (Ch. 1934); Brown v. Fidelity Union Trust Co., 10 N.J. Misc. 555, 558 (Ch. 1932).

way Cranbury can receive the equitable relief it is now seeking is to bring this application directly before this Court. Thus, under general equitable powers, this Court may relax any technical jurisdictional or procedural barriers to the instant Petition. See New Jersey Highway Authority v. Renner, 18 N.J. 485, 494-95 (1955); Fidelis Factors Corp. v. DuLane Hatchery Ltd., 47 N.J. Super. 132, 138 (App. Div. 1957) (equity regards substance rather than form, technical or procedural matters are subordinated to the imperatives of justice).

POINT II

THIS COURT HAS INDICATED THAT CERTAIN MOUNT LAUREL PROBLEMS REQUIRE LEGISLATIVE SOLUTION OR ARE BETTER DEALT WITH BY THE LEGISLATURE. AS A MATTER OF SOUND JUDICIAL ADMINISTRATION, AN IMMEDIATE STAY SHOULD ISSUE TO PERMIT THE LEGISLATURE TO ACT

A. ONLY THE LEGISLATURE CAN RESPOND TO THE COURTS CALL FOR REVISION OF THE SDGP AND PROVISION FOR GOVERNMENTAL SUBSIDIES

In Mount Laurel II, this Court acknowledged that legislative action was essential for the effective implementation of the Mount Laurel doctrine. Having found that the Legislature authorized the preparation of the SDGP, 92 N.J. 230, the Court adopted it as a basis for determining if a municipality is subject to a Mount Laurel prospective need obligation. The Court, however, urged that it be revised not later than January 1, 1985 "in order for it to remain a viable remedial standard." 92 N.J. 242. Notwithstanding the Court's suggestion, to date no revision of the SDGP has taken place. A stay at this time will enable the Legislature to order revision of the SDGP so that it can become a viable planning document.

Similarly, deference to the Legislature is called for because only the New Jersey Legislature can authorize the subsidies necessary to build lower income housing. As this Court noted in Mount Laurel II with respect to governmental housing subsidies:

> [Government subsidies] are, nevertheless, apparently a permanent part of the housing scene; the long-term importance of defining the municipality's Mount Laurel obligation in relation to such subsidies is that the construction of lower income housing is practically impossible without some kind of governmental subsidy.

92 N.J. 263.

In sum, a stay will enable the Legislature to review the problems presented by Mount Laurel II in a comprehensive manner and take such remedial action as it deems prudent. The desirability of allowing the Legislature this opportunity is particularly compelling in view of the current unrevised status of the SDGP. A legislatively ordered revision of the SDGP would eliminate the necessity for the special Mount Laurel courts to engage in intensive review of municipal and regional characteristics in order to determine whether the municipality falls within a growth area.

B. ISSUES OF ZONING AND HOUSING ARE FUNDAMENTALLY LEGISLATIVE IN CHARACTER

The Mount Laurel II decision is extraordinary in the extent to which it immersed this Court in matters which are traditionally legislative and administrative in character. The Court recognized this fact when it stated that in matters of zoning "powerful reasons suggest ... that the matter is better left to the Legislature," 92 N.J. 212, and that when the time came, the Court would defer to the Legislature: "we shall continue -- until the Legislature acts -- to do our best to uphold the constitutional obligation that underlies the Mount Laurel doctrine." 92 N.J. 212-213. Further evidence of

the essentially legislative nature of the decision is found in the Court's suggestion that the remedial method which had been promulgated in Mount Laurel II could be changed if events proved it advisable. Thus, speaking of the SDGP, the Court noted:

> If events indicate, however, that this new direction given to the Mount Laurel doctrine is somehow inadequate, or needs further revision or refinement, the Court remains open to any party to advance such a contention.

92 N.J. 243. In light of the consideration the Legislature is now giving to the issues presented by the Mount Laurel doctrine and the implementation of that doctrine, we submit that the time has come to defer to the legislature and to place a moratorium on all pending Mount Laurel litigation.

C. THE IMMINENCE OF MOUNT LAUREL LEGISLATION

An affidavit submitted herewith by Albert Porroni, who is Legislative Counsel and Director of Legal Services and also Executive Director of the Office of Legislative Services, lists a number of pages of bills introduced before the New Jersey Senate and General Assembly, dealing with low and moderate income housing. Affidavit of Porroni dated March 27, 1985, Pa 97a-111a.

Significant multimillion dollar appropriations are included in some of the bills. A clipping from the Newark Star-Ledger, from the March 8, 1985, issue of the newspaper, indicates that bills addressed to Mount Laurel concerns have passed both houses of the Legislature, but that the Governor has indicated that he will not

sign in the present form. The Governor has informed the lawmakers of the problems he had with the bills. A copy of the aforementioned clipping is included in the Appendix and the Court is respectfully requested to take judicial notice thereof.

Ironically, the proposed legislation appears to have been stimulated, at least in part, by problems caused by the implementation of the Mount Laurel doctrine in the special courts. The assembly bill, for example, contained a one-year respite from court-imposed housing rulings. Finally, the article reported that the parties were conferring and "prepared to meet again to reopen the delicate negotiations." The stay requested herein would not only provide time to insure proper legislative action, but would also reflect the recognized public need to halt the effect of the current special litigation.

D. THE OVERWHELMING WEIGHT OF JUDICIAL AUTHORITY SUPPORTS THE IMMEDIATE ISSUANCE OF A STAY

The apportionment cases in New Jersey and elsewhere present compelling authority for the issuance of a stay. See Jackman v. Bodine, 43 N.J. 453 (1964) and other cases cited in Point III of this memorandum at Pages 34-38, below. A leading United States Supreme Court apportionment case, Maryland Committee for Fair Representation v. Tawes, 337 U.S. 656 (1963) should be considered here. In Tawes, the Supreme Court noted that since the legislature was primarily responsible for apportionment, affirmative action by

the courts should be deferred until the legislature could act. 337 U.S. at 676, quoted more fully below at Pages 36-37. Here, zoning is clearly the primary responsibility of the Legislature -- indeed, by specific state constitutional provision. See N.J. Const. art. 4, § 6, ¶ 2. Because the Legislature had not acted after Mount Laurel I, this Court, in Mount Laurel II, called for affirmative action in the special courts. But now the Legislature is ready to act. The traditional forum is available and apparently willing. Certain actions specified by this Court require legislative action; other affirmative steps can best be dealt with by the Legislature. An immediate stay should issue.

POINT III

A STAY SHOULD ISSUE SO THAT THE LEGISLATURE MAY ACT TO MEET A PUBLIC NEED AND TO AVOID THE IRREPARABLE HARM WHICH WILL OTHERWISE OCCUR

Notwithstanding this Court's assurance in Mount Laurel II that "[n]o forests or small towns need be paved over," it is clear that the traditional character of many New Jersey communities is jeopardized by the way the Mount Laurel II doctrine is being implemented. 92 N.J. 219. At the heart of these problems is the absence in many communities of the physical infrastructure to support a vastly increased population. Another root cause is the promulgation of the builders' remedy whereby a builder prevailing in a Mount Laurel II action can build four times as much housing for the affluent as will be built for those of low or moderate means. Cranbury, a town which currently has approximately 750 housing units, is not only faced with the prospect of building 816 "below market value" units for low and moderate income people but of adding an additional 3264 "market price" units for the more affluent. If built, the total of new lower income and affluent housing will result in a 544% increase in the number of housing units in the town.

The impact that growth of that magnitude would have upon Cranbury and similarly situated New Jersey communities is staggering. Basic services such as water, sewer, roads and schools would be, at a minimum, severely strained. Sensitive environmental areas would be harmed. As a result, current municipal budgets are

bloated by the costs of litigating Mount Laurel actions. In this sense, the situation is much the same as that which concerned the Court in Mount Laurel II: "The expense of litigation is so high that a real question develops whether the municipality can afford to defend." 92 N.J. 200.

Nothing in the Mount Laurel II doctrine compels the present situation to continue. The objective of Mount Laurel is "to provide a realistic opportunity for housing, not litigation." 92 N.J. 199. The burgeoning costs of litigation and the total abandonment of sound planning cannot be permitted to continue. The entry of a stay pending legislative action is clearly called for, and is supported by the prior decisions of this, and other, courts.

In Switz v. Township of Middletown, 23 N.J. 580 (1957), this Court considered whether to affirm an order of mandamus compelling defendants to value and assess taxable property in accordance with the full and fair value of the property.[20] While finding that the State Constitution and statutory law required equality of treatment and burden in taxation, the Court also found that such equality of treatment had been generally disregarded and that this was a problem that could not be resolved "overnight." 23 N.J. at 594. The Court noted:

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20. The State Constitution required all real property to be assessed under the same standard of value; a state statute required that the standard be the true value of the property. 23 N.J. at 592-93.

> The problem is now one of deep public concern. There is evident apprehension of harsh economic dislocation that may be averted by an orderly and systematic approach to the basic administrative deficiencies in the assessment process, such as are not remediable at one fell swoop but rather by specialized and considered judgment after full inquiry, bearing in mind the new constitutional principle of assessments according to the same standard of value.
>
> The Legislature has taken cognizance of the essential fault and the public need, and is seeking for the remedy.

23 N.J. at 594. In light of impending action by the Legislature, the Court affirmed the order of mandamus but held that the order would not apply to the 1957 and 1958 tax years "thereby to afford the Legislature the opportunity to take such measures and provide for such administrative procedures as its own inquiry may prove to be essential to the public interest...." 23 N.J. at 598.

Similarly, in Jackman v. Bodine, 43 N.J. 453 (1964), this Court deferred to the Legislature when it held that the legislative article of the State Constitution was invalid insofar as it dealt with the apportionment of members of the Legislature. With respect to the appropriate remedy, the Court stated:

> We think it clear that the judiciary should not itself devise a plan except as a last resort. The reasons, simply stated, are that the prescription of a plan of apportionment is laden with political controversy from which the judiciary cannot be too distant, and further, that if the judiciary should devise an interim plan, that plan will likely seem so attractive to some as to impede the search for common agreement. We therefore will confine our role for the present to the minimum demands of the Federal and State Constitutions, retaining jurisdiction, upon applications directly to us and within this cause, to grant further relief if circumstances so require and to resolve such additional issues as may arise.

43 N.J. at 473-74. See also Mauk v. Hoffmann, 87 N.J. Super. 276, 283 (Ch. Div. 1965) (in a reapportionment case, the Superior Court held that it had "the right to refrain temporarily from issuing injunctive relief in order to allow resort to available political remedies.").

The discretionary use of stays pending legislative action by the courts of this State parallels the entry of stays by Federal courts and the courts of other states. For example, when the United States Supreme Court held in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), that the broad grant of authority given to bankruptcy judges by the Bankruptcy Act of 1978 violated Article III of the United States Constitution, the Court stayed the effective date of its judgment in order to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." 458 U.S. at 88. Similarly, in Maryland Committee for Fair Representation v. Tawes, supra, the Court, while holding that the apportionment of seats in both houses of the Maryland Legislature violated the Equal Protection Clause of the United States Constitution, stated that on remand the state court need not necessarily develop an apportionment plan:

> Since primary responsibility for legislative apportionment rests with the legislature itself, and since adequate time exists in which the Maryland General Assembly can act, the Maryland courts need feel obliged to take further affirmative action only if the legislature fails to enact a constitutionally valid state legislative

> apportionment scheme in a timely fashion after being afforded a further opportunity by the courts to do so.

377 U.S. at 676. In reliance upon the deference shown to legislative authority in Tawes, courts determining numerous subsequent apportionment cases have stayed the effective date of their judgment to allow time for remedial action by the legislature. See, e.g., Harris v. Anderson, 194 Kan. 302, 311-12, 400 P.2d 25, 32-33 (1965). State v. Sylvester, 26 Wis.2d 43, 60-62, 132 N.W.2d 249, 258 (1965).

As in the above cases, a stay in the instant matter is necessary to enable the Legislature to remedy severe dislocation resulting from a judicial decision. Mount Laurel II has already virtually halted sound municipal planning within this State. Further implementation of the decision will result in staggering growth adversely affecting virtually every aspect of municipal life, including physical infrastructure, educational opportunities and the environment. In similar instances, this Court has recognized its discretionary power to stay the effect of a decision when administrative chaos, or other irreparable harm, would likely result from implementation. In Salorio v. Glaser, 93 N.J. 447, cert. denied, 104 S.Ct. 486 (1983), for example, in staying the effect of a judgment because of resultant revenue loss and administrative problems, this Court noted:

> [E]quitable remedies "are distinguished by their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties."

93 N.J. at 469, quoting 1 J. Pomeroy, Equity Jurisprudence § 109, at 122-23 (4th ed. 1918).[21] See also Coons v. American Honda Motor Co., 96 N.J. 419, 435 (1984), cert. den. sub nom. Honda Motor Co. v. Coons, 105 S.Ct. 808 (1985). The equitable considerations which led the Court to stay the judgment in Salorio are equally applicable here. A stay sould issue immediately lest injury continue without abatement and hope of repair.

POINT IV

IF A STAY IS GRANTED AND THE LEGISLATURE FAILS TO ACT OR IF THE COURT DOES NOT GRANT A STAY, THEN THIS COURT SHOULD PROMPTLY RECONSIDER ITS USE OF THE SDGP, THE BUILDER'S REMEDY AND THE EFFECT OF MOUNT LAUREL II ON URBAN AREAS AND OTHER EGREGIOUS RESULTS OF IMPLEMENTATION

Nowhere in this application does Cranbury attack the Mount Laurel II objectives. In the earlier portions of this memorandum, Cranbury calls for Legislative action as the preferable (and in the case of revision of the SDGP and provision for governmental subsidy, the only) way in which to redress the problems caused by implementation in the special courts. If Legislative action does not provide the requisite redress, then this Court is requested to reconsider

21. In Salorio, this Court held that the Emergency Transportation Tax Act, N.J.S.A. §§ 54:8A-1 to -57, violated the Privileges and Immunities Clause of the United States Constitution, Article IV, Section 2, Clause 1. 93 N.J. at 462.

immediately the problems now rampant as a result of litigation in the special Mount Laurel courts.

A. USE OF THE SDGP

The mechanistic use of the SDGP as the primary means of determining whether a municipality has a Mount Laurel obligation has produced, and will continue to produce, chaotic results. For example, as previously noted, the SDGP designates Cranbury as both a "growth area" and a "limited growth area." However, recommended modifications of the SDGP which were made by the Division of State and Regional Planning in 1981 would have substantially reduced the growth area in Cranbury, designating a portion of the Township as limited growth area, and a large area as agricultural. See Danser Aff. ¶ 6, supra, Pa 2a. These recommended modifications were never implemented because the SDGP has not been revised.

The mere inclusion of a portion of a municipality in a "growth area" does not necessarily mean that growth should occur in that area, or municipality. The SDGP clearly states that:

> It should be emphasized that the Growth Area designation does not imply that only growth supporting investments will be made within this area or that the development of environmental sensitive lands is encouraged. Land acquisition for recreation and resource conservation, as well as local controls protecting floodplains, steeply-sloped areas, wetlands, agricultural uses and forested areas constitute valid components of the kind of land use pattern which should characterize such Growth Areas.

SDGP at 49 (emphasis added).

Indeed, the results which have come from litigation in the Mount Laurel courts suggest that the SDGP should probably never have been used by this Court in the first place to determine which municipalities have a prospective need obligation. The SDGP was promulgated in May of 1980 by the Division of State and Regional planning pursuant to N.J.S.A. §§ 13:1B-15.52. The SDGP was never intended as a mandate of where growth must occur; its stated purpose was to provide planners with general guidance as to the areas where State funds should be spent to attain long range development goals:

> Since it is not the purpose of the Guide Plan to supplant more detailed plans prepared by municipalities and counties or other State departments, the categories depicted on the Concept Map are general. It is recognized that environmental constraints as well as development opportunities may be found in virtually every part of the State, and that the principal responsibility to plan and regulate land use is performed at the local level. The Guide Plan responds to a different need; specifically, where limited public funds should be spent to attain long-range, statewide development and conservation goals.

SDGP at 43 (emphasis added).

Nonetheless, in Mount Laurel II the Court adopted the SDGP as a means of ensuring that "the imposition of fair share obligations will coincide with the State's regional planning goals and objectives." 92 N.J. 225. The Court, stressing its concern for sound planning, held that "only those municipalities containing 'growth areas' as shown on the concept map of the SDGP (or any official revision thereof) shall be subject to the Mount Laurel prospective need obligation." 92 N.J. 240.

In the course of Mount Laurel litigation, the SDGP has been applied mechanistically, so that a tiny sliver of a town which overlaps an area marked for growth has mandated massive expansion. In Colts Neck, for example, over 98% of the township is in a "limited growth" area, but the 2% portion which spills over into a "growth area" has led to a prospective need obligation. See, Orgo Farms & Greenhouses, Inc. v. Township of Colts Neck, 192 N.J. Super. 599 (1983). Hundreds of new units are being mandated and hundreds of thousands of dollars in litigation expenses have already been incurred. Affidavit of Robert W. O'Hagan dated March 25, 1985, app. Pa. 71a-72a. See also Growth section of this memorandum, above.

Finally, the Court realized that if the SDGP is "to remain a viable remedial standard" that it should be revised no later than January 1, 1985 and subsequently revised every three years. 92 N.J. 242. No revision of the SDGP has yet occurred; in fact, revision has not even been authorized by the Legislature. Under these circumstances, the continued reliance upon the SDGP by the Mount Laurel courts will continue to lead to chaotic results. The results of the Mount Laurel litigation to date indicate that in the absence of curative legislation this Court must act. Without appropriate "revision and refinement", financial waste, environmental deterioration and destructive growth will proceed unabated.

B. THE BUILDER'S REMEDY

The fundamental unfairness of the builder's remedy is illustrated by the nature of the currently pending lawsuits. The following sets forth summaries of four of the Mount Laurel cases now pending against Cranbury:

Garfield & Company v. Township of Cranbury, et als. Superior Court Law Division Docket No. L 055956-83 P.W. This case was filed in August of 1983 and seeks an order setting aside the zoning ordinance of the Township of Cranbury and granting a builder's remedy to the plaintiff. Garfield & Co. never made an application to the Township for permission to construct low and moderate income housing or any other type of a project. The complaint filed in Superior Court does not describe or designate any specific project which the plaintiff wished to construct.

Cranbury Land Company v. Cranbury Township, et als., Docket No. L 070841-83 P.W., was filed in November 1983. The plaintiffs in that case originally made a proposal to the Township for low and moderate income housing in the early 1970's, at which time the Township had no sewer system. It made no further proposals from then until the time that it filed its complaint. The complaint does not describe or designate a specific development proposal for its land.

