

CA - Cranbury

3/16/84

pretrial order + addendum

- seeking to establish each Twp's fair share and to compel compliance

p 53
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CA002599Q

PRETRIAL ORDER

Pretried by Judge Serpentelli

on (date) March 16, 1984

Reporter G. Garrabrandt

Superior COURT Ocean (Middlesex) COUNTY Law DIVISION

URBAN LEAGUE OF GREATER
NEW BRUNSWICK,

DOCKET NO. C-4122-73

CALENDAR NO. _____

COMPLAINT FILED _____

PLAINTIFF,

VS.

CARTERET, ETC., et al

DEFENDANT.

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

1. Nature of Action: a) with ~~XXXX~~ respect to Urban League, Mt. Laurel II action, seeking to establish each township's fair share and to compel compliance.
- b) with respect to the Garfield, Cranbury Land Co., Monroe ~~RED~~ development, Toll Brothers, and Zurinsky, Mt. Laurel ~~XXXXXX~~ II actions against Cranbury Twp., seeking builders' remedies.
- c) with respect to the Morris, Cranbury ~~RED~~ development Co., and Browning Ferris, et al., prerogative writ actions against Cranbury Twp., seeking to invalidate the zoning ordinance on non-Mt Laurel grounds.

2. Admissions & Stipulations:

- a) Cranbury
 - 1) due adoption of Master Plan in 9/82
 - 2) due adoption of zoning ordinance in 7/83
 - 3) Garfield parcel
 - a) zoned PD-HD (1 unit/2 acres unless TDC scheme used. Then, up to 4-5 units/acre.

SCHEDULE I

Legal Issues

a. Mt. Laurel Plaintiffs

1) Builders

- a) What is Cranbury's fair share?
- b) Whether Cranbury's zoning ord. complies with its fair ~~XXXXX~~ share
- c) whether Cranbury's zoning ord. is arbitrary and capricious relative to Plaintiff's land
- d) whether Cranbury's TDC scheme is ultra vires
- e) whether Cranbury's zoning ord. constitutes a taking of plf's land
- f) whether plfs are entitled to a BR
- g) whether a BR, resulting in lower income housing, can be awarded in excess of the fair share number~~a~~ derived from the use of ~~h~~ the fair share allocation method utilized by the court

2) Public Interest Group (Urban League)

- a) what is the fair share of each of the seven Deft. municipalites
- b) whether the zoning ords. of each of these municipalities ~~complies~~ complies with their fair share obligation
- c) what is the median income and how is it computed
- d) at ~~what~~ what price must units be sold or rented to be affordable to lower income households
- e) how do you determine a township's VDL

b. Non-Mt. Laurel plfs.

- 1) does Cranbury's zoning ord. comply with NJSA 40:55D-62 or NJSA 40:55D-65
- 2) does Cranbury's Land Use Plan comply with NJSA 40:55D-29b(2), d
- 3) whether Cranbury's zoning ord. arbitrarily and capriciously zones plf's land
- 4) whether Cranbury's TDC scheme is ultra vires, arbitrary and capricious, or whether it constitutes a taking

c. Defendants

- 1) can Cranbury use TDCs to satisfy its fair ~~XXXXX~~ share
- 2) whether the Mt. Laurel developers in Cranbury should be barred from proceeding on an exhaustion of administrative remedies theory or on a theory of failing to comply with the ~~rule~~ rule limiting time for filing a prerogative writ
- 3) whether any ~~plfs~~ plfs are entitled to damages against Cranbury based on 1983
- 4) ~~whether~~ whether the SDGP has appropriately classified Cranbury

SCHEDULE I (Cont'd)

- c. 5) whether any township is entitled to credit towards fair share for past performance towards Mt. Laurel I compliance

~~whether~~

SCHEDULE II

Exhibits

a. Garfield

1. ~~XXXXXXXX~~ Zoning and Development Factor Chart of Cranbury

b. Zirinsky

1. Litigation map of Cranbury

c. BFI, et al

1. Tax map of Cranbury
2. Middlesex County Soils Report
3. Mercer County Soils Report
4. HUD Flood Insurance Rate Maps

d. Cranbury

1. Comments on Revised SDGP (1981)
2. Various U.S. Census Reports

e. Piscataway

1. Fair share study
2. Rutgers Report

f. Plainsboro

1. Resident Profiles of Princeton Meadows
2. Agreements with Princeton University regarding ~~XXXXXXXXXX~~ Forestrail Village Apts.

g. South Brunswick

1. Natural Resource Inventory
2. Critical Area Analysis
3. Population and housing projections
4. USDA Soil Conservation Report

h. All Defendants

1. Zoning ordinances
2. Master Plan

i. All Mt. Laurel Plfs.

1. SDGP

j. Urban League

1. Monroe: Answers to Plf's Interrogs. 12-13, 19 and 25.
2. South Plainfield: A Review of the Master Plan, May 1978 and Addendum No. 1. Answers to Plf's Interrogs. 12-13, 19, 20(c), 34, 41-43.
3. Piscataway: A Reexamination Report: Piscataway Twp. Master Plan and Development Regulations. Answers to Plf's Interrogs. 12-15, 17-18, 25, 27, 28, 30-33, 41-42, 44, 49.

SCHEDULE II (Cont'd)

4. Plainsboro: Chapters 20, 67, 85 and 101 of Twp's Code. Answers to Plf's Interrogs. 3,4, 14(c), 25, 27, 41, 42, 43.
5. South Brunswick: Natural Resource Inventory. Critical Area Analysis. USDA Soil Conservation Services Report. Minutes of 12-13-82 Meeting of Twp. Committee. Maps of Natural Resource Inventory Flood Hazard and Wet Soils, Erosion Hazard and Prime Agricultural Soils. Answers to Plf's Interrogs. 12(c),(d), 13 and Table I in answer to interrog. 27.
6. East Brunswick: Chapters 132, 192 and 228 of Code.

SCHEDULE III

Order of Proofs

A. Fair Share

1. Urban League
2. Mt. Laurel Plfs: Alphabetical order
3. Defendants: Alphabetical order

B. Compliance Hearings

1. Alphabetical order, except Cranbury last
2. As to Cranbury's compliance hearing, order of proofs shall be as follows:
 - a) summary hearing on validity of TDC aspects of zoning ord.
 - b) whether TDC is arbitrary and capricious as to each plf.
 - c) whether zoning ord., aside from TDC, is arbitrary and capricious
 - d) whether entire zoning ord. complies with Mt. Laurel II
 - e) 1983 issues will be severed and heard subsequently
 - f) Morris may be severed if Court finds TDC to be ultra vires

SCHEDULE IV

Trial Counsel

- a. Garfield ✓ - William L. Warren
- b. Zirinsky - Michael J. Herbert
- c. Morris ✓ - Richard Schatzman
- d. BFI- ✓ Lawrence B. Litwin
- e. Cranbury ✓ - William C. Moran, Jr.
- f. Piscataway ✓ - Philip L. Paley
- g. Plainsboro ✓ - Joseph L. Stonaker
- h. E. Brunswick ✓ - Bertram E. Busch
- ~~IX~~ ~~IX~~
- i. S. Plainfield ✓ - Patrick J. Diegnan, Jr.
- j. S. Brunswick - Joseph J. Benedict
- k. ✓ Urban League - Bruce Gelber, Janet La Bella, Eric Neisser, John Payne
- l. ✓ Monroe Development Associates - Carl S. Bisgaier
- m. ✓ Cranbury Land Co. - Carl S. Bisgaier
- n. Monroe - Thomas R. Farino, Jr.
- o.

