

CA - North Brunswick

3/7/86

Certification of Jack Malman, citizen seeking
to intervene as citizen/taxpayer to help
protect public interest in implementing
principles of Mt. Laurel

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HOFING AND BUCKLEY

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ATTORNEYS FOR Jack Mailman and
Theodore N. Mellin

Plaintiff

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al.

vs.

Defendant

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

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

Civil No. C 4122-73
(Mount Laurel)

CIVIL ACTION

CERTIFICATION OF JACK MAILMAN

I, JACK MAILMAN, being of full age, hereby certify as follows:

1. I am a plaintiff-intervenor in the above-captioned action and I reside at 1322 Aaron Road in the Township of North Brunswick. I have been a resident and taxpayer of the Township of North Brunswick since 1973.

2. I first became involved in zoning and planning matters in the Township of North Brunswick during the hearings on a revised master plan

in 1983. During this process, Brunswick Manor Associates, one of the plaintiffs to this action, was denied a zoning change on a tract known as the Manor Tract (404 acres) from industrial zoning to high-density residential zoning. I thereafter learned that Brunswick Manor Associates had commenced a Mount Laurel suit seeking the awarding of a builders' remedy granting the requested rezoning of the Manor Tract.

3. I thereafter learned that K. Hovnanian Companies and KAST Inc. joined Brunswick Manor Associates in its Mount Laurel litigation seeking the builders' remedy on more industrial land, in order to obtain high-density housing on previously industrially zoned property.

4. Upon learning of the institution of this litigation, I attempted to obtain copies of the pleadings and ascertain the status thereof so that I might participate therein as a citizen and taxpayer of the Township. At public meetings of the Township Council during 1984 and 1985, I repeatedly requested that the pleadings and other documents filed with the court be released to the public for their review and comment. I was repeatedly rebuffed by the Township Council, speaking through its attorney, on the basis that the matter was in litigation and therefore could not be discussed publicly, under the guise of confidential settlement negotiations. Even attempts to discuss the litigation privately met with the same result.

5. In the summer of 1985, I retained counsel in order to formally request many of the documents relating to this Mount Laurel litigation,

under threat of a law suit if these materials were again denied me.

Specifically, I requested:

- (a) the fair share report of Carla L. Lerman, dated April 2, 1984;
- (b) the expert report of E. Eugene Cross Associates, the Township's professional planner, dated May 23, 1984;
- (c) the report of the Urban League's expert planner, Allan Mallach, dated December , 1983;
- (d) the data used by or submitted to the Township in generating the conclusions contained in the afore-described reports; and the Township's census of "low and moderate income" housing units in the Township of North Brunswick. When I received these items, I found enclosed this Court's Consent Order dated September 13, 1984. This was the first time I became aware of the extent of the Township's efforts to dispose of the present litigation without any participation or input from the public.

6. It is my understanding that the Township Council adopted the provisions of the Consent Order by ordinance sometime in the fall of 1985. I have been unable to obtain a copy of this ordinance from the Township, again being told that the matter was part of confidential "settlement negotiations."

7. Upon reviewing the September 13, 1984 Consent Order, I became aware that many of the conclusions therein seemed to be based upon erroneous factual data, as well as errors in the computation of statistical data relating to the present and future fair share obligations of the Township of North Brunswick.

8. I attempted to raise these concerns at public meetings of the Township Council throughout 1985 and 1986 in order that these issues might be openly addressed. I was again told that the matter was in litigation and that no facet of it could be discussed publicly.

9. In January 1986, I became aware through reports in the media that hearings were being scheduled upon an enabling ordinance, the purported intent of which was to carry out the provisions of the September 13, 1984 Consent Order and to satisfy the Township's Mount Laurel obligations.

We learned that this enabling ordinance was to set up the Affordable Housing Agency.

10. Only in late 1985 did I become aware of the fact that the tracts owned by the developer plaintiffs had already been rezoned for high density residential housing which in fact exceeded the requirements of the September 13, 1984 Consent Order. As far as I have been able to ascertain, none of this rezoning was done at any public meeting, but apparently was enacted under the guise of settling the litigation.

11. During the deliberations of the Township Council prior to enacting the fair housing enabling ordinance of North Brunswick creating an affordable housing agency, the Legislature had enacted the Fair Housing Act (L. 1985 c. 222), and the Supreme Court of New Jersey

had upheld the constitutionality thereof in the opinion known as "Mount Laurel III" (Hills Development Company v. Township of Bernards, Docket No. A-122-85). As a result of these new developments, the Council became deadlocked in its efforts to complete its implementation of the Consent Order and the enabling ordinance creating the Affordable Housing Agency. Two Council members (Sal Paladino and Frank Paul) publicly expressed their preference for transferring the North Brunswick component of this litigation to the Council on Affordable Housing. An ordinance to that effect was made and seconded, but was defeated by the three majority members of the Council who were in favor of completing the settlement agreement as it then stood. The sixth member of the council, Louis Cohen, has disqualified himself from any votes on these issues due to his status as an employee of Michael Kaplan, the principal officer of Brunswick Manor Associates. Accordingly, the Township Council could not act one way or the other since an affirmative vote to implement the affordable housing ordinance required a clear majority of the council, to wit, four affirmative votes. On the other hand, the proposed resolution to transfer the case to the Council on Affordable Housing would require only a majority of the voting members, to wit, three votes.

12. Because the Township Council is no longer able to act, I am seeking to intervene as a citizen and taxpayer in order to help protect the public interest in implementing the principles of Mount Laurel and constructing affordable housing for low and moderate income residents.

I certify that the foregoing 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.

March 7, 1986



JACK MAILMAN