Lawrence Zirinsky v. Township of Cranbury, et als., Docket No. L 079309-83 P.W. was filed in December 1983. This plaintiff acquired options on approximately 1,800 acres of land, all of which were located in the Township's agricultural zone. In the spring of 1983, it requested zoning approval to construct office and commercial type development on its property, which was denied by the Township. No further requests for development were made by the plaintiff to the Township until the filing of the complaint. The complaint sought relief similar to that sought by plaintiffs Garfield and Cranbury Land. No specific development proposal was outlined.

Toll Brothers v. Township of Cranbury, Docket No. L 005652-84, was filed in February 1984. Toll Brothers had sent a letter to the Township Committee in January 1984 in which it made threats to sue the Township unless the town changed its zoning ordinance in order to comply with

> its requests. Toll proposed a development of 940 units at a density of 9 units to the acre. The tone of the letter was such that Judge Serpentelli, when presented with the letter, described it as "personally offensive." The Township, because of the other pending litigation, declined to make the zoning changes requested, and the suit followed. The relief requested was similar to that sought in the other builder's remedy cases.

Danser Aff. ¶ 7, supra, Pa 3a-6a.

Notwithstanding this Court's admonition in Mount Laurel II that the builders' remedy should reward only good faith behavior, see 92 N.J. 218, 279-281, the foregoing illustrates that Mount Laurel actions are being brought by developers which do not have even rudimentary development plans and which have not made any attempt to obtain municipal approval for a project prior to the filing of their lawsuit. It is difficult to perceive how the public interest is advanced under such circumstances. We therefore respectfully submit that the builder's remedy as it is currently being utilized, is wasteful and unjust.

The Mount Laurel courts are simply not equipped to handle the planning problems brought before them in builders' remedy cases. As Professor Robert W. Bruchell has pointed out, "hundreds of thousands of unnecessary units" will be built in New Jersey if present methods persist. Burchell affidavit.

Professor John W. Costonis, a zoning expert, explains why the special courts have not proved adept at zoning:

> Popular endorsement of land use actions that generate onerous capital costs is no less essential to wise and responsive policymaking. The community's residents ought to have a say in these matters because it is they who will

> bear the public costs of these actions. Their voices should be heard as well because it is their priorities that determine and ultimately justify the magnitude of the fiscal burdens they must assume in consequence of the community's land use policies.
>
> It is against this conception of the zoning process in a democratic system that the Mount Laurel remedial scheme must be measured and, I believe, found wanting. Importantly, my comments here are addressed to the scheme itself, not to the New Jersey Supreme Court's prior determination that exclusionary zoning runs afoul of the New Jersey Constitution.

Affidavit of John J. Costonis dated March 27, 1985 ¶¶ 14, 15, Pa 27a.

The unfortunate results of the Mount Laurel litigation are set out in detail in the Fact portion of this memorandum and need not be repeated here. There is a need for planning and zoning methodology which cannot be achieved in the course of litigation. Appropriate revision, the development of a sound planning and zoning system, should come from the Legislature. But if it does not, then this Court should furnish such guidance, after appropriate briefing and hearing on these points. It is clear now that a solution will not emerge from random lawsuits commenced by builders bent on profits.

C. THE EFFECT ON URBAN AREAS

Long Branch is not a growth community. In this sense, it is not the subject of Mount Laurel litigation, nor does it fall within the scope of the Mount Laurel doctrine. But the effect of Mount Laurel on Long Branch, and on other urban areas, has been immense. Any reconsideration by this Court -- in the course of the admittedly "institutional" and "public law" character of this case -- should review the havoc that is being wrought in urban New Jersey by the exodus of capital and shift of interest which has resulted from Mount Laurel II.

As Long Branch planner Yen-Quen Chen points out:

> While, as noted, not much land is available in such a developed urban setting, still, without much difficulty and with imaginative planning there are a number of areas where both rehabilitation and new construction could provide for literally hundreds of affordable housing opportunities for persons of low and moderate income in Long Branch and in many similarly situated urban towns.
>
> While attracting the mix of public and private dollars to build even a fraction of those units has always been difficult for urban towns, the "Mount Laurel" doctrine appears to snuff-out forever all hope of encouraging such development. Even the availability, now, of many millions of dollars in a new state housing aid program would not make a substantial "dent" because such dollars must be spread across several dozen similar communities in most of New Jersey's 21 counties.

Affidavit of Yen-Quen Chen dated March 25, 1985, ¶¶ 19, 20, Pa 41a.

The President of the Long Branch City Council concurs:

> The "builder's remedy" alone creates such irresistible incentives for developers that none is likely to invest a single dollar in places like Long Branch.

> Moreover, I am not at all sure that it is wise social policy virtually to force those who might qualify for such housing to leave their communities, families and friends in order to acquire it. In a perfect world, all citizens would have the widest array of options. But creating a situation where the only housing opportunities for low income citizens are to be sprinkled among market-value housing units in suburban developments -- and where it will not be possible for those who occupy those units to build any equity in them, because of income re-sale restictions, -- does not seem to be sound.

Affidavit of Frank Pallone, Jr. dated March, 1985, ¶¶ 5, 6, Pa 44a.

Perhaps no one could have anticipated the flood of developers' lawsuits which would drive money from urban areas, even as they created chaos in suburbia. But the record of the Mount Laurel courts present lamentable proof that there is a compelling need for a standard which will give a realistic opportunity for adequate housing to all of New Jersey's residents, including the urban poor.

CONCLUSION

In Mount Laurel II, this Court sought to assure a realistic opportunity for a fair share of housing to lower income groups. The implementation of this doctrine has been badly managed by the Mount Laurel courts. Paradoxically, the resultant chaos may have stirred the Legislature to action. Cranbury prays that this Court stay the wasteful and counterproductive litigation in the special Mount Laurel courts so as to permit the Legislature to act. In the alternative, if the stay is not granted, or, if the Legislature does not act, then Cranbury requests reconsideration by this Court of the utilization by the special courts of the State Development Guide Plan and of the

builders' remedy. Moreover, this Court should now reconsider, in the light of the experience of the Mount Laurel courts, whether all of the citizens of the State of New Jersey are being well-served by this Court's Mount Laurel II decision. The matter should be set down for immediate hearing and review.

Respectfully submitted,

By:_____
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-and-

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By:_____
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Dated: March 28, 1985

AFFIDAVIT OF ALAN DANSER

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

ALAN DANSER, being duly sworn according to law upon his oath says:

1. I am the Mayor of the Township of Cranbury a Municipal Corporation of the State of New Jersey, located in Middlesex County New Jersey. I have been the Mayor of the Township of Cranbury since January 1983 and I have been a member of the Township Committee of the Township of Cranbury since January 1980.

2. The Township of Cranbury, originally settled in 1697, and incorporated in March of 1872, is still a rural community consisting of 13.5 square miles with the vast majority of its land area being devoted to agriculture.

3. According to the United States Department of Cencus, the 1980 population of Cranbury Township was 1,927 people, having increased by only approximately 600 people in the 40 years since 1940, when the population was 1,342 people.

4. Cranbury Township has maintained a healthy population mix. According to the 1980 United States Census, 8.7% of its population was black, as compared with neighboring and nearby communities such as Princeton Borough

(8.6%), Plainsboro (5.8%), Monroe Township (3.7%), and West Windsor Township (1.3%).

5. According to the 1980 State Development Guide Plan developed by the Division of State and Regional Planning within the Department of Community Affairs, the village area and easterly portion of the Township is in a growth area with the westerly portion of the Township being in a limited growth area. Approximately 35% of the Township is designated as being in a limited growth area.

6. In January 1981 the staff of the Division of State and Regional Planning recommended a modification of the State Development Guide Plan pertaining to Cranbury Township. The cabinet committee which reviewed the State Development Guide Plan disbanded without ever having the opportunity to take action on these staff recommendations. According to the staff recommendations, the growth area in Cranbury Township would have been reduced in size with the remainder of the Township being in an area designated as agricultural. Approximately 45% of the Township would have been in the agricultural area.

7. At the present time, there are five (5) Mt. Laurel type suits pending against the Township of Cranbury

as follows:

(a) The case of Urban League of Greater New Brunswick, et als. v. Township of Cranbury, et als., in the Superior Court, Chancery Division, Docket No. C-4122-73. This suit was filed in July of 1974 and Cranbury Township was one of twenty-three defendant Townships representing all of the Municipalities in Middlesex County, with the exceptions of the Cities of New Brunswick and Perth Amboy. That suit requested relief declaring the Cranbury Township Zoning Ordinance invalid for failure to provide racially and economically integrated housing within the means of the plaintiffs and the class of plaintiffs which they represented. That suit was tried in February and March 1976 and as a result of that trial, eleven municipalities including the Township of Cranbury were ordered to rezone to provide for specified numbers of low and moderate income housing. The number of low and moderate income housing units assigned to Cranbury was 1,351. Cranbury and seven other municipalities appealed in the Appellate Division. The decision of the trial court was reversed without a remand. The plaintiffs appealed to the New Jersey Supreme Court and the matter was consolidated there with four other cases. The decision in those consolidated cases ultimately became known as Mt. Laurel II.

(b) Garfield & Company v. Township of Cranbury, et als. Superior Court Law Division Docket No.

L 055956-83 P.W. This case was filed in August of 1983 and seeks an order setting aside the zoning ordinance of the Township of Cranbury and granting a builder's remedy to the plaintiff. Garfield & Company had never made an application to the Township for permission to construct low and moderate income housing or any other type of a project. The complaint filed in the Superior Court, in which Garfield demanded to construct 2,000 units, did not describe or designate any specific project which the plaintiff wished to construct. That case is presently pending before Judge Eugene Serpentelli, one of the three judges designated pursuant to Mt. Laurel II to try all Mt. Laurel type cases. The first phase of the case was tried in May of 1984 which resulted in a decision by the Judge establishing that Cranbury's fair share of the regional low and moderate income housing need was 816 units, and giving the Township ninety (90) days to rezone to accommodate that need. The Township has submitted a proposed compliance plan under protest. The trial court has not reacted to said plan as of the date hereof. This case was consolidated with the Urban League case and with the three cases described hereinafter.

(c) Cranbury Land Company v. Cranbury Township, et als., Docket No. L 070841-83 P.W., was filed in November 1983. The plaintiffs in that case had originally made a proposal to the Township for low and moderate income housing in the early 1970's, at which time the Township had no sewer system.

It made no further proposals from then until the time that it filed its complaint. The complaint sought an order declaring Cranbury Township zoning ordinance invalid and ordering that it was entitled to a builder's remedy. The complaint did not describe or designate a specific development proposal for its land.

(d) Lawrence Zirinsky v. Township of Cranbury, et als., Docket No. L 079309-83 P.W. was filed in December 1983. This plaintiff acquired options on approximately 1,800 acres of land, all of which were located in the Township's agricultural zone. In the spring of 1983, it had requested zoning approval to construct office and commercial type development on its property, which was denied by the Township. No further requests for development were made by the plaintiff to the Township until the filing of the complaint. The complaint sought relief similar to that sought by plaintiffs Garfield and Cranbury Land. No specific development proposal was outlined.

(e) Toll Brothers v. Township of Cranbury, Docket No. L 005652-84, was filed in February 1984, in which Toll Brothers demanded to construct 940 units. Toll Brothers had sent a letter to the Township Committee in January 1984 in which it made threats to sue the Township unless the town changed its zoning ordinance in order to comply with its

requests. Toll proposed a development of 940 units at a density of 9 units to the acre. The tone of the letter was such that Judge Serpentelli, when presented with the letter, described it as "personally offensive". The Township, because of the other pending litigation, declined to make the zoning changes requested, and the suit followed. The relief requested was similar to that sought in the other builder's remedy cases.

8. At the present time, Cranbury Township has a total of approximately 750 dwelling units. In order to accommodate the fair share number of 816 units determined by Judge Serpentelli, based on a 20% set-aside, the town would be required to permit the construction of an additional 4,080 housing units, which would result in a total number of housing units 544% higher that the existing housing stock. Another way of stating this is that the present housing density is 1 unit to 11.7 acres of land. If the Mt. Laurel formula is fully implemented, Cranbury's density would be 1 unit to 1.7 acres of land.

9. Cranbury Township is marked by two unique features. One is the fact that Cranbury Township possesses a higher percentage of prime agricultural lands than any other

municipality in Middlesex County, and more than most municipalities in the State. The second factor is that most of the village area of the Township including 218 structures has been designated as a national historic district in the National Register of Historic Places. The statement attached to the designation, in part, summarizes Cranbury's historic significance as follows: "Cranbury is the best preserved nineteenth century village in Middlesex County. Its collection of fine frame buildings ranging from the late eighteenth century to the early twentieth century, project an excellent portrayal of the nineteenth century. While there are many small nineteenth century crossroad villages or small milltowns in New Jersey, few are in such an undisturbed environment as that of Cranbury." To a large extent the significance of the historic nature of the town and the existence of its prime agricultural farmlands are inextricably interwoven. The town was built to serve the surrounding farm community and its significance is directly related to that farmland. The sharp edges that remain between farmland and village are very important to the appreciation of both resources. The views of the many historic buildings along main street are greatly enhanced by the backdrop of the farmland.

10. The Cranbury Township Board of Education has projected that the additional capital costs to the

Board of Education to provide additional school facilities in the event that the full 4,080 units are constructed would be approximately $35 million in 1984 dollars. At the present time, Cranbury Township has one elementary school. Its high school students are bused to Lawrence Township, a municipality approximately fifteen miles away.

11. In 1978 Cranbury Township constructed its first sewer system. The sewer system has a present capacity for approximately 900 additional dwelling units. Any development beyond that point would require substantial capital expenditure and renegotiation of an existing contract with the Township of South Brunswick and the Middlesex County Utilities Authority for transmission and treatment of sewage.

12. Cranbury Township has a municipal water system which was originally constructed in the early 1900's as a private water company. Thereafter, it was taken over by the Township. The system presently is at capacity and any enlargement of the system would require significant capital expenditure.

13. Cranbury Township has no mass transit currently serving the Township directly. The nearest mass transit consists of the main line of Amtrack, approximately 7 miles to the west of the village area, and a commuter bus service to New York City approximately 5 miles to the northeast of the village area. As a result, any major development in the town will severely impact the traffic on the roads in the

town. Just one of the proposed developments by the plaintiff builders carries with it the estimated traffic volume of 10,000 vehicular movements a day. These kind of traffic movements, if located in close proximity to the village area, would have a devastating impact on the preservation of the historic nature of the village. Added to this traffic impact, must be included the traffic which would be generated by developments proposed or under construction in neighboring municipalities including over twenty million square feet of office, research and industrial development and 36,000 housing units in the neighboring municipalities. Many of these housing units are proposed in order for those towns to meet their Mt. Laurel obligations.

14. I, myself, am a farmer, and my family have farmed in Cranbury Township for three generations. In terms of land devoted to a business enterprise, farming remains by far the number one business enterprise in Cranbury Township. This continues the historic relationship between the town and its agricultural roots. Agriculture and immediately adjacent residential uses are not compatible. No matter how well intentioned residents of a development may be, eventually the noise of helicopters spraying at 5:30 in the morning, the

smells of fertilizer being applied, the dust generated from fields being plowed, all contribute to an innate hostility between the farmer and the resident. Given the demand for prime agricultural land which is also prime developable land, inevitably agricultural land becomes the loser. The Township's present zoning ordinance was designed in such a way as to preserve the most valuable of Cranbury's farmland, to separate it from proposed development and still provide between 350 to 400 low and moderate income housing units. At the time of the beginning of these lawsuits, neither Cranbury Township nor any of the plaintiffs had any concept that Cranbury's fair share would ultimately be determined to be 816 units. In fact, 816 units is larger than the number of units assigned to Cranbury by any of the individual expert reports prepared for this case.

15. The Township Committee has retained Thomas W. Evans, of Mudge, Rose, Guthrie, Alexander and Ferdon to represent the Township herein because of his expertise in this matter and respectfully request this court to admit him in this matter pro hac vice.

ALAN DANSER

Sworn and subscribed to
before me this 25th day
of March, 1985.

A Notary Public of the State of
New Jersey

DOREE A. KNUTSEN
A Notary Public of New Jersey
My Commission Expires March 17, 1987

AFFIDAVIT OF WILLIAM C. MORAN, JR.

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

WILLIAM C. MORAN, JR., being duly sworn according to law, upon his oath, deposes and says:

1. I am an Attorney at Law of the State of New Jersey having been admitted to practice in the State of New Jersey in 1966.

2. I am the duly appointed municipal attorney for the Township of Cranbury in certain litigation entitled "Urban League of Greater New Brunswick, et als. v. Township of Piscataway et als." and consolidated litigation under the titles of "Garfield & Co. v. Township of Cranbury, et als.", "Zirinsky v. Township of Cranbury", "Toll Brothers v. Township of Cranbury", and "Cranbury Land Company v. Township of Cranbury".

3. At various times as said litigation progressed through pretrial and then through the first phase of the trial, there were settlement discussions that were held in chambers with the Honorable Eugene D. Serpentelli. At those times, settlements were discussed in which Cranbury's fair share of the regional low and moderate income housing need would be

approximately 600 units. Judge Serpentelli always indicated that he would approve such a settlement, and while the Township never formally committed itself to approve such a settlement, it was most interested in the question of where those dwelling units would be located rather than in the question of whether or not the number of 600 was an acceptable figure.

4. At oral argument on a motion which was not really related to the question of the fair share obligation which was argued before Judge Eugene D. Serpentelli on July 19, 1984, Judge Serpentelli again stated for the record his willingness to approve a settlement with a fair share number for Cranbury of 600 dwelling units. A copy of the pertinent pages of the transcript of that oral argument is attached hereto as Exhibit A. During that dialogue between myself and the court, I indicated again to the Judge that Cranbury's difficulty was not with the numbers but "with where the numbers were going to go as part of those settlement discussions."

5. Despite Judge Serpentelli's willingness to approve a fair share number for Cranbury for settlement purposes of 600 units, only eight days later, he issued his Letter Opinion in those cases wherein he fixed Cranbury's fair share obligation at 816 units.

6. In 1984 the Township of Cranbury spent slightly in excess of $100,000 in the defense of Mt. Laurel litigation, which represents approximately $50.00 for every man, woman, child in the Township. In 1985, the Township has budgeted $70,000.00 for this purpose.

7. I make this affidavit in support of the pleadings being filed by Mudge, Rose, Guthrie, Alexander and Ferdon, Esqs., in the within captioned action.

WILLIAM C. MORAN, JR.

Sworn and subscribed to before me this 26th day of March, 1985.

DOREE A. KNUTSEN
A Notary Public of New Jersey
My Commission Expires March 17, 1987

in the other reports.