SCHEDULE V

Pretrial Discovery Uncompleted

a. Garfield

- 1) further response to interrogs. of Urban League
- 2) response to Zirinsky interrogs.
- 3) reports and depts. of ~~XXXXX~~ Defts' experts
- 4) Depts of Mayor and Chairman of Planning Brd.

b. Zirinsky

- 1) depts of Raymond, March, Curini
- 2) depts of Sully, SDGP witness
- 3) Twp. Committee and Planning Brd. have not answered all interrogs.

c. Morris - Completed

d. BFI

- 1) Depts of Mayor and Planning Brd.

e. Cranbury

- 1) depts of experts
- 2) depts of DCA reps.
- 3) depts of Middlesex County Planning Brd.

f. Piscataway - O.K.

g. Plainsboro - OK

h. E. Brunswick - OK

i. S. Plainfield - OK

j. S. Brunswick - OK

k. Urban League

- 1) answers to interrogs by Monroe, S. Plainfield, Piscataway, Plainsboro, S. Brunswick, & Cranbury
- 2) Plfs have yet to complete Piscataway's interrogs.
- 3) Pretrial depts of several experts

l. Monroe Develop. Assoc.

Interrogs. of Defts not complete

m. Cranbury Land Co.

Depts of R. Curini, G. Raymond, T. March, J. Sulley

ADDENDUM

2. The following admissions are added:
 - a. all items listed in Garfield pretrial memo item No. 2.
 - b. all items listed in BFI pretrial memo item No. 2.
 - c. ownership interest of Garfield as shown on tax records of ~~XXXX~~ Cranbury.

5. Garfield asserts claim for ~~damages~~ damages based on antitrust and civil rights violations

7. the following legal issues are added:
 - a. whether Cranbury TDC scheme is exclusionary
 - b. if the TDC is illegal, does Cranbury have any zoning or Mt. Laurel purposes
 - c.- whether limitations on vacant developable land may limit the fair share ~~is~~ obligation

9. k. Morris - option agreement
X. All exhibits listed in Schedule II are deemed marked in evidence by consent except Rutgers report and Profile of Princeton Meadows. As to litigation map of Cranbury Twp., Item b(1), it is admitted by consent for the purposes of showing the parcels involved in the litigation but not as to the location of the SDGP line.
/ Also admitted by consent is exhibit entitled "Portion of Cranbury Twp. Land Use and Zoning," prepared by Richard Coppolla.

10. a. Harvey Moskowitz
b. Henry Ney and Joseph Martin
g. Joseph Martin
h. Patrick Kennedy
i. Thomas March

11. Briefs are to be submitted by March 30 as to all issues involving TDC and as to the question of whether builders remedies in excess of a fair share number may be ordered. Counsel may brief any other issues set forth in the pretrial memo at their discretion.

16. April 2, 1984, 9:00 a.m.

17. All discovery to be completed by March 27th.

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URBAN LEAGUE v. CARTERET, et al

Eugene D. Serpente
HONORABLE EUGENE D. SERPENTELLI, JS.C.

William J. ...
FOR GARFIELD

Michael J. ...
FOR WILMINSKI

[Signature]
FOR MORRIS

Bruce A. ...
FOR URBAN LEAGUE

Carl A. ...
FOR MONROE DEVELOPMENT

Michael P. ...
FOR CRANBURY

Carl A. ...
FOR CRANBURY LAND CO.

Phillip ...
FOR PISCATAWAY

TN ...
FOR MONROE

[Signature]
FOR ~~REXING~~ PLAINSBORO

Bernard ...
FOR E. BRUNSWICK

[Signature]
FOR S. PLAINFIELD

[Signature]
FOR S. BRUNSWICK

2.a.3)b) SDGP classified as growth area under either SDGP map

4) Cranbury Land Co parcel

a) Zoned A-100

b) SDGP classified as part growth, part limited growth

5) Monroe Development Co parcel

a) Zoned industrial

b) SDGP classified as growth

6) Toll Brothers parcel

a) Zoned A-100 (1 unit/6 acres)

b) SDGP classified as 50% ~~XXXX~~ growth, 50% limited growth

7) Zirinsky parcel

a) 49 acres zoned light impact residential (3-acre minimum lot size)

~~XX~~ 1951 acres zoned A-100 (6-acre minimum lot size)

b) SDGP classified as 50% growth, 50% limited growth.

8) Morris parcel

a) zoned as medium density residential

b)SDGP classified as growth

9) Cranbury Development Co parcel

a) Zoned as residential light impact

b) SDGP classified as growth

10) Browning Ferris et al parcels

a) BFI, Richcrete and Midstate parcels zoned light impact

~~XXXXXXXXXX~~ industrial

b) Mansville zoned residential light impact

c) SDGP classified as growth

b. Piscataway

1)Due adoption of Master Plan on October 1983

2)Due adoption of Zoning Ordinance on 12-6-83

3) SDGP classified as 100% growth

c. Plainsboro

1) due adoption of Master Plan on September 1982

2) due adoption of zoning ordinance on May 1, 1979

3) SDGP classified as ~~XXXXXXXXXXXX~~ part ~~growth~~, part limited growth,

d. East Brunswick

1) due adoption of Master Plan on

2) due adoption of zoning ordinance on May '77, amended Sept 11, 1978

3) SDGP classifies as part growth, part limited growth

2.(Cont'd)

e. South Plainfield

- 1) due adoption of master plan on May 1978.
- 2) due adoption of zoning ordinance on December 1978.
- 3) SDGP classifies as growth.

f. Monore

- 1) due adoption of master plan on November 1978.
- 2) due adoption of zoning ordinance on January 1979.
- 3) SDGP classifies as part growth, part limited growth, part agricultural

g.

g. South Brunswick

- 1) due adoption of master plan on 1982
- 2) due ~~adoption~~ adoption of zoning ord. on (to be supplied)
- 3) SDGP classified as part growth, part limited growth

3-4. Factual and Legal Contentions

See attached

5. Damages

- a) Zirinsky and Cranbury Land Co-- taking without just compensation.
- b) Other plaintiffs -- None

6. Amendments

- a) Garfield - Complaint amended to include what is in factual and legal contentions
- b) Zirinsky - Complaint amended to challenge cost-generating provisions in zoning ord.

7. Legal Issues -- See Schedule I attached.

8. Legal Issues Abandoned -- None

9. Exhibits -- See Schedule II attached.

10. Experts

- a. Garfield-- Coppolla
- b. Zirinsky -- Lynch
- c. Cranbury Land Co.-- Hintz, Weiner
- d. Monroe Development == Hintz, Weiner
- e. BFI - Szymanski, McKenzie, Ard, Orlando
- f. Morris-- None
- g. Cranbury Development Co.-- Engle, Ney, French, Schacter
- h. Urban League --- Mallach, Rogers
- i. Cranbury - Raymond, Curini
- j. Piscataway - Nebenzahl

10 (Cont'd)

- k. Plainsboro -- Hechenbleikner, Raymond
- l. East Brunswick - Hintz
- m. South Plainfield - Rosa, Higgins, ~~XXX~~ Grof, Naberezny, Toth, DeSabato
- n. South Brunswick - Engle, Lynch
- o. Monroe- Tolischus, Applegate

11. Briefs

- 12. Order of Opening & Closing, and Order of Proofs-- See Schedule III attached
- 13. Other Matters Agreed Upon - None
- 14. Trial Counsel - See Schedule ~~IV~~ IV attached
- 15. Estimated Length of Trial - 2 to 4 weeks
- 16. Trial Date -
- 17. Pretrial Discovery Uncompleted - See Schedule V
- 18. Parties Not Served or Parties Defaulted - None

3.4 A

3.&4. FACTUAL AND LEGAL CONTENTIONS: Plaintiffs contend that: 1) the Cranbury Township Zoning Ordinance enacted July 25, 1983 is arbitrary, capricious, unreasonable and clearly erroneous; 2) the Cranbury Township Zoning Ordinance, [as it effects plaintiffs' land and premises and the land and premises of Mansville and Cranbury (which adjoins plaintiffs' properties)] violates N.J.S.A. 40:55D-62 because the zoning does not consider the character of the district and its particular suitability for particular uses with a view of conserving the value of property and encouraging the most appropriate use of land and 3) the Land Use Plan of Township of Cranbury violates N.J.S.A. 40:55D-28(b) (2) and (d).