We also had the report, which in retrospect was unfortunate from Cranbury's point of view, and that was the one where the Court had instructed Miss Lerman to apply the formula that had been discussed in Warren Township at that point in time to this case and it had a drastic effect on some of the numbers increasing most of the municipalities, but in Cranbury, unfortunately because of whatever anomaly there was in the number, it worked out and the number came out to 320 units which is almost half of the other numbers we have been talking about. When the Township Committee saw that, they got excited.

When I explained to them about the consensus --

THE COURT: They didn't get excited enough to settle it.

MR. MORAN: There was never a bona fide offer from any of the plaintiffs to indicate a willingness to settle at that number.

THE COURT: The record should be clear on that because I think it is rather important that this Court has said and continues to say and will say as of today that it would have accepted a

settlement in Cranbury at the fair share number recommended initially by your planner and initially by the Court-appointed expert, that is, in the area of 600. I have always said. I have said it in chambers and I say it here from the bench today, notwithstanding what the position of the plaintiffs might have been, and my recollection is that plaintiffs at that posture would have accepted that, but that is irrelevant.

Cranbury has never been willing to accept it. So, the fact that Carla Lerman ended up with a number that was 222 above or something like that seems to me to be quite irrelevant as to Cranbury.

Cranbury has not been prejudiced by the Urban League report one iota.

I think it says something as to Cranbury's position with respect to the numbers.

MR. MORAN: Your Honor, the difficulty that I have with the comment that you just made on the record with regard to the settlement proceedings is that my recollection of the negotiations was that Cranbury's difficulty was not with the numbers, but with where the numbers were going to go as part of those settlement discussions.

THE COURT: Yes, but your objection is to

the unfairness of the numbers.

The builder's remedy is something that the Court could not mandate without further proceedings, but the Urban League consensus report, assuming its validity did not adversely impact --

MR. MORAN: I assume that remains to be seen because we have not seen your Honor's opinion yet.

THE COURT: Once the decision comes down, it may or may not. But at any point, up until today it has not and if Cranbury was ready to settle today with that number, I would still be at a posture absent the publication of my opinion to discuss any reasonable alternative because there is no methodology that has been adopted by this Court.

It may be that you would do better if you wait. I don't know. But yes, I do know that is an unfair comment, but you don't know.

Go ahead.

MR. MORAN: Anyway, getting back to the argument that I was making is: When the idea came up for the meetings of the experts in the consensus methodology, I, of course, explained that to the Township Committee as part of the regular reports

AFFIDAVIT

STATE OF NEW JERSEY)
: ss:
COUNTY OF MIDDLESEX

ROBERT W. BURCHELL, being duly sworn deposes and says:

1. I am a professor on the faculty of Rutgers University's Center for Urban Policy Research. I was a project leader on a report prepared by the Center entitled Mount Laurel II: Challenge & Delivery of Low-Cost Housing (1983) and a coauthor of a summary of that report prepared for a seminar on "Land Supply for Housing" sponsored by the Lincoln Institute for Land Policy held in Cambridge, Massachusetts, in December 1983. I served as a principal investigator on a report prepared for the New Jersey State League of Municipalities entitled Response to the Warren Report: Reshaping Mount Laurel Implementation (December 10, 1984). (Counsel informs me that this Court may take judicial notice of these publications and I do not therefore burden the record by appending these volumes to this affidavit.)

2. This affidavit is being submitted at the request of special counsel who represents certain municipalities which are making an application to the Supreme Court of the State of New Jersey to stay all Mount Laurel II litigation pending appropriate action by the Legislature. This affidavit will summarize aspects of my

views on the present implementation of the Mount Laurel decisions. For the record, let me say that I favor the social objectives of the Mount Laurel decisions; it is only the implementation that I am in disagreement with. Appropriate legislation, incorporating revisions to current implementation procedures is one way to alleviate this problem.

3. The Mount Laurel II decision is based in large part on the State Development Guide Plan ("SDGP"). In 1983, I pointed out the necessity of updating that plan by 1985. This has not yet been done. If it is not done, we shall return to the confusion and now archaic language of growth community designation which was hammered out subsequent to Mount Laurel I. The Mount Laurel II courts are now using the outdated SGDP. If the courts are to continue to rely on the SGDP, it is imperative that the Governor and the Legislature commission a new study and promulgate an updated plan.

4. A second important reason for legislation evolves after reviewing the characteristics of the present and prospective Mount Laurel-eligible populations. Generally speaking, it appears that nearly two-thirds of the Mount Laurel income-defined population are low income households. This is particularly true in the northern and southern parts of the state. Accordingly, I believe that in order to house the bulk of the Mount Laurel low income

population, subsidies outside the framework of private sector shelter development must be used.

5. The Warren Township formula raises other problems, which will be exacerbated if applied by the Mount Laurel courts sitting in the other two regions. Present need regions under that formula do not reflect accurately the housing market and journey-to-work considerations. Further, criteria used to define the income and housing condition of the present Mount Laurel population are inadequate.

The Warren Township court's method of calculating prospective need has shortcomings, as well. Since prospective-need regions are constructed on a municipality-by-municipality basis, the overall county and statewide prospective-need tallies remain unknown until all the local allocations are completed. Even then they do not agree with state or regional projections of need because there is no consistent base upon which the allocation procedure is applied. This does not make for good planning -- how can counties and the state prepare and locate the infrastructure necessary to accommodate future Mount Laurel housing construction if they don't know precisely where these units will be built? There is also a practical consideration. There is a greater likelihood of municipal receptivity to provide for Mount Laurel housing if each community can readily determine the overall Mount Laurel housing obligation as well as its specific local

responsibility. The multiple of the builder's remedy or bonus ratio, which applies more to prospective than to present need, could further worsen the situation.

6. Besides errors in definition and projection of the Mount Laurel population there are serious problems with procedures used for allocation. One such problem is the wealth allocation index. The use of an erroneous arithmetic* for allocation as opposed to a share of regional wealth impacts overall projections in two ways. First, it works towards increasing the Mount Laurel numbers by several thousand for prospective need statewide. Let us not forget that without a uniform control population at the top, allocation inconsistencies can pyramid to anything. They need not take an equivalent measure from somewhere else. Second, the measure is erratic and its allocation impacts unpredictable. One potential effect is that it provides a significant bias against wealthier communities. It is at one level to take wealth into account; it is at yet another to have it weighted equally; it is at a third level to have it significantly influence and possibly dominate other variables.

7. The Mount Laurel case should be reviewed to ascertain if it really meant that physically larger and wealthier jurisdictions -- and possibly soley with these

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*a ratio of median incomes multiplied by other averaged percentages and termed a percentage.

characteristics -- have proportionately larger Mount Laurel obligations, and this equivalently weighted to employment base and/or employment base change as indicators of Mount Laurel housing need.

8. The response thus far to the Mount Laurel II decision has typically been in the form of new construction provided by developers granted a bonus density. This response is not wrong in itself; it is, however, incomplete. The 4:1 market-to-Mount Laurel ratio is often too high; it is appropriate only when the market units to which it is applied are modestly priced, so that more of these must be allowed to permit the writedown of Mount Laurel housing. The bonus ratio should not be fixed at 4:1. It should be custom-tailored to each specific situation. Communities can establish their own housing authorities to build low and moderate income units, a response which would avoid the 4:1 bonus arithmetic which rapidly increases the local development load. This strategy allows communities to themselves direct the pace and placement of Mount Laurel construction as opposed to just reacting to proposals at litigation by developers. The Mount Laurel obligation is ultimately a local one; the response should start there.

9. Another error of the Mount Laurel implementation is the failure to consider fully the reuse of existing stock through conversions, rehabilitation and filtering.

Crediting other-than-new housing production toward Mount Laurel requirements reflects the manner in which housing is already being delivered in New Jersey and throughout the nation. If the Warren Township formula is applied to Mount Laurel requirements generally, insisting as it does on new construction to satisfy Mount Laurel requirements and this is coupled with a 4:1 bonus ratio it could mean the building of hundreds of thousands of unnecessary units in the State of New Jersey.

Robert W. Burchell

10

Sworn to before me
this 21 day of March, 1985

Notary Public

My Commission Expires March 3, 1986

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

JOHN J. COSTONIS, being duly sworn according to law, upon his oath, deposes and says:

1. I am a Professor of Law at the New York University School of Law and Dean-Designate of the Vanderbilt University Law School. I have taught and written in the fields of zoning and property law over the last 15 years at the law schools of the Universities of California and Berkeley, Pennsylvania, Illinois and Chicago. As a former land use practitioner with the Chicago (Ill.) law firm of Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons, I participated in drawing up numerous master plans, including the first master plan for the Hackensack Meadowlands Development Commission, and worked on various special projects, including a Model Cities program for Newark, New Jersey intended to increase the production of housing at costs affordable to that city's low and moderate income population.

2. I make this motion in support of Petitioner's application for a stay or in the alternative for reconsideration.

3. I support the Petitioner's application because I believe that the anti-exclusionary remedial scheme proposed in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and implemented in A.M.G. Realty Co. v. Township of Warren, Docket Nos. L-23277-80PW and L-67820-80PW (Warren) is an ill-conceived effort to achieve goals that, however laudable, exceed the judiciary's capability. The scheme seeks to convert what in broad outline is a question for the political branches into a question for the courts. It invites frustration,

moreover, by relying upon procedural judicial changes to resolve substantive planning issues for which manageable judicial standards remain as elusive today as when the New Jersey Supreme Court penned the first Mount Laurel opinion in 1975. See Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975).

4. Zoning today no longer seeks simply to prevent nuisance-like land uses. Increasingly over this century, it has served two other functions, whose accomplishment and legitimacy in our democracy requires the participation of the political branches and of the people whom these branches represent.

5. One function is the definition and maintenance of the quality of life within the municipalities of the State and nation. Far more than simple nuisance prevention, this function encompasses the preservation of landmarks and historic districts, the conservation of cherished natural features and preserves, the regulation of controversial uses such as pornographic theaters, and the implementation of aesthetic goals such as those underpinning urban design and billboard control measures. The harms this function addresses relate as much to the municipality's common psyche -- its root requirements for identity and stability in the face of rapid environmental change -- as to earlier proscriptions against smoke, dust, livery stables and the other quaint nuisances of the fin de siecle.

6. The ascendancy of this function is perhaps most eloquently rendered in Justice Douglas's description of the police power's contemporary province.

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in the land use project addressed to family needs.... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for the people.

Village of Belle Terre v. Boraas, 416 U.S. 1, (1974).

7. The second function derives from the infrastructure and other capital costs generated by the pattern of uses to which a community's land base is devoted. Zoning and other land use devices seek to insure that these costs return appropriate benefits, and that they do not overtax the community's fiscal capabilities.

8. Neither function will retain its legitimacy for very long if it is withdrawn from the people and remitted to the presumed sagacity of planning experts working under the superintendence of judges. There can be no doubt, of course, that local governments benefit from the professional advice of the former, and must submit to the discipline of legal limits defined by the latter. The experts can and should coax municipalities this way or that on the basis of technical data and professional skill, just as the courts must rebuff measures that overstep the bounds of the municipality's power as the latter is defined in state enabling legislation, state and federal constitutions and other pertinent sources. But the root responsibility and prerogative to define land use policy must remain with the citizens acting through their elected official at the municipal and state levels.

9. Why so? In part, because significant land use actions proceed from a complex factual base whose identification and evaluation require fora and investigative techniques that exceed the grasp of experts or courts. Preparation of the housing element of a municipal or regional master plan is illustrative.

10. It often happens, moreover, that the facts upon which momentous use actions are founded must, in the nature of the case, remain conjectural. What will be the area's population and, hence, its housing needs ten years from now? Will these needs be met principally by new construction or, on the contrary, by the trickle-down mechanism, conversion, or rehabilitation? If by some combination of both, in what proportion by each? Will the future see a continuing decline of the cities at the expense of the suburbs, or will that relationship begin to reverse itself as it seems to be doing on both sides of the Hudson River today? How will the marketplace respond to density bonuses and other governmental innovations intended to induce the marketplace to effectuate public purposes that exceed government's financial capabilities?

11. The eventual outcome of such issues is necessarily conjectural. Yet the risks associated with their resolution are viewed as both acceptable and legitimate in our democracy so long as the policies and decisions framed around them are made by elected officials who remain directly responsible to the people.

12. Most important, of course, these policies and decisions ultimately turn upon value judgments. How the latter are made profoundly influences municipal and state welfare because they

invariably call for choices among competing, often mutually exclusive alternatives. These choices are creative social and political actions whose ultimate badge of legitimacy is their compatibility with community will.

13. It is on this basis that some communities impose distancing requirements on "adult theaters," while others worry about halfway houses, or that some communities cherish their landmark buildings and historic neighborhoods while others assiduously pursue "clean" industry or downtown redevelopment. To like effect at the state level are such policies as those favoring inner city redevelopment over or in conjunction with exurban growth. These policies are "right" in the last analysis not because they conform with some abstract set of planning principles or the predilection of judges, but because they resonate with the deeply felt values of the state's residents.

14. Popular endorsement of land use actions that generate onerous capital costs is no less essential to wise and responsive policymaking. The community's residents ought to have a say in these matters because it is they who will bear the public costs of these actions. Their voices should be heard as well because it is <u>their</u> priorities that determine and ultimately justify the magnitude of the fiscal burdens they must assume in consequence of the community's land use policies.

15. It is against this conception of the zoning process in a democratic system that the <u>Mount Laurel</u> remedial scheme must be measured and, I believe, found wanting. Importantly, my comments here are addressed to the scheme itself, not to the New Jersey

Supreme Court's prior determination that exclusionary zoning runs afoul of the New Jersey Constitution.

16. Like virtually every other court system, state or federal, in the nation, I believe that the issues posed by a finding of the invalidity of a challenged zoning measure are distinct from those posed by the establishment of a remedy for this invalidity. It does not follow, that is, that a court that declares the measure unconstitutional ought to take it upon itself to declare what the substitute measure should be.

17. Most courts, in fact, do no more than invalidate the offending measure, remitting to the political branches that establishment of an appropriate substitute. A minority take the further, but still modest, step of directing that the challenger's desired use of a particular parcel be permitted. None takes the position that the sole judicial response to unconstitutional zoning is the threatened or actual imposition of what, in effect, is a judicial receivership on the land use powers of entire classes of municipalities throughout an entire state, and the concommitant prerogative to fix the policies to which these powers will be exercised.

18. The New Jersey Supreme Court endorsed this unprecedented position because it reasoned that what it viewed as the exclusionary zoning practices of some of state's municipalities presented it with a Hobson's Choice. "Judicial legitimacy may be at risk if we take action resembling traditional executive or legislative models," the Court acknowledged, "but it may be even more at risk through failure to take such action if that is the only way to enforce the [New Jersey] Constitution." 92 N.J. at 287.

19. At the threshold, of course, is the question whether zoning that disparately affects access to a community's land base of classes of different wealth is unconstitutional at all. The merits of this issue, as noted above, are not addressed in this affidavit. The vast distance separating New Jersey from the federal and the great majority of state judiciaries on the question, however, justifies asking a different question: namely, the merits of the New Jersey Supreme Court's contrary position to one side, does not its decidedly minority character establish the prudence of a correspondingly less interventionist set of remedies than those outline in Mount Laurel II?

20. My second concern ties directly back into the compatibility of the remedial scheme and, indeed, of the Court's institutional role vis a vis the state's political branches with the basic premises governing the definition of zoning policy in a democratic society. Surely, it is the Court's job to articulate the scope of local government's zoning power under pertinent constitutional and statutory constraints, and to proscribe zoning exercises that fail to respect these constraints. It is wholly another matter, however, to establish by judicial fiat regional and state-wide policies governing New Jersey's most controversial and complex single planning issue: the proper equilibrium between development in the state's urban and in its suburban-to-rural areas.

21. The dispersion of low and moderate income housing outside of New Jersey's troubled cities may be a significant value, perhaps even one meriting the state constitutional protection that the Court claims for it. But other interests of undoubted constitutional

dimension come into play once the Court moves from a remedy of invalidation or of single parcel judicial rezoning to a full-blown remedial scheme under which the Court arrogates to itself the political branches' power to determine what those dispersion patterns will be.

22. These interests, which cluster about the well-known separation of powers doctrine and the due process entitlement of citizens to have legislative decisions made by legislatures or reserved to themselves, are amply safeguarded in the Federal Constitution's due process and equal protection clauses, see, e.g., City of Eastlake v. Forrest City Enterprises, 426 U.S. 668 (1976); James v. Valtierra, 402 U.S. 137 (1971), as well as in the New Jersey Constitution itself. See N.J. Const. Arts. III, para 1 (adopting the separation of powers doctrine in New Jersey), and IV, Sec. 6, para 2 (authorizing the New Jersey Legislature by general laws to delegate zoning powers to municipalities, and reserving to the Legislature power to repeal or alter those laws).

23. The Court misstates the competing values that were at stake in Mount Laurel II by characterizing them as the entitlement of the state's low and moderate income persons to access to suburban areas vs. the latter's interest in excluding those persons through parochial zoning measures. That characterization may perhaps have been accurate in deciding the original question posed in Mount Laurel I: namely, whether exclusionary zoning violates the New Jersey Constitution. But it miscasts the values at issue when the question moves from the plane of the constitutional wrong -- the issues in

Mount Laurel I -- to that of the proper remedy for that wrong -- the issue in Mount Laurel II.

24. The finding of that wrong, of course, does not necessitate adoption of Mount Laurel II's unprecedented remedial scheme. In passing on the latter question, the Court should have balanced one set of interests of constitutional dimension -- those clustering about the process values enshrined in the New Jersey and Federal Constitutions -- against another -- those associated with the proscription of the New Jersey Constitution, as interpreted by the Court, against exclusionary zoning. The Court failed to distinguish the question of wrong from that of remedy in Mount Laurel II. It failed, therefore, properly to attend to or to weigh the fundamental process and policy values that its remedial scheme effectively rebuffs.

25. My final objection relates to Mount Laurel II's unjustified optimism that the introduction of a set of procedural modifications, e.g., its three-judge system, restrictions on interlocutory appeals and stays, etc., would somehow resolve the ominously complex substantive issues of planning with which it seeks to grapple. The Court itself identifies the basis of my objection acknowledging that "[t]he difficulty in making the Mount Laurel obligation a reality is perhaps unique, for it consists of determining the obligation as much as enforcing it." 92 N.J. at 252 (emphasis added).

26. Mount Laurel II's goal is to require that municipalities secure housing for their fair share of the region's low and moderate income population, present and prospective. To achieve it, the New

Jersey judiciary must, inter alia, define standards for and fix pertinent regions, the regions' present and prospective need for low and moderate income housing, the fair share allocation among the regions' municipalities, the modifications in municipal ordinances necessitated by this allocation, and builders' remedies.