More particularly, the zoning of the plaintiffs' land and premises and the zoning of the Mansville and Cranbury lands and premises does not adequately consider: (1) existing land uses and the zoning of adjacent lands in Cranbury as well as the zoning of lands in adjoining municipalities (2) traffic considerations taking into account existing traffic as well as future traffic levels; (3) the nature, location, reasonableness and feasibility of developing the lands adjoining plaintiffs lands as 3 acre residential uses; (4) the character of the area; (5) natural conditions, and; (6) the State Development Guide Plan, (SDGP).

The Land Use Plan and the zoning of the Mansville and Cranbury land and premises do not realistically consider the ability of that land to be developed. The soils, although suitable for load bearing capacity and structural strength, have a high water table; therefore, the construction of buildings with basements is precluded, and slab type construction must be utilized. It would be unique to find slab type construction for homes on 3 acres or 1 acre clusters.

Additionally, the nature of the soils will augment the cost for sanitary waste disposal; small amounts of lands on the Mansville land and premises are capable of being used for septic type disposal systems. Furthermore, the location of the flood plain on the Cranbury and Mansville land and premises dictate that development in the Light Impact Residential Zone (LIR) must be immediately adjacent to the plaintiffs' properties. Thus, based upon the type of construction and cost constraints residential zoning of the Mansville and Cranbury land and premises is inappropriate, and incompatible with existing lands uses.

The rezoning of plaintiffs' property has an adverse effect on value of plaintiffs' property. As a result of the rezoning, values and future marketability of plaintiffs' property and the adjoining properties will be reduced. Further, the incompatibility of residential and industrial properties will have an adverse effect on the value of plaintiffs' property and the adjoining property of Mansville and Cranbury. Additionally, the ability to obtain financing for a residential structure with 3 acre zoning or 1 acre clustering on the Mansville and Cranbury land and premises is questionable. Furthermore, in the area, the demand for housing is for smaller homes, rather than large homes on large lots.

As a matter of law, if the plaintiffs collectively were to seek a use variance on the subject premises they would be required to obtain a zoning change. The dimensions of the variance are so substantial that a zone change is required; conversely owner-occupants of property for many years should as, a matter of law, be zoned to be conforming or conditional uses.

The transfer development credit provisions of the Zoning Ordinance are (a) ultra vires; (b) arbitrary and unreasonable; and (c) tantamount to a taking of property without due process. Without transfer development credits, Cranbury cannot satisfy its Mt. Laurel II obligations and thus the Zoning Ordinance is null and void.

Plaintiff's land and premises should be zoned for heavy industrial uses and the Mansville land and premises and portions of the Cranbury lands and premises, adjoining the plaintiffs' lands and premises, should be zoned light impact industrial.

3-4 B

3-4. FACTUAL AND LEGAL CONTENTIONS:

The light impact-residential zoning designation for the 373 acre site owned by plaintiff is inconsistent with the intent and purpose of the Cranbury Township Land Use Ordinance, contrary to the legislative requirements for zoning pursuant to N.J.S.A. 40:55D-62, and, furthermore, is arbitrary, capricious and unreasonable because the present zoning is not based on identifiable and reputable zoning and planning criteria. Furthermore, the restrictive residential zoning classification of the subject property is excessively market restrictive.

One of the principal goals of the Cranbury Township Land Use Plan is to maintain the area west of the Village as agricultural and limited growth and to channel development into the area located to the east of Highway 130. Essentially, land west of the Village as compared to areas east of Highway 130 have very different planning criteria vis-a-vis the State Development Guide Plan. The fact that plaintiff's tract and the Dey Road area are both designated light impact-residential is a contradiction to the basic tenets of the Township Land Use Plan element.

N.J.S.A. 40:55D-60(a) requires that a zoning ordinance be drawn with reasonable consideration for the character of each district and its peculiar suitability for particular uses and, further, to encourage the most appropriate use of land. A land use analysis of the subject zoning, reveals that the prevailing land development adjacent to plaintiff's site is industrial. Plaintiff's site is also dominated by two major highways which border it. The type of industrial activities which surround

plaintiff's site and the excellent highway accessibility, should facilitate a non-residential or much higher intensity residential site utilization than single-family homes on three-acre parcels. The three-acre residential zoning is appropriate in areas which are transitional due to the agricultural zone in Cranbury such as the Dey Road neighborhood rather than areas adjacent to major highways and industrial districts.

The present zoning of the subject site represents an unreasonable hardship with regard to plaintiff's utilization of his property. Most homes sold in Cranbury are on one-acre or smaller parcels and have resale levels predominantly greater than \$100,000.00. The application of three-acre minimum tract size zoning of the subject parcel represents a taking of development rights due to the impracticality of marketing estate homes in an industrial neighborhood bordered by two of the most heavily traveled State highways in New Jersey. Furthermore, the industrial traffic generated east of plaintiff's property, must pass by plaintiff's residential area to gain access to Highway 130. Industrial traffic traversing residential large lot estate areas will pose an insurmountable marketing obstacle for plaintiff. Additionally, it is unreasonable to believe that single-family homes situated on three-acre lots will be marketable on plaintiff's site with its current land use characteristics when currently there are no other three-acre lot developments in the entire Township.

3-4 C

ATTACHMENT

3. and 4. FACTUAL AND LEGAL CONTENTIONS: Plaintiff is the owner of approximately 140 acres of land in the defendant Cranbury Township. Plaintiff wishes to develop these lands for residential uses and to provide a substantial percentage of units for low and moderate income persons. The defendant's land use plan and zoning ordinance places plaintiff's lands in a zone at which residential units can be built at one unit for every six acres. Plaintiff contends that said zoning and planning is arbitrary and capricious, is confiscatory and a taking of property without just compensation, and is inimical to the construction of low and moderate income housing. Defendant's land use plan and zoning ordinance as otherwise approved does not provide for defendant's provision of a realistic opportunity for the construction of its fair share of its region's low and moderate income housing needs. Defendant has zoned an insufficient amount of land for higher density uses and subject to a zoning scheme which will not produce low and moderate income housing. The transfer of development credit system adopted by the defendant is ultra vires, arbitrary and capricious and undermines the possibility of the production of low and moderate income housing. Plaintiff further contends that in light of the particular circumstances relating to Cranbury, for example, the involvement of several major developers with an interest in producing low and moderate income housing, extensive vacant developable lands, proximity to major transportation systems and employment centers, that consideration should be given to approving low and moderate income housing developments in excess of the fair share number for the municipality. With regard to the aforementioned claims, plaintiff seeks declaratory, injunctive and monetary relief, invalidating the land use plan and zoning ordinance of the defendant, appointing a master to facilitate the adoption of appropriate land use ordinances, providing plaintiffs with a builder's remedy, and/or providing plaintiffs with damages for the necessity of instituting this litigation relevant to the transfer development credit provision in the defendant's ordinances.