27. Performance of these functions, of course, obligates judges to oust the political branches and the people from their central role in the zoning process. Judges must establish the legislative and administrative facts necessary to give practical meaning to the terms "region," "regional present and prospective housing need," and "regional fair share" of that need. Judges must resolve issues of profound social and economic consequences in cases when these facts must necessarily be conjectural. And judges must interpose their own value preferences when the facts that are found or hypothesized must then be fashioned into a policy framework addressing New Jersey's single most controversial land issue.

28. The Court assumed that the morass into which it was about to move could be navigated thanks to two factors: 1) the use of the Executive Branch's State Development Guide Plan, which would enable the Court to superintend the urban-suburban development question within a policy framework established by the political branches, see Mount Laurel II, at 421-35; and 2) the imposition of the foregoing procedural changes which, it envisaged, would somehow resolve the stubborn substantive questions posed by the Mount Laurel II remedy.

29. Neither expectation has materialized, however. The State Development Guide Plan has not been revised by January 1, 1985, as the Court advised. 92 N.J. at 242. The Court, therefore, finds itself faced with the necessity "to reconsider use of the [State Development Guide Plan] as a remedial guide to the Mount Laurel obligation." 92 N.J. at 242 n. 16. In consequence, the Court must be prepared to reenter the thicket of "developing communities," and similarly unmanageable judicial constructs that sprung up like so many dragon's teeth in response its decision in Mount Laurel I.

30. Nor has there taken form the Court's expectation that within several years the fair share question will be confined to the allocation issue.

> Our use of the [State Development Guide Plan] should end practically all disputes over the existence of the Mount Laurel obligation and, in relatively short time, adjudication by the three judges should end most disputes over region and regional need. In practically all cases the only issue . . . that may require serious litigation is a particular municipality's fair share of that need. And even as to that issue, the housing allocation methodologies previously adopted should simplify it considerably.

92 N.J. at 255

31. Judge Serpentelli's post-Mount Laurel II decision in Warren is illustrative. It is a critical decision insofar as it entails an early attempt of one of the three Mount Laurel trial judges to provide clarity and substantive cogency to the Mount Laurel II trilogy of "region," "regional housing need," and "fair share." Shortly after its publication, however, it was severely criticized by Robert Burchell and David Listokin, members of the respected Center for

Urban Policy Research at Rutgers University. See R. Burchell & D. Listokin, Responses to the Warren Report: Reshaping Mount Laurel Implementation (N.J. State League of Cities 1984).

32. The criticisms are pervasive and fundamental. Among Warren's contested standards are those relating to the delineation of both the present and the prospective housing need regions; the identification and count of the Mount Laurel population; the identification and number of dilipidated dwellings (a major index of a region's housing deficit); the projection of future household formation (an index of future housing need); the weighing of the various discrete variables of Warren's fair share allocation formula; the economic feasibility of constructing the volume of housing projected in Warren, particularly if the four-to-one multiplier commonly assumed to write down the cost of below-market housing is used; and the extent to which Mount Laurel units might derive from existing urban structures that have been rehabilitated or converted in addition to or in substitution of new construction in the suburbs, which Warren features as the sole source of this housing.

33. Whether or not the Burchell/Listokin study is correct in all or even most of its criticisms, it strongly evidences that the search for manageable judicial standards to administer the Mount Laurel obligation remains as frightfully elusive today as it was eight years ago when the New Jersey Supreme Court conceded that:

> the breadth of approach by the experts to the factor of the appropriate region and to the criteria for allocation of regional housing goals to municipal "subregions" is so great and the pertinent economic and sociological

considerations so diverse as to preclude judicial dictation or acceptance of any one solution as authoritative.

Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A.2d 1192, 1200 (1977).

JOHN J. COSTONIS

Sworn and subscribed to before me this 27th day of March, 1985

JEANETTA McLEOD RUSS
Notary Public, State of New York
No. 31-4[illegible]15
Qualified in New York County
Commission Expires March 30, 198[illegible]

10

YEN-QUEN CHEN of full age certifies as follows:

1. I am Licensed Planner of the State of New Jersey and am Director of the Planning Department of the City of Long Branch, supervising a staff of ten persons.

2. I hold a Bachelor of Science Degree in Archechitecture and City Planning from the College of Chinese Culture, Taipei, Taiwan. I also hold a Master of Science degree in Urban and Regional Planning from the University of Mississippi.

3. I have been Director of Planning for the City of Long Branch since June, 1978. Previously, I served as Senior Area Planner for the Central Midlands Regional Planning Council of Columbia,South Carolina.

4. As Long Branch Planning Director my duties include over seeing all aspects of Municiapl Planning and implimentation for the city. I have acquired a broad knowledge of federal and state programs affecting local community development efforts.

5. The purpose of this affidavit is two-fold: First, to provide the Court with broad factual data concerning the City of Long Branch, and second, to offer my professional opinion concerning the impact of any state housing policy designed primarily to induce development dollars to flow toward rural and suburban areas.

6. The City of Long Branch consists of approximately 5 square miles, and is bounded on the east by the Atlantic Ocean, on the south by the generally affluent Borough of Deal, and on the west and norht by largely developed, suburban communities; Ocean Township, West Long Branch, Oceanport and Monmouth Beach.

7. The city's population is approximately 30,000 people, of which approximately 25 per cent are minority, including Black and Hispanic citizens.

8. The city's per capita income during the past several years has been about $6,970.00, and the median family income is $15,949.00. It is served by a school system which includes 5 public elementary schools, one junior high/high school complex and 2 parochial schools. Its tax rate for 1984 was $3.00.

9. Long Branch has traditionally endeavored to attract the maximum number of federally, state and privately-financed housing units for its sizable population of low-income citizens.

10. Although Long Branch is blessed with a 5 mile beachfront, this asset, together with many unusually fine residential neighborhoods, has not been enough to offset

strains on the city's infrastructure, police services and social climate caused by a relatively high population of low-income persons, and a relatively high percentage of housing stock in poor condition and urgently in need of replacement or rehabilitation.

11. Although, as with many developed, urbanized communities, there are vacant lots available for sporadic development, as a practical matter Long Branch has little available land for large-scale residential development of the "townhouse" or single-family style. While Long Branch has a number of units, built largely during the past 25 years, devoted to occupancy by citizens of low income, the vast majority of these units are in "high rise" senior citizen buildings, constructed with assistance from federal and state direct funding and loan guarantee programs. Such housing for persons of low income which Long Branch may be able to attract in the future will presumably follow this pattern of "high rise" or, at least, high numbers of units-per-acre.

12. While Long Branch is making a concerted effort to attract private capital so as to generate employment opportunities and revitalize its oceanfront and downtown business area (where there is a high vacancy and deterioration rate), and while city officials are especially optimistic about expressions of interest from serious developers studying the oceanfront area, the availability of public funding for housing for persons

of low or moderate income is virtually non-existent, making the attraction of private capital all the more important to Long Branch and similarly situated, urban communities.

13. Just as many "downtown" areas plunged into virtual abandonment because of their inability to compete with suburban shopping malls, so also do other aspects of urban life compete with suburban areas, across the entire range of infrastructure. Indeed, cities like Long Branch compete with suburban communities for middle-income citizen/residents. The availability of adequate housing stock for citizens of all economic groups is essential to the continuing vitality and stability of any city, large or small. Deteriorating housing stock -- or unavailable homes for all income groups -- is a part of the cycle which drains cities of their lifeblood, decimates their downtown shopping districts, and contributes to the downward spiral accelerated by shrinking tax bases.

14. While Long Branch has been fortunate during the past decade to attract substantial housing facilities for high-income persons, especially in the form of expensive, luxury oceanfront condominiums, its ability to attract housing for less affluent citizens has lagged seriously behind, just as it has in virtually every urban community in New Jersey.

15. The people of Long Branch are an ethnically, culturally and economically diverse community whose strong desire to see a "rebirth" in their City cuts across racial, sociological and political lines. Generally, it is widely accepted that the health and vitality of one economic or social group is inextricably bound up with that of all the others.

16. For these reasons, it is distressing to me personally and as a professional planner that current state housing policy appears to encourage the flow of almost all development dollars -- especially those for low and moderate-income housing -- away from urban areas and into rural and suburban areas.

17. One need not be a planner or a lawyer to appreciate that the existence of unusually attractive incentives -- indeed, to my knowledge, the most lucrative incentives in the nation, in the form of "builders' remedies" -- luring housing developers into rural and suburban areas may well seal the doom of urban areas which may have had a chance for at least some of those development dollars but for such incentives.

18. Long Branch, for example, has an entire infrastructure in place: sewers, utilities, schools, police, and so forth. While there are problems, as there are in any urban setting, generally this infrastructure is in sound shape and available to serve the city's existing citizens and those new residents who might be attracted by suitable

housing.

19. While, as noted, not much land is available in such a developed urban setting, still, without much difficulty and with imaginative planning there are a number of areas where both rehabilitation and new construction could provide for literally hundreds of affordable housing opportunities for persons of low and moderate income in Long Branch and in many similarly situated urban towns.

20. While attracting the mix of public and private dollars to build even a fraction of those units has always been difficult for urban towns, the "Mount Laurel" doctrine appears to snuff-out forever all hope of encouraging such development. Even the availability, now, of many millions of dollars in a new state housing aid program would not make a substantial "dent" because such dollars must be spread across several dozen similar communities in most of New Jersey's 21 counties.

21. Moreover, many kinds of development dollars inevitably "follow" such housing dollars: monies for roads, sewer construction or improvement, schools, -- even for local convenience stores -- these funds will be sought even more vigorously by suburban towns striving to serve populations which will now grow at unexpectedly rapid rates and, without their being sought, such dollars will simply naturally follow the housing patterns.

22. I am making this affidavit in behalf of the City of Long Branch and her citizens, and in behalf also of what I believe to be sound planning principles. I sincerely believe that a state housing policy, whether judicially or legislatively imposed, which does not take into account the interests of the state's urban areas, is seriously flawed, and is likely to generate problems in the years ahead which will make complaints of "exlusionary zoning" pale by comparison.

24. I am informed that about 120 lawsuits are pending throughout the state which may result in "builders' remedies" being awarded to private developers. I urge the Supreme Court of New Jersey to grant the relief being sought by Long Branch and many suburban towns, namely, a "stay" of all such pending litigation, during which the serious impact of "Mount Laurel II" upon urban areas can adequately be assessed by a wide range of planning, sociological and economic experts.

Dated: March 25th 1985.

FRANK PALLONE, JR. of full age certifies as follows:

1. I am President of the City Council of Long Branch, having been first elected to that governing body in 1982. I am also a member of the New Jersey Senate, having been elected in 1983.

2. As a member of the City Council, I supported a resolution, enacted unanimously by our bi-partisan City Council, authorizing the participation of the City of Long Branch in efforts to reverse or substantially modify the "Mount Laurel II" doctrine.

3. I have reviewed the affidavit of our City Planner, and find it accurate in all details. I wish to emphasize that Long Branch has always sought out every avenue of public and private funding. In an age when public funding for housing is dwindling to the point of non-existence, cities' competition for private development dollars, it seems to me, is more important than ever before.

4. In that sense, the "Mount Laurel II" decision could not have been more badly timed. Although I recognize that the Mount Laurel decision is a judicial response to legislative inaction in the field of exclusionary zoning, I sincerely believe -- as do my colleague throughout the city government -- that the broad implications of the decision are deeply disturbing for cities like Long Branch, which are striving to improve their housing stock and to provide more housing opportunities for citizens of low and moderate income.

5. The "builder's remedy" alone creates such irresistible incentives for developers that none is likely to invest a single dollar in places like Long Branch.

6. Moreover, I am not at all sure that it is wise social policy virtually to force those who might qualify for such housing to leave their communities, families and friends in order to acquire it. In a perfect world, all citizens would have the widest array of options. But creating a situation where the only housing opportunities for low income citizens are to be sprinkled among market-value housing units in suburban developments -- and where it will not be possible for those who occupy those units to build any equity in them, because of income re-sale restrictions, -- does not seem to be sound.

7. As a life-long resident of Long Branch, I care deeply about its future. As an attorney, I have reviewed the "Mount Laurel II" decision and am distressed to find that it barely mentions urban areas, and does not discuss the impact of the decision on towns like Newark. Camden, Trenton, and smaller urbanized towns such as Long Branch and Asbury Park. I believe this to be s serious, though obviously unintentional, omission.

8. I respectfully urge this Court to heed the request of all the plainitffs and amicus participants in this Petition to "take another look" At Mount Laurel II. If experts such as the Long Branch City Planner are correct, as I believe they are, the harms which will flow from a refusal to place Mount Laurel "on hold" greatly outweigh any delay which might be experienced from such a Stay.

Frank Pallone, Jr.

Dated: March, 1985. FRANK PALLONE, JR.

AFFIDAVIT

STATE OF NEW JERSEY:
SS.:
COUNTY OF MONMOUTH:

SAUL G. HORNIK, being duly sworn and upon his oath, deposes and says:

1. I am the duly elected Mayor of the Township of Marlboro, County of Monmouth, New Jersey. I have served in this capacity since January 1, 1980, and my present term of office expires on January 1, 1988.

2. Marlboro Township is a municipal corporation created under the laws of the State of New Jersey. It is 30.20 square miles in area. It has a population according to the 1980 census, of 17,560, with an estimated 1985 population of approximately 22,000.

3. In 1980, there were 4,791 housing units within the Township. In 1985, we estimate there will exist 6,000 housing units within the limits of the Township.

4. The total budget for the present fiscal year is $7,010,032.04 with $135,000.00 designated for expenditures for professional services in connection with Mount Laurel II. This figure above is greater than the normal annual expenditure for professional services. Additional projects within the Township have been indefinitely postponed because of the expenditure of these funds due to Mount Laurel II and the associated lawsuits, including one by neighboring Aberdeen Township, Docket No. 44957-84E-P.W., and one against the Township by a Citizens Group challenging the zoning changes, Docket No. L-8802-85E-P.W.

5. At present, Marlboro Township has been sued by eight different developers claiming a failure to comply with the requirements of the Supreme Court of New Jersey within the Mount Laurel II decision. The following is a list of the eight different lawsuits, including the dates suit was instituted. A Stipulation of Dismissal is presently being filed, however, with the Court with reference to 230 Marlboro, Inc., decreasing the number of suits by one.

	Case Name	Docket No.	Date Filed
A.	Michael Kaplan, individually and as Executor of the Estate of Nathan Kaplan and Morris Kaplan vs. Marlboro Township, a Municipal Corporation of the State of NJ located in Monmouth County, NJ	L-039596-84	June 7, 1984
B.	Anthony Spalliero, Individually and Centrio Builders, Inc., A Partnership vs. Marlboro Township, a Municipal Corporation of the State of NJ located in Monmouth County, NJ, Bayshore Regional Sewerage Authority and Marlboro Township Utilities Authority	L-41366-84	June 22, 1984
C.	Oliver Kovacs, Sanford Rader, John Fiorino, Henry Traphagen & the W.L.W. Co., a NJ Partnership vs. Township of Marlboro and Marlboro Township Planning Board	L-043845-84	July 25, 1984
D.	Michael Weitz and David Kahane vs. Township of Marlboro and Marlboro Township of Planning Board	L-050456-84	July 31, 1984
E.	Penn Associates, a General Partnership of the State of New Jersey vs. Township of Marlboro, the Marlboro Township Planning Board, Western Monmouth Utilities Authority and Marlboro Township Municipal Utilities Authority	L-052552-84	August 1, 1984

F.	Federal Equity Associates, II, A General Partnership of the State of New Jersey vs. Township of Marlboro, the Marlboro Township Planning Board, Western Monmouth Utilities Authority and Marlboro Township Municipal Utilities Authority	L-052553-84	August 8, 1984
G.	Crine Realty, Inc., a NJ Corporation, Marvin Schmelzer, Samuel Halpern, individually and Gill Lane, Inc. vs. Township of Marlboro, Marlboro Township Planning Board, Western Monmouth Utilities Authority and Marlboro Township Municipal Utilities Authority	L-067465-84	October 9, 1984
H.	230 Marlboro, Inc. vs. Township of Marlboro, County of Monmouth, a Municipal Corporation of the State of NJ, Township Council of the Township of Marlboro, Planning Board of the Township of Marlboro, the Western Monmouth Utilities Authority and Gordons Corner Water Company	L-071163-84	October 24, 1984

6. Each of the above developers has sought the judicially created relief of "builders' remedies" stating that if given the chance, they would build low to moderate income housing on their specified lots. When appearing before the Planning Board, however, the developers appearing all indicated that they were seeking these zoning changes even though they had not completed any economic feasibility studies indicating the validity of their proposals. The eight developers combined have offered approximately 1,230 acres of land as available for this construction. Six of the eight suits have been consolidated for the purposes of trial, which in the first phase of the bifurcated trial system will determine whether or not the present Ordinance in place by Marlboro Township sufficiently complies with the mandates as determined by the Court. These six consolidated suits alone seek builders' remedies for the construction of 7,000

to 7,500 units within the Township over the next few years. The other plaintiff-builders have been consolidated partially within litigation. The suit is presently within the Discovery stage, and a trial is anticipated in mid to late spring of 1985.

7. Our Township Planner has indicated in his most recent report that a fair share obligation under the present Court formulas for Marlboro Township is 822 low to moderate income units. This figure was arrived at by analysis of the established formula in the Court's decision in A.N.G. vs. Warren Township, as well as consideration of certain unique factors to the Township which have been injected into the formula to adjust the growth area. This includes a reduction of defined growth area for the airport zone, the toxic site, a steep slope area and flood drain areas. Even at a fair share as suggested of 822 units, this would result in over 4,000 units of construction to satisfy the Mount Laurel obligation.

8. The New Jersey Department of Environmental Protection has classified the present depletion of the aquifer as critical. Simply stated, there is insufficient water to meet the available housing needs, yet alone to provide for increased usage of the magnitude that would be created by the additional construction mandated in Mount Laurel II.

9. In addition to the water supply problem, the sewer infrastructure is at capacity. A moratorium has been placed on expansion of any sewer lines.

10. Marlboro Township has a unique problem due to the presence of Burnt Fly Bog, an area of approximately 200 acres which has been classified as a hazardous waste site on the New Jersey Super Fund list. It is presently #11 on the Environmental Protection Agency list, or #8 on the State list.

11. The addition of 4,000 units within the Township over a short period of time will create havoc on the present and future infrastructure, as well as further burdening the already crowded middle school and high school. It is questionable whether this new construction will generate tax revenues sufficient to cover the increase in services necessitated by the increase in population. Further, the present residents of the Township must concern themselves and are legitmately fearful about whether their own personal taxes will be increased to pay for the expanding services. The addition of this many new housing units in such a short period of time, without a concerted and thorough planning approach, will negatively affect the entire Township, all the Township agencies and public services, and probably most significantly the school districts within the Township. It is absurd to think that the present facilities can absorb this anticipated growth without a massive infusion of funds. Generally, this type of artificially generated growth is the antithesis of sound planning.