2. ADMISSIONS and STIPULATIONS:

None

3. FACTUAL AND LEGAL CONTENTIONS OF PLAINTIFF:

Not applicable

4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT:

The Township of Cranbury takes the position that its Ordinance as presently constituted provides a reasonable and adequate opportunity for the construction of the Township's fair share of the low and moderate income housing needs both present and prospective of the region in which the Township is located. The Ordinance permits the construction of multi-family housing and provides density bonuses to those developers who wish to construct low and moderate income housing. Some specific and minor amendments may have to be made to the Ordinance in the event the Court adopts a formula for the allocation of low and moderate income housing need which results in a number different from the number of low and moderate income housing units which are capable of being constructed under the provisions of the existing Ordinance. The formula upon which the regional housing needs are allocated should be based upon figures involving vacant developable land since such figures as presently exist have proven to be thoroughly unreliable. The Township further contends that the State Development Guide Plan Map as adopted by the New Jersey Department of Community Affairs Division of Planning, in 1980, should not be applied to Cranbury Township, but rather the proposed revision to that map as adopted by the Department of Community Affairs Division of Planning in 1981 should be applied to the Township of Cranbury. Cranbury also objects to any fair share housing allocation plan which places reliance on figures for vacant developable land whether limited to the Township as a whole or to the growth area as defined in the State Development Guide Plan since such figures have proven to be grossly inadequate.

The Township further contends that the transfer of development credit provisions provided in the Township Zoning Ordinance fall within the reasonable police powers and zoning powers of

Township permitted under the State Constitution and the Municipal Land Use Law. The transfer of development credits provides the only realistic method of preserving the Township's and the State's important natural resource of prime agricultural lands. Virtually all of the land within the Township of Cranbury constitutes a prime agricultural land as defined by the New Jersey Department of Agriculture. The Township's zoning of specific tracts of land within the Township which are the subject matters of some of the complaints in the consolidated actions are neither unreasonable, capricious or arbitrary but rather constitute sound zoning in accordance with an overall comprehensive scheme.

Finally, the Township's zoning practice has not been violative of the Civil Rights of any of the plaintiffs nor of anyone else, under the provisions of Section 1983 of the Federal Civil Rights Act.

5. DAMAGE AND INJURY CLAIMS:

Damages for violation of civil rights pursuant to Section 1983 of the Federal Civil Rights Act (Garfield, Cranbury Land Co.)

6. AMENDMENTS:

None

7. ISSUES AND EVIDENCE PROBLEMS:

Determination of region, fair share allocation formulas, compliance with Mt. Laurel II, definitions of low income and moderate income, validity of transfer of development credit provisions, compatibility of transfer of development credit provisions with satisfaction of Mt. Laurel obligations, reasonableness of zoning ordinance as applied to specific sites, entitlement to builders' remedy, exhaustion of administrative remedies, compliance with rule limiting time for the filing of prerogative writ actions, entitlement to counsel fees, entitlement to damages under Section 1983, applicability of State Development Guide Plan.

8. LEGAL ISSUES ABANDONED:

None

URBAN LEAGUE OF GREATER NEW BRUNSWICK
vs BOROUGH OF CARTERET, ET ALS
Docket No. C-4122-73

3-4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT, TOWNSHIP
OF EAST BRUNSWICK.

East Brunswick accepts the figures originally submitted by Alan Mallach on behalf of Plaintiffs to the effect that East Brunswick's share of present and prospective indigenous and regional need is 1,533 units. We do not necessarily accept the ratios and percentages between low and moderate income units and we reserve the right to have a staging or phasing of units so that the Township will not be overwhelmed with construction. East Brunswick has done many things to comply with Mount Laurel requirements and is prepared to take additional steps in order to achieve a settlement.

Specifically, East Brunswick has streamlined all of its ordinances, has used its community development block grant for the acquisition of dilapidated housing which has been rehabilitated (Victory Gardens), has used other funds for the construction of Hall's Corner providing 153 units of low and moderate income housing, has adopted density bonus provisions in various multi-family zones which previously had been zoned for half acre residential or planned industrial parks including but not limited to MXD zone (12 to 16 units per acre), Town Green and Village Green 1, 2 and 3A with densities up to 9 units per acre. East Brunswick has achieved 15 units through the density bonus provision for moderate income housing constructed by Brunswick/Raritan Corporation in Colonials Oaks Village and another 43 units through U.S. Homes Corporation.

East Brunswick has also rehabilitated dilapidated units with federal funds and is entitled to credit for those units.

By way of settlement, East Brunswick is considering the following:

Zoning Changes

1. Rezoning the Bonus South River/Sand property from Industrial Manufacturing to Village Green II.
2. Rezoning the Weingarten Turnpike piece from MXD with densities of 12 to 16 to MXD with density bonuses.
3. Rezoning Cranbury Road South from R-1 to VG-II.
4. Rezoning Cranbury Road South of Helmetta Boulevard from R-1 to modular/manufactured housing and mobile/manufactured housing.
5. Rezoning tract on Helmetta Boulevard North of MMH Zone from OP-1 to C-2 Neighborhood Commercial.

The Township will also consider an amendment providing for a 5% mandatory set aside initially. If the first two developments under the Mount Laurel provisions do not produce the desired number of units, the minimum would be

increased to 10% and eventually to 20%. The Township already has adopted an affordable housing ordinance and has arranged for the inclusion of covenants in master deeds to provide assurance that low and moderate income housing will be resold to persons of low and moderate income at prices tied to a fixed index. There are other provisions of a settlement which are being discussed by the parties which, if necessary, can be adopted.

3.4 F

1. A number or range representing its indigenous housing needs.
2. A number or range representing its fair share of the region's present and prospective housing needs.
3. A region for fair share planning purposes.
4. An allocation methodology for fair share planning purposes.
5. An assessment of present and prospective regional need for fair share planning purposes.

3-4. FACTUAL AND LEGAL CONTENTIONS:

- A. The Township of Cranbury has adopted a Zoning Ordinance which does not provide a realistic opportunity for the construction in Cranbury of a fair share of the region's present and prospective need for low and moderate income housing.
- B. Cranbury's fair share of the region's present and prospective need for low and moderate income housing as of 1990 is in excess of 800 dwelling units.
- C. The Zoning Ordinance not only fails to encourage the construction of low and moderate income housing but actually discourages such construction by mandating certain unnecessary cost enhancing requirements, the most significant of which are listed below:
 1. Gross densities in the PD-HD zone are too low to permit or encourage a developer to construct low and moderate income housing.
 2. The housing mix schedule which applies to the PD-HD zone unduly limits the flexibility of developers in achieving a housing mix which will be economically feasible.
 3. The net density limitations which apply to the PD-HD zone are too low to permit or encourage a developer to construct low and moderate income housing.
 4. The restriction on impervious coverage in the PD-HD zone should be less than 40% of the entire planned development and should not be applied on a lot by lot basis.
 5. The requirement that at least 30% of the development be common open space should be substantially reduced.
 6. The requirement that 15% of the gross area of the development be devoted to "active recreational facilities" is excessive.

7. The detailed standards for types and construction of facilities which qualify as "active recreational facilities" are excessive.
8. The landscaping requirements of the Zoning Ordinance are in excess of what is necessary in a planned development.
9. The set back distance from the roads required by the Zoning Ordinance is greater than necessary.
10. The building height restrictions in the Zoning Ordinance preclude the developer from constructing a four story building, which would reduce construction costs and thereby encourage the construction of low and moderate income housing.
11. The solar energy standards set out in the Zoning Ordinance increase construction costs without achieving any significant savings in energy costs.
12. The architectural and site design principles and standards set forth in the Zoning Ordinance are cost enhancing, require designs that are relatively expensive to build and limit the construction of economic larger structures.
13. The Zoning Ordinance's parking lot requirements are unduly restrictive and cost generating.
14. The requirements of a conditional use procedure for a planned development unnecessarily complicate the development and review process. Sufficient protection is provided by normal sub-division and site plan reviews.
15. The environmental impact assessment mandated by the Zoning Ordinance should not be required for property such as plaintiff's which is not environmentally sensitive.
16. The requirement for a community impact statement is needlessly cost generating.
17. The Zoning Ordinance fails to mandate any tax abatement procedure which would encourage the construction of low and moderate income housing.
18. The requirement that plaintiff purchase TDCs to achieve the maximum permitted density on its land will make the construction on plaintiff's land of any low or moderate income housing virtually impossible.

D. The TDC provisions of the Zoning Ordinance are invalid. The MLUL does not

authorize a municipality to create development rights, to separate development rights from land ownership, to create a preservation zone dependent upon development credits or to create a receiving zone in which development is conditioned on the purchase of such credits. The TDC provisions of the Zoning Ordinance are therefore ultra vires.

- E. The TDC provisions of the Zoning Ordinance are arbitrary and capricious as applied to plaintiff's land. They arbitrarily and capriciously apply only to land in the PD-HD and PD-MD zones. In no other zone is a landowner required to purchase TDCs to achieve the full development potential of the land. In addition, though the PD-HD zone is recognized by the Master Plan and Zoning Ordinance as the best location in the Township for low and moderate income housing, the TDC provision precludes plaintiff from using its property in the PD-HD zone for this purpose. Also, the TDC provisions are not necessary or rationally related to achievement of their stated objective, preservation of land in the A-100 zone from residential development.
- F. The Zoning Ordinance's prohibition on any commercial development in the PD-HD zone is arbitrary and capricious as applied to the plaintiff. Plaintiff's land is recognized by the Master Plan and the Zoning Ordinance as the appropriate location in the Township of Cranbury for low and moderate income housing. The cost of transportation is a significant expense to such families. Without limited commercial development in the PD-HD zone, (e.g. food store, drug store, etc.), these residents will have to travel by car or bus to purchase their necessities. Requiring residents in the PD-HD zone to have and maintain readily available means of transportation will limit the low and moderate income families able to reside in the PD-HD zone to those at the top of the low and moderate income scale.
- G. The Zoning Ordinance in its entirety is arbitrary and capricious as applied to plaintiff. Plaintiff's land is recognized by the Master Plan and the Zoning Ordinance as the appropriate location in the Township of Cranbury for low and moderate income housing. However, the cost generating features and density restrictions of the Zoning Ordinance preclude the use of plaintiff's land for this purpose.

5. DAMAGE AND INJURY CLAIMS:

Reserved for a subsequent stage of this proceeding.

6. AMENDMENTS:

Plaintiff's Complaint should be deemed amended to include all factual and legal contentions set out in Paragraphs 3 and 4 above.

7. ISSUES AND EVIDENCE PROBLEMS:

- A. Calculation of the Township of Cranbury's fair share of the present and prospective low and moderate income housing needs of its region.
- B. Determination as to whether calculation of Cranbury's fair share

ATTACHMENT

3 and 4. FACTUAL AND LEGAL CONTENTIONS: Plaintiff is the owner of approximately sixty (60) acres of land in the defendant Monroe Township. Plaintiff wishes to develop these lands for residential uses and to provide a substantial percentage of units for low and moderate income persons. The defendant's land use plan and zoning ordinance places plaintiff's lands in an industrial zone. Plaintiff contends that said zoning and planning is arbitrary and capricious, and is inimical to the construction of low and moderate income housing. Defendant's land use plan and zoning ordinance as otherwise approved does not provide for defendant's provision of a realistic opportunity for the construction of its fair share of its region's low and moderate income housing needs. Defendant has zoned an insufficient amount of land for higher density uses and subject to a zoning scheme which will not produce low and moderate income housing. Plaintiff further contends that in light of the particular circumstances relating to Monroe, for example, extensive vacant developable lands and substantial growth in non-growth areas, proximity to major transportation systems and employment centers, that consideration should be given to approving low and moderate income housing developments in excess of the fair share number for the municipality. With regard to the aforementioned claims, plaintiff seeks declaratory and injunctive relief, invalidating the land use plan and zoning ordinance of the defendant, appointing a master to facilitate the adoption of appropriate land use ordinances and providing plaintiff with a builder's remedy.

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Monroe Dev

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MONROE DEVELOPMENT ASSOCIATES, a
New Jersey Partnership

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION
MIDDLESEX/OCEAN COUNTY

Plaintiff(s)

MONROE TOWNSHIP, a municipal corporation
of the State of New Jersey, located in
Middlesex County, New Jersey

Defendant(s)

Docket No. L-076030-83 PW

CIVIL ACTION

PRETRIAL MEMORANDUM OF

Defendant, Township of Monroe

- 1. NATURE OF ACTION:** Consolidated action in lieu of perogative writs under Mt. Laurel II seeking declaratory and injunctive relief. Plaintiff also seeks re-zoning of its land, appointment of a Master and a builder's remedy.
- 2. ADMISSIONS AND STIPULATIONS:** None at this time

3-4. FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto). The site of plaintiff's property is not located within a growth zone as depicted on the State Development Guide Plan and, in addition, is located in an environmentally sensitive area. The subject site constitutes prime industrial land and to grant plaintiff's relief would distort the purpose and intent of the Township zone plan to develop this prime industrial area.

5. DAMAGE AND INJURY CLAIMS: None

6. AMENDMENTS: None

7. ISSUES AND EVIDENCE PROBLEMS: 1. Determination of region, fair share allocation formula, and Township's fair share of present and perspective low and moderate income housing needs; 2. Whether or not the Township is in compliance with its Mt. Laurel obligation; 3. If required, modification of the Township zoning ordinance so as to effect compliance with its Mt. Laurel obligations.

8. LEGAL ISSUES ABANDONED: None

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MONROE TP
ADS

THOMAS R. FARINO, JR., ESQ.
Cor. Applegarth & Prospect Plains Road
Cranbury, New Jersey 08512 (609) 655-2100

URBAN LEAGUE

Attorney(s):
Office Address & Tel. No.:

Attorney(s) for Defendant, Township of Monroe

URBAN LEAGUE OF GRATER NEW BRUNSWICK,
et als

SUPERIOR COURT OF NEW JERSEY

CHANCERY
MIDDLESEX COUNTY

DIVISION
COUNTY

BOROUGH OF CARTERET, et als

Plaintiff(s)

vs.

Docket No. C-4122-73

CIVIL ACTION

Defendant(s)

PRETRIAL MEMORANDUM OF

Defendant, Township of Monroe

1. NATURE OF ACTION: Mt. Laurel action which has been remanded by Supreme Court to trial Court for determination of defendant Township of Monroe and other municipalities fair share of regional low and moderate income housing need and revision of ordinance to allow for construction of same.
2. ADMISSIONS AND STIPULATIONS: None.

3-4. FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto). Revisions to the Monroe Township zoning ordinance will be effected in order to permit the Township to meet its fair share obligation consistent with those limited areas as designated under the State Development Guide Plan.

5. DAMAGE AND INJURY CLAIMS: None

6. AMENDMENTS: None

7. ISSUES AND EVIDENCE PROBLEMS: 1. Determination of region, fair share allocation formula, and Township's fair share of present and prospective low and moderate income housing needs; 2. Whether or not the Township is in compliance with its Mt. Laurel obligation; 3. If required, modification of the Township zoning ordinance so as to effect compliance with its Mt. Laurel obligations.