12. Marlboro Township, along with neighboring towns and municipalities have retained Thomas W. Evans, a member of the law firm of Mudge Rose Guthrie Alexander & Ferdon, New York City, to represent the municipalities with reference to Mount Laurel II housing issues. Mr. Evans has been retained because of his expertise in this area, and it is respectfully requested that the Court grant his motion to be admitted pro hac vice, and to be able to appear before the Court with reference to this matter.

SAUL G. HORNIK

Sworn and subscribed to
before me this day of
March, 1985.

CERTIFICATION IN LIEU OF AFFIDAVIT

ARTHUR GOLDZWEIG, by way of certification says:

1. I am an attorney at law of the State of New Jersey, and I am the Township Attorney for the Township of Marlboro.

2. On this day, I have spoken to Saul G. Hornik, the Mayor of the Township of Marlboro by telephone. Mayor Hornik has informed me that he is presently in the State of Florida.

3. I read to Mayor Hornik the attached Affidavit in its entirety, and Mayor Hornik stated that the Affidavit is correct, that he would sign it if he were physically present, and will, in fact, sign the Affidavit upon his return to Marlboro next week.

4. Accordingly, I offer the attached Affidavit of Saul G. Hornik, and ask the Court to accept same as if signed.

I hereby certify that the above statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

ARTHUR GOLDZWEIG

Dated: March 26, 1985

STATE OF NEW JERSEY:
SS. AFFIDAVIT OF JOHN P. WADINGTON
COUNTY OF MONMOUTH:

JOHN P. WADINGTON, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Township Clerk of the Township of Holmdel and a Class Two member of the Planning Board. I have served as Township Clerk for almost 20 years, and I also serve as the Township Treasurer.

2. Holmdel, according to the 1980 U. S. Census, had a population of 8,447 persons.

3. Holmdel, according to the 1980 U. S. Census, had approximately 2,305 total housing units.

4. In early 1984, an action under Mt. Laurel II was filed and is known as Real Estate Equities, Inc. v. Holmdel Township, et als. The case was assigned to the Honorable Eugene D. Serpentelli, Judge of the Superior Court, assigned to the central New Jersey area for Mount Laurel II cases. The Consolidated Docket No. is L-15209-84 PW.

5. At the trial which was held in the fall of 1984, two experts for plaintiffs and two experts for Holmdel testified concerning Holmdel's fair share number of the low and moderate housing needs under the formula provided by the court in an earlier case, AMG Realty vs. Warren Township. Each of the four experts testified to different numbers as to the prospective need for low and moderate income housing in Holmdel to the year 1990. The Court, at the end of the case, appointed a Master who is a licensed professional planner of New Jersey who studied Holmdel and provided four sets of additional numbers which he said constituted our fair share.

6. The total number submitted to the Court by the Master to the year 1990 approximated 2,213 low and moderate income units. According to the Master and pursuant to the formula established in the Warren Township case, those units are "to be provided by 1990."

7. It is my understanding and that of the Township Committee that under the "density bonus" procedures established and apparently encouraged by Mount Laurel II, that this could mean a total of more than 10,000 new dwelling units for Holmdel. Since Holmdel now has an approximate total of 2,550 dwelling units, the impact upon Holmdel of the proposed new units would have a tremendous and deliterious effect upon the Township.

8. The action brought by Real Estate Equities, Inc. described above demands a "builder's remedy" declaring that it is entitled to construct 1,836 units on approximately 100 acres or more than 18 units per acre.

9. Holmdel introduced an Ordinance known as Ordinance 84-7 which was adopted after several public hearings and public meetings in the late summer of 1984. That Ordinance rezoned several parcels in order to provide zoning for Mount Laurel II housing and to comply with the Mount Laurel II decision.

10. At this point there have been no applications to the Planning Board by any of the plaintiffs for Mount Laurel II housing, and the following cases are pending:

> Real Estate Equities, Inc. v. Holmdel Township;
> Suit filed on or about March 5, 1984; Answer filed on March 28, 1984; Demand was for approximately 1836 dwelling units;

New Brunswick Hampton, Inc. v. Holmdel Township;
Suit filed on or about May 16, 1984; Answer filed on June 14, 1984; Demand was for approximately 1646 dwelling units.

Palmer Associates v. Holmdel Township;
Suit filed on or about August 15, 1984; Answer filed on September 14, 1984; Demand was for approximately 300 dwelling units;

Township of Hazlet v. Holmdel Township, et al;
Suit filed on October 10, 1984
Answer filed on November 2, 1984

11. As a direct result of the Ordinance 84-7, our sister community, the Township of Hazlet, instituted suit against Holmdel declaring that it was improper for Holmdel to rezone for high density in the northern area of the Township because of the adverse effect upon Hazlet and its residents. Further, the Township of Hazlet Sewerage Authority recently gave notice of termination of our joint sewerage agreement which has been in existence for many years and was originally designed to allow the Townships of Holmdel and Hazlet joint use of sewer facilities along roads which joined the two municipalities so that neither Township would be required to construct parallel line and, therefore, would double our costs for sewer service.

12. As a result of the receipt of 60 days notice from Hazlet Township Sewerage Authority, Holmdel filed an Order to Show Cause seeking restraints against the termination of the agreement. The Order to Show Cause is returnable on Friday, March 29, 1985, before Judge Eugene D. Serpentelli.

13. As heretofore stated, the Master's report calls for approximately 2,213 low and moderate income units, which under "density bonus" could equal more than 10,000 units. The Township is very concerned about the availability of potable water to serve such a huge

number of units. At the trial before Judge Serpentelli, Michael Walsh, Vice President and Manager of West Keansburg Water Company, a private water purveyor, testified that his company simply did not have sufficient diversion rights which would permit the servicing of large developments. He testified that as a result of fear on the part of the State of New Jersey that there would be salt water intrusion in our aquifers (and due to other factors) that his company could not expand sufficiently to meet the demand that will come about if Mount Laurel II is implemented as demanded by the various plaintiffs against Holmdel.

14. The northern portion of Holmdel is served by the Bayshore Regional Sewerage Authority which treats sewerage brought to it from the northern Bayshore area of Monmouth County. It is our understanding that the Bayshore facilities are at or near capacity and there is a real question as to how much additional flow the Authority can accommodate from Holmdel. The treatment of sewerage is a serious environmental issue and one which has not been answered to anyone's satisfaction as of this time.

15. As a direct result of the threatened and pending litigation, legal fees, special counsel fees, planning experts, real estate experts, other consultants, court costs and other fees and expenses have more than tripled for the year 1984 over what they would have been if Mount Laurel II had not been decided.

16. Holmdel is a member of the Mayor's Task Force on Mount Laurel II. This task force has worked closely with the New Jersey League of Municipalities, the Legislature, the committees of the Legislature and other municipalities threatened or sued under Mount

Laurel II. The task force has retained Thomas Evans, Esq. of the law firm of Mudge, Rose, Guthrie, Alexander & Ferdon to represent the interests of the member municipalities. Holmdel has joined the other municipalities in asking Thomas Evans, Esq. and his firm to pursue an action before the Supreme Court of New Jersey which would cause a review of the incongruous and intolerable situation in which Holmdel and dozens of other New Jersey municipalities now find themselves as a result of Mount Laurel II. They have also been requested to file for a stay of further actions or judgments which threaten municipalities by the awarding of a "builder's remedy".

17. The opinion of Holmdel and its governing body and its planning board is that the very fabric of municipal government is being destroyed by the effects of the Mount Laurel II and its implementation. Holmdel asks that it be given an opportunity to explain to the Supreme Court the very serious nature of the problem and joins its sister municipalities in requesting prompt and effective relief.

JOHN P. WADINGTON

Sworn and Subscribed to:
Before me this 25th day:
of March, 1985.

BETTY M. CURTIS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 23, 1989

County of Somerset:

State of New Jersey:

Affidavit of Morrison O. Shuster, Jr.
Warren Township Administrator

Morrison O. Shuster, Jr., of full age, being duly sworn, says:

1. I am the Administrator of the Township of Warren, Somerset County, New Jersey. I am familiar with the Township of Warren and also the items set forth herein. I previously was the Warren Township Tax Collector and held that position for seven years. I have been the Township Administrator for five years.

2. Warren Township is located in Somerset County, north of Route 22, in the Watchung Mountains. The region in which it is situated is extremely diverse, containing a full cross-section of business opportunities, income groups, and housing types. It is serviced by State Route 22 and marginally by Interstate Route 78. There is no public transportation servicing the Township and it's "downtown area" is spread apart being substantially made up of two separate shopping centers which do not allow the standard suburban city opportunities.

The gross acreage of Warren Township of 12,355 acres or 19.3 square miles. There are presently approximately 3000 undeveloped acres, 2040 of which are of an environmentally critical nature. Of the said 3000 acres, approximately 2575 are qualified farmlands under the Farm Assessment Act of 1984, N.J.S.A 54-23.1 et seq. and there are approximately 750 acres of unqualified farmlands. Approximately 1000 acres of the 3200 acres are zoned for residential developement and are developable for that purpose. Some of the developable land, however, is presently used for

agricultural purposes. The total developable land is therefore less than 10 per cent of the Township.

3. The population of Warren Township has been growing, but at an increasingly slower rate. In the past 20 years, the increase has been at a rate under 85 per cent. In 1960, the population was 5386; in 1970 - 8592; in 1980 - 9791.

4. Warren Township is designated a "growth area" in the State Development Guide Plan.

5. Warren Township was sued by AMG Realty Company, Skytop Land Corp. and Timber Properties under Mount Laurel I. After the New Jersey Supreme Court decided Mount Laurel II, the above cases were consolidated and forwarded to the Honorable Eugene Serpentelli for hearing pursuant to the second Mount Laurel case. The above cases have the consolidated docket numbers of L-23277-80P.W. and L-67820-80P.W. The plaintiffs in the above cases are seeking builders remedies for their properties.

6. The above cases were tried before Judge Serpentelli who issued an opinion dated July 16, 1984 wherein he established Warren Township's fair share obligation at 946 which was comprised of a total present need of 214 and a total prospective need of 732. Utilizing the set aside ratio of low and moderate income housing to market priced housing of 20 per cent, that figure escalates into 4730 units.

7. The number of present residential housing units in the Township of Warren is approximately 3100. Thus, there will need to be an increase of over 150 per cent in the total housing in Warren as a result of Warren's fair share allocation. This

increase in housing is to be completed by 1990. Obviously the impact of this type of development upon Warren Township, which has substantial environmental constraints (wet lands and steep slopes) is astronomical and impossible to comply with and would destroy the character of the community.

8. The Township Treasurer's records indicate that the Township's expenses for legal services and consulting experts services were as follows for the years 1981 through 1984:

a. 1981 - $ 76,872.92
b. 1982 - $ 71,287.61
c. 1983 - $ 79,227.45
d. 1984 - $205,602.18

These figures show an increase of 177% in the cost of the said services and that increase is directly related to the defense of Mount Laurel litigation.

The costs to the Township as a result of defending Mount Laurel type litigation is substantial and has a disastrous effect on the Township's financial footing.

9. As a result of the extraordinary legal and related expenses relative to defending Mount Laurel litigation, Warren Township has been required to reduce it's capital funding in the areas of road and drainage work, construction of new municipal facilities, replacement of equipment and many others. These legal and related expenses are interfering with the Township's ability to operate effectively.

10. At the present time Warren Township is also involved in a Mount Laurel related case entitled Z.V. Associates vs. The Township of Warren, et als, Superior Court of New Jersey, Law Division, Somerset County, Docket Number L-014179-85P.W. This

is Mount Laurel related litigation which has reference to a land owner in a Mount Laurel designated compliance district (an area for proposed low and moderate income housing) that wants to develope his property as a commercial use and remove it from the said compliance district. This litigation is presently pending along with the above-referenced consolidated case.

11. Warren Township is also involved in a Mount Laurel case in Greenbrook Township (an adjoining municipality) where Top 'O The World Corporation is the plaintiff and Greenbrook Township is the defendant. The Township of Warren and other entities are joined in that litigation as third party defendants. The litigation is in the Superior Court of New Jersey, Law Division, Somerset County, Docket Number L-068913-84. Warren Township has filed an answer and counter claim in that case as a result of substantially all of Greenbrook's Mount Laurel obligation being placed on Warren Township's border with the only usable access to the property in question being through the Township of Warren. One of the collateral consequences of Mount Laurel litigation is its effect upon neighboring municipal relationships. That effect has been to deteriorate the same by causing friction between municipalities and also creating litigation.

12. Both of the above court cases (Z.V. Associates and Greenbrook) are causing Warren Township additional legal expenses in the year 1985 and will substantially increase the legal and related consulting expenses for the year 1985.

13. The consolidated case referred to above (AMG Realty Company, et als) is presently pending in the Superior Court of

New Jersey. Judge Serpentelli has issued an interim judgment holding that the Warren Township ordinances are unconstitutional in light of the Mount Laurel II decision and also establishing the 946 fair share figure referred to above. The Township has presently completed a 90 day compliance period where it held 7 public meetings with the Court Appointed Master, Philip Caton, and has prepared a compliance ordinance under protest. The Township is presently awaiting the Master's report on the aforesaid compliance ordinance. Judge Serpentelli has not made a final decision relative to builder's remedy awards in the Township of Warren/AMG litigation, and has reserved decision in that matter for the compliance portion of the case which has yet to be tried.

Relative to the AMG litigation referred to above, the Township of Warren has not appealed the interim judgment of Judge Serpentelli as a result of the wording in the Mount Laurel II case limiting the right of interlocutory appeals. The Supreme Court has limited the right of appeal to a final decision which has not yet been rendered in the AMG - Warren litigation. The Township of Warren has entered into all compliance proceedings under protest and with the understanding that it is preserving it's right to appeal the final decision in that matter.

14. The Township of Warren has a present population of approximately 10,000 residents. Based upon the 4,730 unit figure (low and moderate and market income housing units) which has been assigned to Warren Township and multiplying the same by an average occupancy of 2.7 person, that fair share allocation to the Township of Warren will increase the Township of Warren's population by

12,771 persons. Obviously, based upon the present population of 10,000, Warren Township's population will be increased by approximately 125 per cent by the year 1990 if the court's decision is allowed to stand in AMG vs. Warren. This is catastrophic for the Township of Warren and impossible to comply with.

Increases in the Warren Township housing stock from approximately 3100 units to 4730 by the year 1990 and an increase in the population from approximately 10,000 to 22,771 by the year 1990 will cause infrastructure problems which will be insurmountable. There does not exist sufficient sewer capacity, drainage facilities, roads, municipal administrative services, police, fire, or other municipal services to handle the increases proposed. The Township does not have the financial capability to finance the expansions of the above services without producing tax rates which would devastate the Township property values and, thus, destroy the Township.

15. Relative to Warren Township sewers, Warren Township is in the process of completing a certain sewer project known as "Middlebrook Sewer." The facilities in that waste water treatment district have been allocated by the 201 Facilities Plan and 208 Facilities Plan to the existing Township properties under zoning in effect at the time those plans were prepared. There exists no capacity for a project of the magnitude desired by the AMG Realty Company and Skytop Land Corporation within the Middlebrook Trunk District. In the event sewer capacity was provided to the above two plaintiffs, it would remove almost all other developable land in that district from the ability to be developed now or at

any foreseeable time in the future. Those other property owners would be deprived of the use of their property which they have rightfully looked forward to.

The northern section of Warren Township lies within the "Upper Passaic River Basin" and that is where the Timber Property's land is located (the last plaintiff in the consolidated case referred to above. A federally funded 201 Facilities Plan has been prepared for the waste water facilities in that portion of the Township. The Passaic River, which is the major waste water transmission route, is presently probably over capacity, and the further use of the same to transmit waste water would be undesirable and probably meet with the denial of DEP or EPA.

The Middlebrook Trunk District sewer facilities are a federally funded project. The federal regulations pertaining to that funding prohibited the construction of a facility which exceeded the capacity allocated under the 201 and 208 Facilities Plans. That sewer system was built to the specifications dictated by the federal government, thus, there is no excess capacity beyond that required to service the area under existing zoning (zoning not influenced by the Mount Laurel II decision).

16. From a review of all matters referred to above, it appears that there is a complete lack of regional planning. It appears that it is the "luck of the draw" as to whether a town will be singled out by land speculators for Mount Laurel type litigation. In the event the town is so designated, that specific town will bear an unfair burden relative to towns lucky enough not to be so designated. This is an unfairness which must be resolved so

that all towns and residents therein are treated equally under the doctrine of Mt. Laurel II.

17. Warren Township has joined with other municipalities in the State of New Jersey for the purposes of litigation concerning Mount Laurel II. For the purposes of that litigation, the Township requests that Thomas Evans, Esq., a New York attorney, be admitted pro hac vice to handle any matters relating to this Mount Laurel II litigation in the New Jersey court system or any other court system.

Morrison O. Shuster, Jr. 10

Sworn to and subscribed
before me this 3rd day
of June, 1985.

GLORIA FURINO
A Notary Public of New Jersey
My Commission Expires Nov. 17, 1986

Robert W. O'Hagan being duly sworn according to law deposes and says:

1. I am an attorney licensed by the State of New Jersey.

2. I am the attorney for the Township of Colts Neck, which is a municipal corporation of the State of New Jersey. I personally have been actively involved with the Township's legal representation since 1971. My firm has represented Colts Neck for a period in excess of twenty-five years.

3. Colts Neck has been sued by two developers who claim that the Township's ordinances are invalid by reason of their failure to provide a reasonable opportunity for housing for low and moderate income people.

4. The first suit filed by Orgo Farms and Greenhouses, Inc. and Richard J. Brunelli was filed in September of 1978.

5. The Plaintiffs in that suit sought to develop a massive housing and commercial project at the intersection of Route 34 and 537 within the Township.

6. The Township defended that action contending that it was not a developing municipality.

7. Among the factors relied upon by the Township was the strong agricultural base in Colts Neck. In that regard, approximately 9,000 acres of the Township are devoted to agricultural pursuits. Colts Neck has a land area of 31.6 square miles, which is somewhat over 20,000 acres.

8. At the first trial, the Monmouth County agricultural agent, Donald Mohr testified as did John Van Zandt, an employee of the State Department of Agriculture. Both witnesses confirmed that agriculture was important to the State of New Jersey, and that the location of high density housing in close proximity to farms would have a detrimental impact, which would ultimately lead to the fall of the farm to development.

9. The federal, state, county and local government owned large holdings of land in Colts Neck. When the governmental holdings are added to the farm lands, the total represents over 85% of the Township's land mass.

10. By way of contrast, less than 1% of the Township's land area is devoted to commercial or industrial purposes.

11. In this same vein, it is important to note that only 14% of the Township's land mass is devoted to residences.

12. The land areas devoted to farming pursuits has remained fairly constant over a period of ten years.

13. In the first trial, the Township referred to the Monmouth County Guide for Development, which recommended development of Colts Neck at low densities. Similarly, the reports of the Tri-State Regional Planning Commission recommended densities of less than .5 dwelling units per acre throughout the Township.