8. LEGAL ISSUES ABANDONED: None

3-4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT:

This Defendant respectfully contends that its situation and circumstances are such so as to permit this Court to conclude that it fully complies with the strictures of Mount Laurel II, in that it has made adequate provision for its fair share of housing affordable by low and moderate income families within an appropriate region.

This Defendant has considered the proposed formula for allocation, the proposed definition of region, and other matters which were the subject of several conferences held at the Court's direction among the planners for all parties. This statement will summarize those contentions of the Township regarding the appropriateness of the consensus reached.

AS TO REGION FOR PRESENT NEED:

The consensus of the planners is that the appropriate region for consideration of present need incorporates 11 northerly counties of the State. Conceptually [the word "conceptually" is used only because the statistics supporting the consensus have not yet been provided to counsel],

this Defendant respectfully objects to that region, principally because incorporated within that conclusion is the premise that households occupying substandard housing in a municipality whose proportion of substandard housing is greater than the regional average will effectively disperse concentrically and uniformly throughout the region. Thus, based upon that premise, households occupying substandard housing in Newark, Jersey City and Paterson, for example, would relocate to Piscataway, among other municipalities, despite the substantial distance between Piscataway and those urban centers. This premise is contravened by the Rutgers study, which concluded that 50% of New Jersey residence work in the County in which they live. Having said this, Defendant recognizes that this factor can be incorporated within a fair formula for allocation of present need, and if that formula is so modified, this Defendant can consent to the 11 County region for purposes of present need calculations. Alternatively, this Defendant would argue that the appropriate region is that delineated in the Rutgers study.

AS TO REGION FOR PROSPECTIVE NEED:

This Defendant does not object to the use of the proposed commuter shed for determination of its prospective obligation.

AS TO FAIR SHARE OF PRESENT AND PROSPECTIVE NEED:

Obviously, some aspects of Defendants' analysis pertaining to the allocation formula will have an impact upon the determination of fair share; rather than repeat this Defendant's contentions, the Defendant will incorporate its contentions within its discussion of the allocation formula.

This Defendant respectfully contends that the methodology employed by the consensus to reach population projections is seriously flawed. The methodology used involves two models found within existing New Jersey State populations projections, which models are averaged to determine the number of households which will exist in 1990. This Defendant respectfully contends that the annual housing survey published by the United States Census Bureau demonstrates that the models employed by the consensus are

inaccurate and unrealistic. For example, model 1 shows a state-wide population approximating 210,000 by 1990; model 2 shows 500,000. The three-year census data, however, estimates that, at present population growth rates, the population increase to 1990 will not exceed 150,000. Furthermore, the population models include households in group quarters, such as university dormitory housing. The effect of this inclusion is to increase the apparent household need without deduction for group quarter facilities to house a portion of that increase. Obviously, this has a dramatic impact upon this Defendant's situation, because if dormitories are to be constructed by Rutgers, Piscataway is where that construction will take place. The conclusion, therefore, is that population projections applied to Piscataway should be reduced by the estimated increase in group quarter housing.

AS TO THE ALLOCATION FORMULA:

This Defendant respectfully contends that the consensus allocation formula is unfair, relying, as it does, almost exclusively upon employment data. The following paragraphs will suggest modifications of that formula, to make the formula substantially

more equitable:

(1) Although the consensus uses existing employment to measure present need, it again uses existing employment to measure prospective need. While existing employment may certainly be relevant, it should not be counted twice.

(2) The fiscal capacity of the municipality to assimilate additional housing should be included in any allocation formula. This factor can be computed using equalized assessment valuation, per capita, in accordance with the position of many of the planners who met with the Court. This is wholly consistent with the concept of transferring excess need from urban aid municipalities, whose per capita valuations are extremely low, to municipalities who enjoy better financial positions. Furthermore, it supports the objective of not burdening a municipality beyond its ability to incorporate its fair share of low and moderate income households within its borders.

(3) Similarly, the allocation formula should include consideration of the existing per capita income of the municipality's population.

(4) The consensus formula uses total land area, without consideration for existing development. Vacant land area is a relevant factor, at least prima facie, but the use of land already improved is certainly not consistent with the objective of determining a fair share. Data is available from the municipal assessment records of every municipality to demonstrate which lands are presently unimproved and which appear to be suitable for high-density residential development.

AS TO OTHER FACTORS:

Once a municipality's fair share is determined, the municipality should have the opportunity to present evidence to demonstrate that circumstances exist which justify adjustment to its fair share requirement. Among these factors, applicable to this Defendant, are the following:

(1) Substantial numbers of full-time students are housed on the Livingston and Busch campi of Rutgers University, within Piscataway's borders. The overwhelming majority of these students fall into the categories of low and moderate income.

This Defendant respectfully contends that the present students should be considered as an offset to the fair share otherwise determined to be Piscataway's obligation. Obviously, this factor should not be part of the allocation process, because Piscataway is one of the few municipalities in the State housing substantial numbers of students.

(2) Existing housing units affordable within regional low and moderate income housing guidelines should constitute an offset to Piscataway's fair share. Internal data provided to our adversaries, during Discovery, reflect that more than 50% of the existing housing stock falls within the accepted guidelines of affordability for low and moderate income households based upon standards promulgated by H.U.D.

(3) Clearly, past performance and past attempts to conform to standards of Mount Laurel I should be considered by the Court, including affordable housing stock in place, amendments to prior zoning ordinances to permit higher density-low cost dwellings to be constructed, existing subsidized housing, as well as other similar factors.

(4) If the Court's objective is to have housing affordable by low and moderate income houses constructed, the courts must consider the availability and appropriateness of existing vacant land suitable for such development. Obviously, not every site of three acres or larger is suitable for residential development of any kind. In Piscataway, for example, several areas of vacant land abut heavy industrial development, including several parcels adjacent to heavy manufacturing facilities. In addition, other factors, such as traffic circulation, environmental constraints, and related factors may make residential development inappropriate. Obviously, further, the totality of vacant land is a limiting factor.

This Defendant further contends that, with respect to determination of, present indigenous need, it is permitted to rely upon the conclusions reached at the Trial below by the trier of fact to the effect that Piscataway had met its present need fully and was assessed an obligation to meet prospective need only.

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Plainsboro

STONAKER AND STONAKER
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(609) 921-2155
Attorneys for Defendant, Plainsboro Township

URBAN LEAGUE OF GREATER NEW BRUNSWICK vs.
BOUROUGH OF CARTERET, ET AL.
DOCKET NO. C-4122-73

Pretrial Memorandum, Factual and Legal Contentions:

The Township accepts the definition of region and the fair share allocation in the original report of Carla Lehrman. The Township is not in a position to respond to the assumptions and the fair share allocation in the Consensus report of the Planners because original assumptions of their report produce an unreasonable projection of population and a significantly inflated aggregate demand for statewide housing.

It is the Township's position that it is providing its fair share of low and moderate income housing. Even Judge Furman in his opinion noted

Planned Community Development providing significant low and moderate housing is under construction. Princeton University is planning a research center with multi-family housing units, including at least 20% low and moderate-income, between Lake Carnegie and U.S. Route 1.
142 N.J. Super @ 33

The Township will prove that the rents for these multi-family units are within the parameters established for low and moderate income families.