14. Based upon these factors, the Township contended that it was not a developing municipality.

15. In addition, the Township contended that development of the Orgo site and other sites within the Township would have a detrimental impact upon the integrity of the Swimming River Reservoir. In that regard, General William Whipple, Jr., a professor at Cook College, a division of Rutgers, testified. A copy of General Whipple's report is attached hereto.

16. Notwithstanding this evidence, the late Merritt Lane, Jr., then Judge of the Superior Court Law Division found that Colts Neck was a developing municipality. He opined, however, that had zoning been regulated on a county-wide basis,

his finding might well have been different. In this regard, it is apparent that Judge Lane placed special significance on the testimony of Robert D. Halsey, then Director of the Monmouth County Planning Board who testified that Colts Neck was not a developing municipality and that the project proposed by the Plaintiff was out of character with the area.

17. With reference to the character of the area, it is important to note that in the southeast quadrant of the Township, wherein the proposed project is located, there is one house for every fifty acres. As one travels eastward on Route 537 from the Orgo project, there is farm after farm for over 3.7 miles until one reaches the boundry line of Colts Neck and Tinton Falls.

18. Our appeal of Judge Lane's decision to the Superior Court was denied. Subsequently, a petition for certification was filed with the Supreme Court with the request that Judge Lane's ruling requiring the Township to rezone be stayed pending higher court review.

19. A considerable time period elapsed until the Supreme Court handed down its findings in "Mt. Laurel II".

20. In that case, a bright line test guiding the determination of whether or not a builder's remedy should be awarded appeared to be the location of the SDGP growth line.

21. In that connection, it is important to note that over 98% of the Township is designated as limited growth. Only a small sliver in the southwest corner is designated as growth. No part of Colts Neck is served by either public water or public sewer.

22. The Supreme Court remanded the case above cited to the Law Division.

23. After the remand of the case to the Law Division, the Township filed a motion contending that a builder's remedy should be denied as a matter of law since the Plaintiff's project was situated in a limited growth area. The court denied this motion.

24. Subsequently, the Township moved for a reconfiguration of the growth line, relying upon the Monmouth County Growth Management Guide, which placed the growth line a mile and one-half west of Colts Neck. The County's designation was site-specific and had reference to a ridgeline which guided

the drainage pattern, i.e. lands west of the ridgeline drained away from the Swimming River Reservoir, while lands east of the ridgeline drained toward the Reservoir.

25. At this time, a subsequent Plaintiff joined the litigation, i.e., Sea Gull Builders Ltd., Inc. The property of that Plaintiff is situated squarely within the growth area.

26. After an extended trial in the Spring of 1984, the Honorable Eugene Serpentelli ruled against the Township contending that placement of the growthline in the State Development Guide Plan was not arbitrary, capricious or unreasonable.

27. Subsequently, a Master was appointed to first calculate the fair share obligation of the Township and to examine the sites of the two Plaintiffs to gauge their suitability.

28. Initially, the Plaintiff Orgo Farms and Greenhouses, Inc. had submitted a report by its Planner, Carl Hintz, which assessed a fair share obligation through the year 2000 of 1,900 dwelling units for low and moderate income people.

29. The Township's Planner calculated the fair share obligation to be approximately 136 dwelling units. There now are approximately 2,500 dwelling units in Colts Neck.

30. After application of the formula developed in the Warren Township Case, the Township's fair share obligation was fixed at 200. Such number was stipulated.

31. The trial resumed in the month of March of 1985.

32. In the interim period, in September of 1985, the Township, recognizing the peril of its position rezoned. A high density development was planned for the southwest corner of the Township within the growth area. At the same time, the Township upzoned the land and large portions of Colts Neck. The new zoning provides for one dwelling for every five acres, and allows transfer of development credits from the designated agricultural districts to an agricultural receiving district, which is situated in close proximity to the A-4 high density zone.

33. As expected, a great number of Colts Neck farmers instituted suit against the Township regarding the validity of the new zoning ordinance.

34. The action on the part of the Township of Colts Neck has involved great time and expense on the part of myself as Township Attorney, William Queale, the Township Planner, Glen

Gerken, the Township Engineer, as well as other independent planners and engineers who are retained specifically for the litigation.

35. At this time, the estimate of monies spent by the Township in defending its zoning ordinance is $239,000.00.

36. I understand that Thomas Evans, Esquire of the firm of Mudge, Rose, Guthrie, Alexander & Ferdon is an attorney of great experience. I would request that the Court admit Mr. Evans to serve as the attorney for the Township of Colts Neck involved in the litigation pro hac vice.

ROBERT W. O'HAGAN, attorney for the Township of Colts Neck

Sworn to and Subscribed
Before me this 25th day
of March, 1985

Notary Public,
State of New Jersey

VIRGINIA CAVALCANTE
A NOTARY PUBLIC of New Jersey
My Commission Expires July 15, 1986

May 14, 1979

Attachment to Affidavit of Robert W. O'Hagan: Report of William Whipple, Jr., Dated May 14, 1985

NONPOINT SOURCE POLLUTION FROM PROPOSED COLTS NECK VILLAGE PUD COMPLEX

William Whipple, Jr.

General

This report will deal with the environmental consequences of the proposed development by the plaintiffs, particularly the increase in runoff pollution and the effect of this pollution upon streams. The plaintiffs propose to change the zoning ordinance of the township of Colt's Neck to allow construction of various types of residential development, including multiple family dwellings, and associated commercial development. The residential portion of the development is referred to as the site; but other development is contemplated; and would presumably follow on other lands even if not built by the plaintiffs. We must consider that if a zoning ordinance is ruled invalid for one piece of property it may be invalid for other pieces of property, so that in addition to the consequences of the particular development in question there must be considered the consequences of a more widespread development along the same lines. Obviously, the additional runoff pollution to be contributed by development in this relatively undeveloped area will be proportionate to the amount and character of the development. However, in this report, only the effects of building the PUD complex will be estimated.

In years past, the pollution resulting from stormwater runoff and other miscellaneous sources of pollution associated with land development was overlooked, all official attention being given to sewage and industrial wastewaters. Within the last decade, the so-called nonpoint sources of pollution have come to be very seriously considered, especially in rapidly urbanizing areas such as New Jersey. I have personally been involved in research and study of this question for about 12 years, and have published a book, edited two books, and written many reports and papers dealing with the subject. As a result of research by myself and others, it is now possible to forecast reasonably well the runoff pollution to be expected, respectively,

from undeveloped land, from low density housing and from medium density housing, for such pollutants as BOD, nutrients, heavy metals, and ammonia. With somewhat less accuracy the petroleum hydrocarbons and coliform bacteria from various types of development, and the runoff pollution from high density housing can be evaluated. Forecasts of runoff pollution from commercial and industrial facilities and from multiple family housing can also be made, but with less certainty.

The pollution loading from a given storm varies with the amount of rainfall in that storm, the season of the year, the rate or intensity of rainfall, and the days since previous rainfall. After appropriate calculations are made, results may be expressed as average daily loading of pollutant, over a year of mean rainfall. Estimates of short term variations are required for some purposes, but for lake eutrophication and stream degradation the long term effects are usually the more significant.

Effects of Nonpoint Source Pollution

The runoff pollution from undeveloped land varies somewhat with the soil character and the climate; but in this region such pollution values fall within a range which is generally smaller than the man made runoff pollution from developed areas. The man-made runoff pollution in residential areas originates from many sources including automobiles, pets, garbage handling, garden and lawn fertilizer, pesticides, and corrosion of exposed metals. Larger households generate more pollution, and obviously, the pollution loading varies proportionately to the number of households. In single family housing, pollution of this type is generally much reduced by draining across lawns or other vegetated areas, as compared to other situations, such as typical garden apartments, where polluted surface drainage flows across impervious surfaces directly into storm sewers. It is for this reason that multiple family housing may be expected to produce more runoff pollution than an equal number of single family households which are otherwise similar.

The effect on streams of the various pollutants in urban runoff is impracticable to determine precisely, especially where relatively small areas of the watershed are

to be developed. Insufficient research has been done to determine such relationships. However, it is clear that where the watershed is largely developed with housing and associated commercial development, streams are generally very polluted, with desirable species of biota absent, with anaerobic mud banks, and with generally unsanitary and unhealthful conditions. The concentrations of pollutants in urban runoff are often in excess of water quality standards set for New Jersey streams. For example, the mean lead concentration in runoff from the Twin Rivers housing complex near Hightstown, N. J., was found to be .2 mg/l, which is four times the stream flow standard for lead allowed by the state of New Jersey. It seems probable that either lead concentrations or petroleum hydrocarbons may be responsible for the commonly observed absence of desirable species of fish and insect larvae in urban and urbanizing area stream. There is a possibility that in some cases, a pollutant other than heavy metals or hydrocarbons may be the responsible agent; but there is no doubt at all that some of the pollutants from urban runoff are responsible. It may be stated that streams in developed areas are generally and characteristically polluted, and the higher the development, the worse the pollution.

Extent of Development

Information available as to the proposed development is not complete; but it appears from the report of plaintiff's consultants, (Killam Assoc.) that a site development of 214 acres is contemplated with provision for 1363 residential units, plus some other facilities, including an office building and a nursery school. The breakdown of residential units provided in options 1 and 2 only corresponds to this total if account is taken of senior citizens and nursing home residents. From the plan, it is apparent that single family housing will be provided on only a small part of the acreage. For purposes of estimating runoff pollution from the site after development, the following breakdown is assumed:

Type Development	Acreage	Dwelling Units
Single family housing	24.5	80
Multiple family housing or apartments	128.3	1283
	152.8 acres	1363
Open space and miscellaneous development	61.2	
	214.0	1363

The open space and miscellaneous development will be assumed to be well landscaped and well managed, so as to produce only the low pollution runoff which ordinarily characterizes two acre zoned housing. Therefore, in comparing alternative futures with development as now proposed and with development under currently authorized zoning, no account need be taken of this 61.2 acres. Any differences on this account will presumably be relatively small.

The differences which are material relate to the proposed 24.5 acres in single family housing and 128.3 acres of (equivalent) multiple family housing. The proposed condominium apartments are included as multiple family housing.

It is noted that reference is made to 61 acres of "off site" commercial facilities which is contemplated for development. The proposed construction of 1363 housing units, would of course bring in a population of perhaps 5000, which would inevitably result in an increased commercial demand.

It is assumed that the developers are holding this property with the intention of meeting this demand, as soon as the zoning contraints can be removed.

Estimation of Nonpoint Source Pollution

Runoff pollution, usually referred to as nonpoint source pollution, means the total pollution entering streams from adjacent watersheds, except discharges from large municipal, commercial and industrial "point sources". In a properly controlled watershed, the only point sources are the effluent discharges from waste treatment plants. Nonpoint source pollution may include not only that carried by the flow of rainfall over land, but also flow contained in storm sewers, and various minor discharges, seeps, leakages, sanitary sewer overflows and illegal connections that

develop in an occupied area. Such discharges are especially likely to originate from minor commercial facilities, such as garages and laundries. As regards sanitary and public health conditions, it is clear that urban runoff characteristically has high coliform counts, indicating high bacterial content. Much of the bacteria comes from the streets and gutters themselves. It is also true, unfortunately, that sewers both leak and overflow. Combined sewers of course are notorious, and obviously will not be used here. However, all conventional sewers leak. They leak contaminated material outward during dry weather; and in wet weather they leak groundwater inward. This inward leakage, and sometimes illegal connections, result in conditions of sewer overflow, usually from overflow pipes, or bypasses, which are unobtrusively installed by the sanitary engineers. If no bypasses are installed, the sewers lift off the manhole covers by hydrostatic pressure and gush forth their contents. Also, during storms, sewer plants are generally overloaded, and unless storage ponds are provided they may bypass part of their load. These matters are not usually discussed by responsible public officials; as they detract from the public image of the community; but they happen nonetheless.

The evaluation of nonpoint source pollution cannot depend for data upon the regular monitoring programs of the state and the U.S. Geological Survey, because they only provide measurements at stations on fairly large streams. Except on large rivers, such water quality data are taken only at considerable intervals. Such monitoring is sufficient to show the general condition of the major streams; but it fails to define runoff pollution at source, for three reasons, as follows:

(1) Runoff pollution fluctuates greatly with flow, and must be measured at frequent intervals during a storm.

(2) The land use for areas of several square miles is almost always mixed, so that a given amount of pollution cannot be attributed to a single land use.

(3) The runoff pollution entering a stream from source areas does not correspond to that which is observed passing out below. As regards total suspended sediment, the quantities measured as flowing from small drainage areas, averaging

6 acres in size, are reduced by more than two thirds by the time they pass a gaging station draining 100 square miles. As regards biodegradable or other non-conservative substances, the pollutant may be reduced to an even greater extent. Therefore the pollution observed at gaging stations gives only a rough indication of the much greater amounts entering the watershed above.

Research institutes and government contractors have worked over the past decade to measure nonpoint source pollution more accurately. Some additional information has been obtained from planning conducted with EPA funds under Section 208 of PL 95-12 (formerly 92-500), the Federal Water Pollution Control Act, although these results have been generally disappointing. With information from these sources, it is now becoming possible to make approximate estimates of pollution of various kinds which may be expected to originate from various types of land use. The concentration and loading of pollutants in runoff fluctuates widely during every storm, and from storm to storm depending upon its characteristics. However, for most pollutants the total cumulative amount is more important than temporary high concentrations. Therefore, pollutant loadings are most conveniently expressed in pounds per square mile per day, meaning that, considered over an average year, this quantity of the given pollutant would be expected, on the average.

For unimproved land, the amount of such pollution varies considerably with slope, ground cover and the geology of the area. For developed and properly landscaped land, however, pollution varies mainly in accordance with activities of man, which are of overriding importance. Urban and industrial areas generally produce very high pollution loadings. These conditions are not directly applicable here, since it is assumed suburban housing and associated suburban commercial development are mainly involved. Within this category, shopping centers, strip commercial development and multiple family housing produce generally more pollution than does lower density housing; and low density housing produces more pollution than does undeveloped land.

A review has been made of latest research results conducted by the New Jersey Water Resources Research Institute and of similar research in other states; and a comparison has been made with data cited in EPA publications and other available literature. Much of the results are not directly applicable, either because accurate land use was not given, or because the data were determined for an urban environment. However, some directly relevant data are available from work done in Fairfax County, Virginia; and this source has been given considerable weight, along with New Jersey data.

It has been concluded that the following pollution loadings are to be expected from various degrees of development in Northern New Jersey, based upon other comparable experience. These are not exact figures, since particular circumstances may change them, and there is considerable scatter in values found; but they are considered to be best estimates for general planning purposes, on the basis of data currently available.

Estimated Nonpoint Source Pollution Loadings
Northern New Jersey

Average, lbs/mi^2/day

Pollutant	Large lot Single family	Small lot Single family	Multi-family 10 du/acre	Commercial
BOD	8	27	74	200
Total P	0.6	1.9	5	17
Total Lead	.14	.34	1.0	4.0
Hydrocarbons	1.2	11	33	66

The application of these figures can be made directly from land use. For example, if a square mile of 2 acre zoning were to be replaced with 50% quarter acre zoning, 30% multiple family homes, and 10% a commercial strip or shopping center, the BOD produced would average 8 lbs a day in one case and .6(27) + .3(74) + .1(200 = 58.4 lbs a day in the other. The ratio for petroleum hydrocarbons would be even higher, with only 1.2 lbs fro the large lot zoning, as compared to .6(11 + .3(33) + .1(50) = 21.5 lbs on the mixed development, or almost 18 times as much as the petroleum pollution from the large lot zoning.

The significance of the various pollutants is quite different. BOD is not generally harmful in itself; but its presence may cause oxygen depletion in water some distance downstream. If particulate, it may settle out and produce anaerobic muds in streams, which are harmful to aquatic life and produce objectionable odors. BOD also may result in stratification and anaerobic bottom waters in lakes.

Phosphorus in concentrations usually found in streams is not harmful directly. It is a nutrient, and usually the one which limits plant growth in lakes. Its presence stimulates weed growth in streams and the edtes of lakes, and by its effects upon algae stimulates undesirable processes of eutrophication in lakes.

Lead is a poison to humans and to biological life. The commonly accepted limit of lead in waters to be used for water supply is .05 mg/l, a concentration which is materially exceeded by runoff from commercial developments and multiple family housing. Lead often accumulates in sediments of streams in concentrations far in excess of the concentration in which it is found in water, and through filter-feeding insect larvae, lead in sediments may enter into the food chain.

Petroleum hydrocarbons are complex substances of which literally hundreds of thousands exist in crude oils. In urban runoff, about 85-90% of hydrocarbons occurs adsorbed or combined with particulate matter; and the balance is mostly dissolved in water. Relatively little is known of the toxicity of hydrocarbons; but it has been proved that when adsorbed on clay particles, even 1 mg/l of hydrocarbons is toxic to some filter feeding organisms, when they are exposed for considerable periods of time. Some accompanying constituents, including some of the phenols, are quite toxic. When hydrocarbons are chlorinated, as in processing for drinking water, even more dangerous compounds may be formed. Hydrocarbons occur in relatively large quantities in runoff from developed areas, in concentrations averaging from 1 to 5 or more milligrams per liter; and it is suspected that they may be largely responsible for the widely observed biologic degradation of most streams in densely developed areas, which has seldom been traced to specific known pollutants.

There is some doubt as to whether hydrocarbons really are responsible for such

adverse impacts; but there is no doubt at all that biological degradation is generally characteristic of streams in developed areas; and that in the many cases in which there is no point source pollution, the nonpoint source pollution is responsible. Of course, pesticides, herbicides and other exotic pollutants are also found in runoof from developed areas; and these may play an important role.

Summary of Pollutant Loadings

Applying the runoff coefficients, the following comparison appears between runoff pollution loadings with the 1363 dwelling units proposed and the same land developed fully in two acre zoning.

	POLLUTANT (Average lbs/day)			
	BOD	Total Phosphorus	Lead	Hydrocarbons
Proposed dev.	15.8	1.07	.21	7.0
Same area 2 acre zoning	1.91	.14	.033	.29

If to the 1363 dwelling units are added 61 acres of commercial development, and the total runoff pollution is compared to that of the same land in two acre zoning, the comparison is as follows.

	POLLUTANT (Average lbs/day)			
	BOD	Total Phosphorus	Lead	Hydrocarbons
Proposed devel.	34.9	2.69	.59	13.3
2 acre zoning, same area	2.67	.20	.047	.40

Public Health

The aspect of pollution that is most difficult to quantify is the public health aspect. This is usually measured by total coliform counts, or more recently by fecal coliform counts. There is great variation in the figures experienced in many parts of the country, and from time to time at the same point. However, in general, except for agricultural animal concentrations, the more dense the human occupancy, the greater the coliform counts.