The Township is now considering amending its ordinance to set aside an area for 125 units of Senior Citizen housing. It is prepared to use its funds to prepare the necessary plans and engineering studies for a grant application to make the Senior Citizen housing a reality. The Senior Citizen housing combined with the existing rental housing in the two Planned Developments will more than meet Plainsboro's fair share.

Minor revisions to the Plainsboro Zoning ordinance to delete offensive language may be appropriate, but this is cosmetic only and would not produce more housing units.

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(201) 921-2155

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al.,

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY

Plaintiff(s)

vs.

BOROUGH OF CARTERET, et al.,

Defendant(s)

Docket No. C-4122-73

CIVIL ACTION

PRETRIAL MEMORANDUM OF

Defendant -
PLAINSBORO TOWNSHIP

1. **NATURE OF ACTION:** Mt. Laurel action which has been remanded by Supreme Court to trial court for determination of Defendant Plainsboro Township and other municipalities' fair share of regional low and moderate income housing need and revision of ordinance to allow for construction of same.
2. **ADMISSIONS AND STIPULATIONS:**
None at this time.

3-4. **FACTUAL AND LEGAL CONTENTIONS:** (Annexed hereto).

5. **DAMAGE AND INJURY CLAIMS:**

None

6. **AMENDMENTS:**

None

7. **ISSUES AND EVIDENCE PROBLEMS:** Determination of region, fair share allocation formula, and Township's fair share of present and prospective low and moderate income housing needs whether the Township is in compliance with its Mount Laurel obligation, modification of the Township's zoning ordinance if required to effect compliance with those obligations.

8. **LEGAL ISSUES ABANDONED:**

None.

9. **EXHIBITS:** Plainsboro Township Zoning Ordinances and 1 amendments, Master Plan, Zoning Map, Princeton Meadows Residence Profiles, 1979, 1980, 1981, 1982, 1983 Agreements with Princeton University regarding Forestal Village Apartments

10. **EXPERT WITNESSES:**

Peter I. Hechenbleikner, P.P. 1540, A.I.C.P.
George Raymond, P.P., 621 Alexander Road, Princeton, NJ 08540

11. **BRIEFS:**

As required by court.

12. **ORDER OF OPENING AND CLOSING:**

Usual.

13. **ANY OTHER MATTERS AGREED UPON:**

None.

14. **TRIAL COUNSEL:**

Joseph L. Stonaker, Esq.

15. **ESTIMATED LENGTH OF TRIAL:**

4(four) weeks.

16. **WEEKLY CALL OR TRIAL DATE:**

March 19, 1984

17. **ATTORNEYS FOR PARTIES CONFERRED ON MATTERS THEN AGREED UPON:**

February 14, 1984 .

18. **IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED,**
except

None.

19. **PARTIES WHO HAVE NOT BEEN SERVED:**

None.

PARTIES WHO HAVE DEFAULTED:

None.

STONAKER and STONAKER
Attorneys for Plainsboro Township

By


Joseph L. Stonaker

Dated: February

1984 .

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South Brunswick

BENEDICT AND ALTMAN
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Attorneys for Defendant Township of South Brunswick

URBAN LEAGUE OF GREATER NEW BRUNSWICK vs.
BOROUGH OF CARTERET, ET AL.
DOCKET NO. C-4122-73

Pretrial Memorandum, Factual and Legal Contentions:

The Township contends that relevant considerations in the determination of housing region in which the Township should fall include (a) the housing market area from which the prospective population of the municipality would be substantially drawn; (b) the area encompassed by significant patterns of commutation; (c) the area served by major public services and facilities; (d) the necessity of data gathering/maintenance; and (e) intraregional differences and interregional similarities as well as consideration of the area in which the housing problem can be solved. These considerations support South Brunswick's position that it is located in the Middlesex, Somerset, Hunterdon and Warren primary metropolitan statistical area, as delineated in and described by the Rutgers Report. The Township's fair share formula, calculation of present and prospective need, and rental and sales prices affordable to low and moderate income households are as set forth in the Summary Report of South Brunswick Township's Fair Share Allocation to 1990 which was previously submitted to the Court.

The Township further contends that its zoning ordinance has been brought into substantial compliance with its Mount Laurel obligation by amendments to the ordinance which were adopted subsequent to Judge Furman's decision in this matter. The ordinance can be brought into full compliance with mandatory set-asides and increased density in several specific developable tracts and increased density in the Township's manufactured housing zone. The specifics of such increases are directly related to judicial determination of the Township's fair share of present and prospective need.

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S. Plainfield

FACTUAL AND LEGAL CONTENTIONS

The Borough of South Plainfield contends that there is insufficient developable land within its borders to meet the mandate of Mt. Laurel. It is submitted that allocating a significant present and prospective need to the Borough of South Plainfield would frustrate the intent of Mt. Laurel in that the municipality would be unable to meet said need due to the lack of developable land. Therefore, allocating housing units to South Plainfield would therefore further reduce the potential available low and moderate income housing units.

The Borough further contends that it has made a good faith effort to allow high density housing. Additionally, it intends to build a 100 unit Senior Citizens Housing Complex which will supply 100 low income units into the housing stock. It is submitted that the Borough should therefore be relieved from any mandated revisions to its ordinance since any proposed modifications cannot be enacted due to the lack of developable land.

3. FACTUAL AND LEGAL CONTENTIONSGeneral

In South Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158, 456 A.2d 390 (1973), the New Jersey Supreme Court affirmed the July 9, 1976 Judgment of this Court insofar as it declared the zoning ordinances of the Townships of Monroe, South Plainfield, Piscataway, Plainsboro, South Brunswick, East Brunswick, and Cranbury unconstitutional. On the other hand, the Court vacated the determination of region, regional need, and fair share allocation and remanded to this Court solely for redetermination of those issues "and, thereafter, revision of the land use ordinances and adoption of affirmative measures to afford the realistic opportunity for the requisite lower income housing." Id. at 350-51, 456 A.2d at 490. There need be no trial concerning non-compliance with the Mount Laurel obligation unless the municipality's land use ordinance has been substantially amended. Id. at 350, 456 A.2d at 489.

Therefore, plaintiffs contend that plaintiffs have the burdens of going forward and of persuasion on the issues of region, regional need, and fair share allocation. Once the Court determines the fair share for each township, each defendant bears "the heavy burden" of going forward and of persuasion on the following issues, to the extent it raises them:

(1) whether there is insufficient vacant land currently available for residential development to meet its full fair share obligation; (2) whether it has made substantial amendments to its zoning ordinances and land use regulations since entry of the Judgment of July 9, 1976; (3) whether those amendments have produced compliance with the Mount Laurel obligation; and (4) whether it is entitled to credit against its fair share for any

housing constructed since 1980. Mount Laurel, 92 N.J. at 222-23, 456 A.2d at 422; Morris County Fair Housing Council v. Boonton Township, et al., No. L-6001-78-P.W., Transcript of Judge's Decision, at 9 (Sup. Ct. Middlesex County, Jan. 27, 1984).

Plaintiffs contend that none of the defendant townships' land use ordinances has been substantially amended and that none of the amendments has produced compliance with Mount Laurel obligations. In those instances in which no amendments have been made in the ordinance or regulations relating to multi-family or high density residential construction, there is no issue of compliance and thus the only issue is what are the revisions and affirmative measures necessary to afford the required realistic opportunity for low and moderate income housing. Id. at 350-51, 456 A.2d at 489-90. Thus, plaintiffs contend that in those instances in which there have been no relevant ordinance amendments, the Court should immediately appoint a master to aid the municipalities in revising their ordinances and devising appropriate affirmative measures. Id. at 282-83, 351, 456 A.2d at 452-53, 490. In those instances in which a defendant contends that there have been substantial amendments but the Court determines that the township has failed to carry its burden of persuading the Court that there have been substantial amendments or that the amendments have indeed produced compliance with the Mount Laurel obligation, the Court should likewise proceed to appoint a master to oversee revision of the ordinance and development of affirmative measures.