Criteria for fecal coliform counts cited by the Council for Environmental Quality require less than 200* for body contact sports and 2000* in streams to be treated for water supply.

Eight water samples tested from the Saddle River above Lodi, which has partial residential development, averaged 4,230 fecal coliforms; but in Milbank Brook, a much more densely occupied tributary below Lodi, the average of 6 samples was 18,000. Data from other states shows similar tendencies. Fecal coliform counts near Oklahoma City were reported at 2,900 for woodland, 10,000 for rural, and 22,000 for suburban development. Runoff from urban areas has a high degree of bacterial pollution. Although quantitative estimates of bacterial populations cannot be made, there is no doubt that the development proposed by the plaintiff, will produce relatively high numbers of fecal coliforms in the adjacent streams.

Conclusions

A. The consequences of the proposed abandonment of the zoning regulations should include not only the specific development now proposed, but the commercial activity which it will stimulate, and also such further development as might be expected to follow if the zoning ordinances are revised.

B. The amount of runoff pollution can be approximately predicted for different types of land use. Pollutant loading to be added from runoff of the proposed development would be of the nature of nonpoint sources, including loadings of BOD, heavy metals, nutrients, and petroleum hydrocarbons. Calculations indicate that for BOD, phosphorus, and lead the average runoff pollution loading from residential areas will be increased about seven times by the development; as compared to development with now authorized zoning. Hydrocarbon loadings will be over twenty times greater. If commercial areas are added, the ratios become even greater.

C. Even if complete pollutant data were available, it would be impracticable to determine precisely the effect of runoff pollutants on stream biota. However, we can state with certainty that when a watershed is fully developed, with housing

*per 100 milliliters of sample

and associated commercial development, the streams are always somewhat polluted, biologically impacted, and with high bacterial counts. Even without any point sources, this pollution comes from storm runoff, and sanitary sewer overflows, spills, leakages, and illegal discharges. To the extent that development proceeds, a similar result is to be expected here.

D. Storm runoff from developed areas, here as elsewhere, may contain pollutants in concentrations exceeding those specified in state water quality standards.

E. Storage and detention provisions for stormwater management proposed by the plaintiff are too vague for their effect upon stormwater pollution to be other than conjectural.

F. It appears that the proposed development will result in adverse water quality impacts in both Swimming River Reservoir, and Hockhockson Brook.

WW/bg

HOWELL TOWNSHIP

STATE OF NEW JERSEY)
: SS.:
COUNTY OF MONMOUTH)

THOMAS A. THOMAS being duly sworn, deposes and says:

1. I am the President of Townplan Associates, the professional planner for the Township of Howell. I am a licensed professional planner in the State of New Jersey and I have been the professional planner for the Township of Howell for approximately three months. During that short tenure, I have provided the Township of Howell with professional planning expertise in its Mt. Laurel II litigation.

2. The Township of Howell contains approximately 62.1 square miles and a population of 25,065 based upon the 1980 census. The population was housed in 8,315 housing units in 1980. The total number of occupied dwelling units in 1980 was 7,822 of which 6,740 were owner occupied (86.2%), and 1,082 were renter occupied (13.8%). In 1980, the vacancy rate for year round housing units were 1.9% for sales units and 7.4% for rental units.

3. Howell is a middle income community and in 1980 the Township's medium household income was $21,562.00 which was lower than the commutershed region of Mercer, Monmouth, Middlesex and Ocean Counties by approximately $800.00. As a suburban community, the Township of Howell ranked 42nd out of 53 municipalities in Monmouth County in terms of per capita income

with $7,126.00 compared to the County's average of $8,539.00.

4. The State Development Guide Plan (hereinafter "SDGP") promulgated in 1980, designated 40% of Howell in the growth area and 60% in the limited growth area. However, 90% of Howell is contained within the Pinelands physiographic area. As a result, extensive areas within Howell contain envirnomentally sensitive lands composed primarily of flood plains and areas with shallow depths to water table. See, paragraph 13, infra. It has been determined that 20% of the land located within the designated SDGP "growth area" is undevelopable due to flood plain and/or shallow depths to water table conditions. Unlike other municipalities within Monmouth County, Howell Township's environmentally areas are not clustered in large continguous acres. Rather, Howell's sensitive lands are located like ribbons which have been strung throughout the growth area. Ironically, the areas in the SDGP that have been designated as limited growth are the lands Howell has considered the most suited for development while the designated growth areas contain extensive ribbons of environmentally sensitive land.

5. In 1980, Howell ranked second in Monmouth County in providing mobile home units with a total of 383 units. In addition to these units which now total 462 mobile homes, Howell has 567 units designated as a target neighborhood for receipt of U.S. Housing and Urban Development Community Development Block Grant funds for rehabilitation.

6. Howell is presently the Defendant in several Mt. Laurel suits chief among which is Fort Plains Building & Development

Co. vs. Howell Township. The Fort Plains case is presently under a Consent Order for Settlement and Immunity as of December 12, 1984. Since the entering of the Consent Order, additional suits have been filed regarding other parcels in Howell by Hovbilt, Inc. and Sepenuk and Greenfield. Although the Complaints fail to make specific demands as to the densities of the projects requested as builder's remedies, present demands in other cases lead us to believe that should the three litigants be successful they would seek to construct more than 1300 units. At least 20% of the 1300 units would be low and moderate. The actions brought by these additional plaintiffs are presently stayed pending the outcome of a determination by the Honorable Eugene D. Serpentelli with regard to a submission of proposed settlement filed on or about March 15, 1985. In addition to the various plaintiffs in the litigation, other developers have written to the Township of Howell demanding rezoning for densities which would result in at least 2,310 units of housing being constructed in Howell of which 20% are to low and moderate income units.

7. In preparing its proposed settlement submission, Howell has calculated its fair share obligations under the so called "AMG Formula". The total municipal fair share for Howell is 1788 units of low and moderate income housing without credits. Based on the 20% set aside requirements, the total number of units to be constructed to satisfy this fair share need would be 8940.

8. The development of such high density growth in order to facilitate the building of low and moderate income housing requires sewer and water utility service. Presently Howell Township has several areas that are connected to public sewer and serviced by different water franchise companies. Municipally owned sanitary sewer lines are located south of Route 195 and according to the Municipal Utilities Authority extension of sewer lines are contemplated for the future. In addition, the Township has two privately owned sewer systems, the Adelphia Sewer System and the Maxium Sewer System. The Adelphia Sewer System service areas that extend into the northern part of the Township along Highway 9 and Casino Drive. The Maxium Sewer System is located adjacent to Highway 9, south of Route 195. Ultimately, all public and private collection systems will discharge into the Manasquan River Regional Sewer Authority which has significant capacity for future housing units. However, there is an absence of sewer lines for servicing the growth area in Howell. In fact, sewer service is more readily available in portions of the limited growth area wherein the Howell Township Municipal Utility Authority has constructed sewer lines in anticipation of locally zoned areas of intended development.

9. In addition, the availability of water in the growth area has come into significant question in recent years. Most of the present housing stock in the growth area utilizes wells for water service. An increase in development in the growth area will render some of the existing wells useless. Although

increase development will raise a demand for delivery of water by public water systems, the ability to deliver such water is seriously questioned at this time in Monmouth County. In the area of Monmouth County where Howell is located, the private and public water systems rely upon local aquifers in order to supply water service. Recently the Department of Environmental Protection has cut back and limited the ability of water companies, both public and private to divert waters from the aquifer for water systems. Since Monmouth County has no reservoir system, it is difficult at this time to determine whether or not sufficient water supply exists for intensive development not only in the growth area of Howell Township, but in other surrounding municipalities of Monmouth County. While a reservoir is presently proposed in Howell, the completion of that project and the ability to deliver water from the reservoir is several years away.

10. An increase in the number of units in the Township of Howell on the magnitude suggested by the various plaintiff developers and the Mt. Laurel II formula would put significant pressure on the infrastructure and services within the Township of Howell. Since the designated growth area runs along the Route 9 corridor in the Township of Howell it is anticipated that any Mt. Laurel development would also occur along the Route 9 corridor. However, the Route 9 corridor has significant problems handling the present volume of traffic. Since 50% of the Township's population live within one mile of the Route 9 corridor and its intersection of Aldrich Road, any further development would exacerbate an already serious traffic

problem. In fact, the present expansion of Route 9 from a two-lane to a four-lane highway will be significantly outdated by the time it is completed.

11. In addition to the impact on traffic in Howell, the Township will also have to build two or three new schools in order to accomodate projected increases in students from full Mt. Laurel development.

12. Howell's need for extensive funds for future expansion of infrastructures and schools is compounded by the so called "soft costs" in professional services that have been incurred in connection with Mt. Laurel litigation and planning. Those expenditures according to the Business Administrator total approximately $20,000.00 and may exceed this figure significantly in the future. Those expenditures would not have been otherwise incurred by Howell or would have been spent on other necessary projects if it had not been necessary to defend the various builder's remedy suits brought under Mount Laurel.

13. As set forth above, Howell's environmentally sensitive lands have been determined primarily by delination of flood prone areas and areas with a seasonal high water table of 18" or less based upon the Howell Township natural resoures inventory of 1976 and the Freehold Soil Conversation District Soil Maps and Classification Sheets from 1984. The seasonal high water table areas include sensitive environmental soils common to the Pinelands physiographic region, including Atsion and Berryland, Muck and Alluvial soils. Ninety percent of Howell is included in the Pinelands physiographic region which contain extensive amounts of these soils. More significantly, a substantial proportion of these sensitive areas are in the designated growth area.

The Pinelands Commission, CAFRA and the U.S. Soil Conversation Service, as well as the New Jersey Department of Environmental Protection, have identified these and other soils to be environmentally sensitive soils. These soils are contained in the Statewide special soils catagories by the Soil Conservation Service and are specifically contained in the Pinelands Commission Management Plan and Development regulatory process. The Pinelands Commission and CAFRA categorize these soils as "wetlands". Wetlands are defined by CAFRA to include wetland soils. Development of any kind is prohibited in such wetland areas, unless a proposed development requires water access and is water oriented or water dependent, has no prudent or feasible alternative on non wetland sites, and will result in minimal feasible alteration or impairment of natural contour or natural vegatation of the wetlands. The Pinelands Commission defines wetlands soils in the Comprehensive Management Plan which was adopted by the Commission to regulate development within its jurisdiction and prohibits all development in such wetlands, unless otherwise specifically authorized by the Commission. Since high density development of such land results in significant adverse impact which cannot meet the standards set forth by CAFRA and the Pinelands Commission, it is normally excluded in favor of uses that include agriculture, horticulture, forestry, fish and wild life management, water dependant recreation uses and public improvements such as bridges, roads and utilities. Since 1980,

the New Jersey Department of Environmental Protection, Division of Water Resources, has required delination of environmentally sensitive areas on municipal maps in order to evaluate the proposed sewer line extensions and service areas. Environmentally sensitive lands have also been specified as lands having steep slopes, fresh water wetlands, 100 year flood plains and habitats containing endangered or threaten plant and wildlife species.

14. Thus any development of the nature required by Mount Laurel II would seriously impact the environment of Howell. With the advent of 208 Water Quality planning programs of 1975 and 1976 within the State, detailed analyses of ground water pollution has been untaken by the Pinelands Commission, DEP and EPA. As a result specific guidelines and standards were incorporated into development reviews for major developments including the extension of sanitary sewer lines and service areas. These guidelines prohibited the funding of facilities which are in or will service environmentally sensitive areas and areas which have a density of less than four units per acre. Moreover, municipal utility authorities, regional authorities or municipalities must enter into agreements with the DEP and EPA to agree that sewer lines and sewer extensions will include designated and environmentally sensitive areas. These stringent standards postdate the State Development Guide Plan and have not been accounted for in Mount Laurel II despite the significant impact on Howell.

15. The soil data utilized to delinate environmentally sensitive areas in the southern and western portions of Howell Township was based upon field survey sheets which became available in 1984 for Monmouth County. Detailed soil mapping was completed for the first time in 1984. As a result of the mapping, in my opinion, the soils as mapped are not suitable for any type of residential development when utilizing the Pinelands regulations and standards.

16. Based upon calculations by Townplan Associates, Howell Township has over 3800 acres of environmentally sensitive lands in the State Development Guide Plan Growth Area alone. The areas are dispersed throughout the growth area of the Township but include certain large contiguous environmentally sensitive lands south of Aldrich Road and East of Route 9 which are adjacent to and extend into the limited growth area to the east. This area consists of 1363 contiguous areas which are in the Metedeconk River Watershed and consist of Alluvial, Atsion and other soils which have a depth to seasonal high water table of 0 to 18 inches. Accordingly, development based upon the standards of Mt. Laurel II in the growth area will significantly impact and result in development otherwise prohibited Pinelands Commission's regulations and environmental planning.

17. Howell also has an area along its border with Freehold Township, which although designated as growth area by the SDGP, is comparable to and consistent with characteristics of the limited growth area in the Township of Freehold and the

definitions contained in the SDGP. This area can only sustain limited growth because of physiographic and environmental constraints. Its inclusion in the growth area is not only unreasonable, but would impact upon Township of Freehold's designation of adjacent areas as one to be preserved by large tract zoning.

18. The Township of Freehold has zoned an area within its area and outside the environmentally sensitive area along its border with Howell for development of Mt. Laurel housing. As a result, a portion of that property is adjacent to a parcel within Howell Township that has been requested to be rezoned for Mt. Laurel development. Thus, Howell is not only affected by its potential need for Mt. Laurel housing, but also the impact of the needs of surrounding municipalities.

19. As a result of Mt. Laurel, Howell, a working and middle class municipality, which has made significant efforts to provide housing for the spectrum of development by rehabilitating certain target areas providing for senior citizen housing as well as zoning for mobile homes which are subject to rent control, the Township of Howell under Mt. Laurel II and the AMG formulas utilized thereunder must absorb approximately 8940 units despite its already strained infrastructure and budget.

20. The Township of Howell has specifically retained Thomas W. Evans, Esq., a member of the New York law firm of Mudge,

Rose, Guthrie, Alexander & Ferdon to represent Howell herein because of his expertise in this matter and therefore respectfully request this Court to grant petitioner's motion to admit Mr. Evans to this court pro hac vice.

Thomas A. Thomas

THOMAS A. THOMAS

Sworn and Subscribed to
before me this 26th day
of March, 1985.

Robert F Munoz

Attorney at Law of the State of New Jersey

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AFFIDAVIT

STATE OF NEW JERSEY:
SS.:
COUNTY OF MERCER:

ALBERT PORRONI, of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am an attorney at law in the State of New Jersey, and I am Legislative Counsel and Director of the Division of Legal Services, as well as the Executive Director, of the Office of Legislative Services.

2. The Office of Legislative Services, among its other functions, provides nonpartisan staff services to the Legislature and is responsible for providing information regarding the organization and activities of the New Jersey Legislature and its several committees.

3. The following documents are appended hereto and made a part hereof:

a: A legislative history listing bills introduced in the New Jersey Senate during 1982-1983, concerning low and moderate income housing obligations. (Exhibit A)

b: A legislative history listing bills introduced in the New Jersey General Assembly during 1982-1983, concerning low and moderate income housing obligations. (Exhibit B)

c: A legislative history listing bills introduced in the New Jersey Senate during 1984-1985, concerning low and moderate income housing obligations. (Exhibit C)

d: A legislative history listing bills introduced in the New Jersey General Assembly during 1984-1985, concerning low and moderate income housing obligations. (Exhibit D)

4. This affidavit is made in support of the fact that I have reviewed the appended documents and confirm, to the best of my knowledge, information and belief, that these documents accurately reflect the bills concerning low and moderate income housing obligations, which were introduced in the New Jersey Legislature during 1982, 1983, 1984 and 1985.

Albert Porroni
ALBERT PORRONI

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Sworn to and subscribed before
me this 27th day of
December, 1985.

E. Joan Oliver
E. Joan Oliver
Attorney at Law
State of New Jersey

LEGISLATIVE HISTORY

1982-1983 SENATE BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Senate Bill 389

Provides for financial assistance to low to moderate income tenants toward the down payment for the purchase of a single family residence, a condominium or a cooperative; appropriates $50,000,000.

Introduced - January 12, 1982
Referred - Senate County & Municipal Government Committee

*Senate Bill 593

Provides for the determination of the housing needs of counties and municipalities, and the setting of housing allocations and designation of appropriate site locations therefor; appropriates $750,000.

Introduced - February 1, 1982
Referred - Senate County & Municipal Government Committee

*Senate Bill 3388

Permits municipalities to create fair housing offices to combat certain unfair discriminatory housing practices.

Introduced - June 16, 1983
Referred - Senate County & Municipal Government Committee

*Senate Bill 3528

Designated "The Affordable Housing Act of 1983," provides for the regulation, taxation and licensing of manufactured homes, mobile homes and mobile home parks.

Introduced - June 30, 1983
Referred - Senate County & Municipal Government Committee

*Senate Bill 3531

Designated "The Affordable Housing Act of 1983," concerning municipal development regulations regarding manufactured homes.

Introduced - June 30, 1983
Referred - Senate Labor, Industry & Professions Committee

LEGISLATIVE HISTORY

1982-1983 SENATE BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*SCR-13

Proposes an amendment to the Constitution to provide that zoning, planning and land use ordinances shall be uniform in application (non-discriminatory) and that financial barriers shall not be unconstitutional.

Introduced	-	January 12, 1982
Referred	-	Senate County & Municipal Government Committee

*SCR-3021

Proposes an amendment to the Constitution prohibiting restrictions on municipal zoning ordinances regarding housing for persons of diverse financial means.

Introduced	-	May 23, 1983
Referred	-	Senate State Government Committee

*SCR-3052

Requests the State Supreme Court to permit legal actions involving challenges to municipal land use regulations in those counties in which the municipality is located.

Introduced	-	October 3, 1983
Referred	-	Senate Judiciary Committee

Exhibit B

LEGISLATIVE HISTORY

1982-1983 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 1243

Provides for the determination of the housing needs of counties and municipalities, and the setting of housing allocations and designation of appropriate site locations therefor; appropriates $750,000.

Introduced	-	May 13, 1982
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 1308

Provides for the Housing Finance Agency to initiate a $50,000,000 program for the conversion of disused non-residential structures into multiple housing accommodations for persons of low and moderate income.

Introduced	-	May 13, 1982
Referred	-	Assembly Housing & Urban Policy Committee
Reported	-	January 31, 1983 with amendments
Passed Assembly	-	March 3, 1983
Received in Senate	-	March 7, 1983
Referred	-	Senate County & Municipal Government Committee
Reported	-	June 16, 1983 with amendments
2nd Reading	-	June 16, 1983
Passed Senate	-	July 11, 1983
Received in Assembly	-	July 11, 1983
Passed Assembly	-	July 11, 1983
Governor's Conditional Veto		
Received in Assembly	-	September 6, 1983
2nd Reading	-	December 8, 1983
Passed Assembly	-	December 12, 1983
Received in Senate	-	December 12, 1983
Passed Senate	-	January 9, 1984
Approved	-	Janaury 12, 1984 (P.L. 1984, c. 477)

LEGISLATIVE HISTORY

1982-1983 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 1312

Permits municipalities to lease certain municipally owned structures to nonprofit housing corporations for the purpose of rehabilitating or converting to housing for persons of low and moderate income.

Introduced	-	May 13, 1982
Referred	-	Assembly Housing & Urban Policy Committee
Reported	-	January 31, 1983 with amendments
Passed Assembly	-	February 14, 1983
Received in Senate	-	February 24, 1983
Referred	-	Senate County & Municipal Government Committee
Reported	-	March 7, 1983
Passed Senate	-	March 30, 1983
Governor's Conditional Veto		
Received in Assembly	-	May 26, 1983
2nd Reading	-	June 13, 1983
Passed Assembly	-	June 20, 1983
Received in Senate	-	June 20, 1983
Passed Senate	-	August 29, 1983
Approved	-	September 9, 1983 (P.L. 1983, c. 335)

LEGISLATIVE HISTORY

1982-1983 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 3355

Designated "The Affordable Housing Act of 1983", provides for the regulation and licensing of mobile home parks.

Introduced	-	April 25, 1983
Referred	-	No Reference
2nd Reading Assembly Amendments	-	June 20, 1983
Passed Assembly	-	June 23, 1983
Received in Senate	-	June 23, 1983
Referred	-	Senate Revenue, Finance & Appropriations Committee
Reported	-	June 30, 1983
Passed Senate	-	September 15, 1983
Governor's Conditional Veto		
Received in Assembly	-	November 21, 1983
2nd Reading	-	November 21, 1983
Passed in Assembly	-	December 8, 1983
Received in Senate	-	December 8, 1983
Passed Senate	-	December 15, 1983
Approved	-	December 22, 1983 (P.L. 1983, c. 399)

LEGISLATIVE HISTORY

1982-1983 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 3517

Permits municipalities to create fair housing offices to combat certain unfair discriminatory housing practices

Introduced	-	June 13, 1983
Referred	-	Assembly Housing & Urban Policy Committee
Reported	-	June 30, 1983 with amendments

*Assembly Bill 3601

Designated "The Affordable Housing Act of 1983," concerning municipal development regulations regarding manufactured homes.

Introduced	-	June 13, 1983
Referred	-	No Reference
Passed Assembly	-	June 27, 1983
Received in Senate	-	June 27, 1983
Referred	-	Senate Labor, Industry & Professions Committee
Reported	-	June 30, 1983 with amendments
Passed Senate	-	September 15, 1983
Received in Assembly	-	September 15, 1983
Passed Assembly	-	September 22, 1983
Approved	-	November 16, 1983 (P.L. 1983, c. 386)

Exhibit C

LEGISLATIVE HISTORY

1984-1985 SENATE BILLS INTRODUCED RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Senate Bill 582

"Comprehensive and Balanced Housing Plan Act," provides a planning mechanism to meet housing needs in the State.

Introduced	-	January 10, 1984
Referred	-	Senate County & Municipal Government Committee

*Senate Bill 2046

Establishes the "Fair Housing Act."

Introduced	-	June 28, 1984
Referred	-	Senate State Government
Reported	-	November 29, 1984 with amendments
Referred	-	Senate Revenue, Finance & Appropriations Committee
Reported	-	January 28, 1985 by Committee Substitute with S-2334
Passed Senate	-	Janaury 31, 1985
Received in Assembly	-	February 4, 1985
2nd Reading	-	February 14, 1985
Referred	-	Assembly Municipal Government Committee
Reported	-	February 28, 1985 with amendments
Passed Assembly	-	March 7, 1985
Received in Senate	-	March 7, 1985
Passed Senate	-	March 7, 1985

*Senate Bill 2276

Supplemental Appropriation of $100,000.00 to the DCA to be used as State aid to the Mayors' Task Force on Mount Laurel II.

Introduced	-	October 18, 1984
Referred	-	Senate County & Municipal Government Committee

LEGISLATIVE HISTORY

1984-1985 SENATE BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Senate Bill 2286

Authorizes any municipality to acquire the necessary real property for low and moderate income housing and to sell that property to low and moderate income individuals.

Introduced	-	October 18, 1984
Referred	-	Senate County & Municipal Government Committee
Reported	-	December 6, 1984

*Senate Bill 2334

The "Regional Fair Housing Act" to establish an elective plan to achieve the provision of low and moderate income housing.

Introduced	-	October 22, 1984
Referred	-	Senate County & Municipal Government Committee
Transferred	-	Senate Revenue, Finance & Appropriations Committee
	-	January 1, 1985
Combined with S-2046	-	January 28, 1985

*Senate Bill 2613

Increases the fees under the realty transfer tax.

Introduced	-	Janaury 24, 1985
Referred	-	Senate Revenue, Finance & Appropriations Committee
Reported	-	February 14, 1985
Substituted By A-3117	-	March 7, 1985

*Senate Bill 2726

Establishes a procedure for review of zoning ordinances and land use regulations to eliminate barriers to affordable housing.

Introduced	-	February 25, 1985
Referred	-	Senate County & Municipal Government Committee

LEGISLATIVE HISTORY

1984-1985 SENATE BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Senate Bill 2733

Provides for an 18 month suspension of the Mt. Laurel builder's remedy.

Introduced - February 25, 1985
Referred - Senate Judiciary Committee

*Senate Bill 2742

Provides State aid to municipalities to meet low and moderate income housing needs.

Introduced - February 25, 1985
Referred - Senate County & Municipal Government Committee

*SCR-24

Proposes an amendment to the Constitution prohibiting restrictions on municipal zoning ordinances regarding housing for persons of diverse financial means.

Introduced - January 10, 1985
Referred - Senate State Government Committee

*SCR-60

Amends Constitution so as to validate municipal land use regulations that indirectly restrict the use or acquisition of property due to a lack of an individual's financial resource.

Introduced - January 10, 1984
Referred - Senate County & Municipal Government Committee

LEGISLATIVE HISTORY

1984-1985 SENATE BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*SCR-129

Proposes an amendment to the Constitution to limit the power of the courts with regard to zoning ordinances and municipal action regulating housing.

Introduced	-	November 19, 1984
Referred	-	Senate Judiciary Committee

*SCR-135

Proposes an amendment to the Constitution to limit the power of the courts with regard to zoning and municipal action regulating housing.

Introduced	-	February 25, 1985
Referred	-	Senate Judiciary Committee

*SCR-136

Proposes an amendment to the Constitution authorizing the Legislature to create a special fund for the construction and rehabilitation of housing for low and moderate income persons from the State's share of realty transfer fees.

Introduced	-	February 25, 1985
Referred	-	Senate County & Municipal Government Committee

Exhibit D

LEGISLATIVE HISTORY

1984-1985 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 76

Provides for the determinations of the housing needs of counties and municipalities, and the setting of housing allocations and designation of appropriate site locations therefor, appropriates $750,000.

Introduced - January 10, 1984
Referred - Assembly Housing & Urban Policy Committee

*Assembly Bill 938

The "New Jersey Balanced Housing Plan Act," provides for the determination of housing needs of counties and municipalities, appropriates $750,000.

Introduced - January 30, 1984
Referred - Assembly Housing & Urban Policy Committee

*Assembly Bill 2134

"Comprehensive and Balanced Housing Plan Act."

Introduced - June 21, 1984
Referred - Assembly Housing & Urban Policy Committee

*Assembly Bill 2339

Allows municipalities to give tax abatements to owners of low and moderate income property.

Introduced - July 30, 1984
Referred - Assembly Municipal Government Committee

*Assembly Bill 2343

"Housing Needs Assessment Act."

Introduced - July 30, 1984
Referred - Assembly Housing & Urban Policy Committee

LEGISLATIVE HISTORY

1984-1985 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 2360

The "Fair Housing Act," provides a mechanism for providing a realistic opportunity for low and moderate income housing.

Introduced	-	June 28, 1984
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 2684

The "Fair Housing Assistance Authorization Act," authorizes municipalities to subsidize the construction of low and moderate income housing.

Introduced	-	October 11, 1984
Referred	-	Assembly Housing & Urban Policy Committee
Reported	-	October 18, 1984 with amendments
Referred	-	Assembly Revenue, Finance & Appropriations Committee

*Assembly Bill 2685

Authorizes municipalities to acquire real property to provide for low and moderate income housing.

Introduced	-	October 11, 1984
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 2696

The "Fair Housing and Urban Housing Assistance Loan Fund Act," appropriates $36,000,000.

Introduced	-	October 11, 1984
Referred	-	Assembly Housing & Urban Policy Committee
Reported	-	October 18, 1984 with amendments
Referred	-	Assembly Revenue, Finance & Appropriations Committee

LEGISLATIVE HISTORY

1984-1985 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 2722

Limits the amount of low and moderate housing a municipality must allow pursuant to judicial judgment.

Introduced	-	October 18, 1984
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 2728

Establishes criteria which the judiciary must consider in its fair share housing cases.

Introduced	-	October 18, 1984
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 3084

Suspends the implementation of the Mount Laurel II doctrine until the Legislature determines that its implementation may be undertaken by balanced community development.

Introduced	-	January 8, 1985
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 3117

Concerns impositions of realty transfer fees.

Introduced	-	February 14, 1985
Referred	-	No Reference
Passed Assembly	-	March 7, 1985
Received in Senate	-	March 7, 1985
Substituted for S-2613		
Passed Senate	-	March 7, 1985

LEGISLATIVE HISTORY

1984-1985 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*Assembly Bill 3257

Allows a municipality to meet its fair share of low and moderate income housing by rehabilitating or renovating existing housing.

Introduced	-	February 25, 1985
Referred	-	Assembly Housing & Urban Policy Committee

*Assembly Bill 3302

The "Fair Housing Act," provides a legislative response to the Mount Laurel II court decision, appropriates $26,000,000.

Introduced	-	February 28, 1985
Referred	-	Assembly Municipal Government Committee
Reported	-	February 28, 1985 with amendments

*Assembly Bill 3363

Requires DEP to study impact of Mount Laurel II decision on environment, appropriates $75,000.

Introduced	-	March 7, 1985
Referred	-	Assembly Revenue, Finance & Appropriations Committee

*ACR-129

Proposes an amendment to the Constitution to authorize the Legislature to enact laws providing tax abatements on newly constructed low and moderate income housing units.

Introduced	-	July 30, 1984
Referred	-	Assembly Housing & Urban Policy Committee

LEGISLATIVE HISTORY

1984-1985 GENERAL ASSEMBLY BILLS INTRODUCED
RELATING TO LOW AND MODERATE INCOME HOUSING OBLIGATIONS

*ACR-145

Proposes a constitutional amendment to limit court power concerning zoning ordinances.

Introduced	-	October 18, 1984
Referred	-	Assembly Municipal Government Committee

*ACR-168

Proposes amendment to State Constitution to guarantee to municipalities certain rights concerning housing opportunities regarding zoning and planning.

Introduced	-	February 28, 1985
Referred	-	Assembly Housing & Urban Policy Committee

Low-cost housing mandate gains approval, faces veto

By DAN WEISSMAN

The Legislature's Democratic majority, defying a threatened veto by Gov. Thomas Kean, yesterday approved a low- and moderate-income housing bill that would pave the way for development of low-cost, state-subsidized housing in the suburbs.

The Assembly passed the bill following an emotional three-hour debate during which opponents charged the legislation would turn New Jersey into a "huge housing project" while proponents accused those objecting to the measure of "racism."

When it was all over, the Assembly voted 42-34 to approve the bill (S-2046).

The bill was immediately sent to the Senate, which had approved an earlier version of the legislation. In that house, the Democrats supported the revisions made in the Assembly by a 22-16 vote and sent the legislation to Kean after 20 minutes of floor action.

Among other things, the bill calls for creation of a council that would determine the amount of low- and moderate-income housing to be built. Towns would then decide how much housing they need and the council would certify those figures.

The legislation comes in response to the state Supreme Court's Mt. Laurel 2 decision which said municipalities must adopt zoning ordinances that allow for construction of low- and moderate-income housing. Since the Legislature had never taken any action to create a statewide program to comply with the court's mandate, the justices have empowered three judges to hear all challenges brought by developers to municipal zoning ordinances. Those judges have been ordering towns to allow developers to build more homes on smaller lots than the zoning ordinances permit, provided 20 percent of the housing is for low- and moderate-income families.

Assembly Minority Leader Chuck Hardwick (R-Union) labeled the legislative action "a big charade. The Democrats know the Governor is going to veto the bill, and they are going to walk away from the problem knowing it has not been solved."

Hardwick acknowledged that the Democrats had amended the legislation to meet Republican concerns. But he said they did not go far enough. "What we are left with is fine tuning of a car that has no motor," he maintained.

Kean, in an unusual move, notified the Legislature before the bill was posted for a vote that he would not sign it in its existing form. The Governor outlined his objections in a five-page veto message. His chief counsel, W. Cary Edwards, said the objections were "the minimum problems we had with the bill."

Edwards said the Governor had hoped to set the stage for further negotiations on the complex legislation. "I am disappointed we were not able to work out a solution while the bill was going through the process, but I understand the realities of politics," said Edwards.

He said the Governor's office would develop a

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Newark Star-Ledger,
"Low-cost housing mandate
gains approval, faces veto."
March 8, 1985, p.1, col. 1.

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final veto message, which would be sent to the Legislature as soon as it is completed. He said the conditions in the existing message would be expanded upon and additional amendments suggested.

The Legislature recessed yesterday for the budget break, and no schedule was immediately available on when the two houses planned to return.

In a related action, the Assembly and Senate, voting along the same party-line breakdowns, approved and sent to Kean a companion bill (A-3117) that calls for a dedication of the realty transfer tax to fund the housing program. There was no debate in either house on the second bill, sponsored by Assemblyman David Schwartz (D-Middlesex).

"This bill begins to put our money where our mouth is," said Schwartz. "Even if we were going to provide hovels, wigwams or new shopping bags for bag ladies, some money would be required."

In the Assembly, Republicans were thwarted in their attempts to force a committee to release a proposed constitutional amendment that would put limits on future court involvement in housing matters.

The move by Assemblyman Arthur Albohn (R-Morris) lost on a technicality when he petitioned the wrong committee. But the proposed amendment is still a key element in the ongoing debate on the housing crisis and played a critical role in the Assembly floor vote.

Even though Democrats supported the complex legislation on a party line, Assemblymen Stephen Adubato (D-Essex) and Buddy Fortunato (D-Essex) held out their votes until they were assured by Assembly Speaker Alan Karcher (D-Middlesex) that the constitutional amendment would be considered on the floor eventually.

"There is a real or perceived concern about the housing crisis in my district," said Adubato, who added a constitutional limit on future court housing involvement was important to him.

Sen. Gerald Stockman (D-Mercer), one of the co-sponsors of the Senate bill, said, "The administration has held back and now we are about to place the issue on the Governor's desk."

Senate Republicans made a last-minute appeal to stall the showdown. Minority Leader S. Thomas Gagliano (R-Monmouth) said the legislation put before the Senate was better than the original version, and was close to something that could win bipartisan support.

"Unfortunately, we have not been able to compromise today," he said. "We could have stayed here 24 hours and could have had a law by tomorrow." Gagliano said the Republicans are prepared to begin meeting again to reopen the delicate negotiations.

The housing legislation coming off the Assembly floor contained a one-year respite from court imposed housing rulings, with the provision that the attorney general would have to test the constitutionality of the proposal within 30 days of the bill being signed into law.

The bill, also sponsored by Sens. John Lynch (D-Middlesex) and Wynona Lipman (D-Essex), calls for a nine-member Council on Affordable Housing to determine the number of low- and moderate-income housing units that would have to be built.

Under the bill, municipalities would determine their needs and refer them to the council, which would ratify them. The bill would give municipalities faced with a low- and moderate-income housing obligations up to 20 years to fulfill the requirements.

Photo by Frank DiGiacomo

Assemblyman Joseph Bocchini (D-Mercer) gestures as he addresses colleagues on the Mt. Laurel 2 issue during a session in the Assembly

It also allows municipalities within a housing district to work out agreements to transfer up to a third of their obligations to neighboring municipalities.

Assemblyman Wayne Bryant (D-Camden), who sponsored the measure in the Assembly, said its principal purpose was to get the issue of housing out of the courts in the aftermath of the high court decision.

Bryant said the bill offers a housing development formula to supplant the volatile "builder's remedy," under which the three judges assigned to all housing cases have been giving builders the authority to construct four regularly priced housing units to reduce the cost of a single low- and moderate-income unit. The result has been orders that threaten to more than double the population of suburban towns in growing areas of the state.

All sides have targeted the builder's remedy as the primary problem. Sen. Peter P. Garibaldi (R-Middlesex), who is also the mayor of Monroe Township, said he would "go to jail before I subject my town to the courts."

Lynch responded that the legislation was designed to give the municipalities faced with the imposition of builder's remedies "the tools to work with" to avoid such court orders.

But Bryant, in one of the more emotional outbursts, said the real issue was "racism." The black lawmaker said, "There were no poor folks who developed the Constitution. There were rich white folks, your forefathers. It's time you stopped hiding under the Constitution."

The key factor that split the Democrats and Kean was the provision calling for a $25 million state appropriation that would be supplemented by a $47 million commitment of realty transfer tax dollars for housing subsidies. Republicans said the money issue was negotiable.

Kean has been adamant on the money issue, but his veto message, which was distributed before the floor vote, also called for changes to require municipalities to provide only enough housing for their existing poorer residents and what would be needed to meet needs based on economic development.

He also wanted more emphasis on rehabilitating city housing and a moratorium on court housing decisions that did not require any action by the administration to have its constitutionality tested.

Photo by Frank DiGiacomo

Assemblyman Arthur Albohn (R-Morris) joins in the floor debate on Mt. Laurel 2

On top of that, the Republicans pressed for changes in the bill that would tie it to the constitutional amendment and require a one-year residency before a person could qualify for subsidized housing.

"The bill is full of hollow promises," said Albohn. "We will become a huge housing project if the bill prevails." The Morris legislator said the legislation was "absolutely socialistic because builders can dip into the pockets of four of their housing customers to pay for the fifth. It's not socialistic. It's communistic."

Moreover, he said, the procedure outlined in the legislation would lead to the development of housing for poor people from other states.

"I can tell you my grandfather was damn poor when he came to Ellis Island. So was my grandmother," said Assemblyman Joseph Boccini (D-Mercer). "Blue bloods and polo ponies did not come with him."