In those instances in which the Court determines that the defendant has carried its burden of persuading the Court that there is insufficient vacant land remaining in the municipality to satisfy all of the defendant's

fair share allocation, plaintiffs contend that the defendant is obligated not only to rezone all remaining vacant land in an appropriate manner to insure construction of the maximum possible number of lower income housing units, but also to satisfy zoning obligations with regard to already developed areas. Specifically, plaintiffs contend that any such town must rezone all already developed residential areas to insure that any reconstruction or rehabilitation of units in those areas will assist in meeting the fair share allocation, and must undertake affirmative steps, including tax abatements, use of municipally owned land, and provision of necessary infrastructure improvements or extensions, to insure that the defendant's fair share obligation is met in already developed zones. Revisions and affirmative measures for both developed and vacant areas should be overseen by a court-appointed master after the fair share allocation and amount of vacant land are established. Mount Laurel, 92 N.J. at 215, 456 A.2d at 418. In those instances in which the Court determines that a township has carried its burden of persuading the Court that there is insufficient vacant land remaining in the portion of the municipality designated "growth" area to meet its full fair share obligation and that township has already permitted development in the "limited growth" areas, it is obligated to rezone sufficient vacant land in the "limited growth" area to assure satisfaction of its full fair share. Cf. Orgo Farms & Greenhouses, Inc v. Colts Neck Township, L-13769-80 P.W., N.J.L.J. at 12 (3/2/84).

Plaintiffs' contentions with respect to regional issues, including definition of housing region, determination of present and prospective housing need, fair share methodology and definition of median income and

affordability are set forth in Alan Mallach's Expert Report, dated December 1983. Plaintiffs reserve the right to comment upon and adopt some or all portions of the Revised Court-Appointed Expert's Report upon review of its provisions.

Plaintiffs contend that the land use and zoning ordinance provisions set forth in the Mallach Report are necessary for the realistic development of low and moderate income housing. We further contend that the Mallach Report's discussion in Appendix B of cost-producing elements and other provisions contained in the ordinances at issue in this case demonstrates that none of the defendant townships is in compliance with their Mount Laurel obligation.

Plaintiffs make the following additional specific contentions regarding each Township's compliance:

MONROE

Plaintiffs contend that Monroe's fair share is at least 1149 units of low and 638 units of moderate income housing. Plaintiffs contend that the present land use regulations of the Township of Monroe, declared unconstitutional in the Judgment of July 9, 1976, have not been revised in the intervening eight years to provide any opportunity for the construction of housing units affordable by low or moderate income households. As defendants admit, the only modification undertaken has permitted construction of housing units costing \$60-65,000 for one- or two-person families over 48. Because there is no question of compliance, plaintiffs contend that, after determining Monroe's fair share allocation, the Court should immediately appoint a master to oversee the revisions of the

Township's ordinances necessary to achieve compliance.

SOUTH PLAINFIELD

Plaintiffs contend that South Plainfield's fair share is at least 982 units of low and 541 units of moderate income housing. Plaintiffs contend that the land use regulations of the Borough of South Plainfield, declared unconstitutional in the Judgment of July 9, 1976, have not been revised in the intervening eight years to provide any opportunity for the construction of housing units affordable by low or moderate income households. No such housing has been constructed. Sufficient developable vacant land remains within the Borough to permit the Borough to meet all or a significant proportion of its fair share allocation. To the degree that there is insufficient vacant land to satisfy all of the Borough's fair share obligation, the Borough is also obligated to rezone appropriately all developed residential areas. Because there is no issue of ordinance compliance, plaintiffs contend that once the Court has determined the Borough's fair share and how much vacant land is available for residential development, the Court should appoint a master to oversee revision of the Borough's zoning ordinance and adoption of appropriate affirmative measures to assure compliance.

PISCATAWAY

Plaintiffs contend that Piscataway's fair share number is at least 2039 low income and 1117 moderate income units. In 1978, Piscataway amended its zoning ordinance and enacted a Planned Residential Development Ordinance. These measures, on their face, failed to satisfy the Township's fair share obligation because they failed to provide a realistic

opportunity for the development of low and moderate income housing and they contained a number of unnecessary, cost-generating features. See Mallach Report, Appendix B. Nor have they resulted in the development of any low or moderate income housing.

In December 1983, Piscataway again amended its zoning ordinance. Plaintiffs contend that Piscataway's zoning ordinance and regulations, as amended, continue to demonstrate facial non-compliance with the requirements of Mount Laurel II. Piscataway's amended ordinance provides for a density bonus of two units per acre for 20% low or moderate income housing in two PRD zones. Plaintiffs contend that the Township's exclusive reliance on a voluntary density bonus is insufficient to provide a realistic opportunity for the development of low and moderate income housing. See Mallach Report, Part II, Section A. Moreover, even assuming the effectiveness of this mechanism, the applicable zones presently contain only 214 vacant acres which, at a density of 10 units per acre, has a maximum development potential of only 428 low and moderate income units. This falls far short of the Township's fair share obligation. Finally, the 1983 amendments failed to eliminate many of the unnecessary, cost-producing requirements and other provisions that are inconsistent with the Township's obligations under Mount Laurel.

Plaintiffs further contend that sufficient vacant, developable land remains within the Township to permit it to meet all or a substantial portion of its fair share allocation. For example, according to the Township's answers to plaintiffs' interrogatories, there are approximately 1900 vacant acres within the Township that are not subject to an approved or pending site plan or any environmental or other constraints that would preclude the development of housing. Assuming that these acres are

developed at a density of 10 units per acre with a 20% low and moderate income set-aside, they have a development potential of approximately 3800 lower income units.

In response to the defendant's affirmative defense that credit should be given for existing student housing on the Rutgers University campus in Piscataway, it is plaintiffs' contention that, other than student family apartments built since 1980 and meeting appropriate criteria for credit, such housing is not includable within "regional housing need" as that term is used in Mount Laurel II.

PLAINSBORO

Plaintiffs contend that Plainsboro's fair share is at least 371 units of low and 204 units of moderate income housing. Plaintiffs contend that the land use regulations of the Township of Plainsboro demonstrate facial non-compliance with the requirements of Mount Laurel II in that no realistic opportunity is provided for the construction of low and moderate income. Plaintiffs further contend that the Township of Plainsboro has not satisfied its fair share obligation through presently existing units constructed since 1980 for two reasons: (1) Such units are not subject to any occupancy or price level controls, and therefore there is no assurance that they will remain available in the future to persons of low and moderate income; (2) None of the units built since 1980 are claimed to be affordable by persons of low income, thereby violating the requirement of Mount Laurel II that both low and moderate income needs be attended to. 92 N.J. at 217, 256-57, 456 A.2d at 419, 440.

Plaintiffs therefore contend that Plainsboro Township is not in compliance with its Mount Laurel obligation and seek appointment of a master to oversee revision of the zoning ordinance and adoption of

appropriate affirmative measures.

SOUTH BRUNSWICK

Plaintiffs contend that South Brunswick's fair share is at least 1876 units of low and 1046 units of moderate income housing. South Brunswick's zoning ordinances provide for maximum densities of 4 to 7 units per acre in the PRD zones, but do not include a mandatory set-aside or specific density bonus provision. Thus, no incentive is provided for low and moderate income housing development. Plaintiffs, therefore, contend that the Township's zoning ordinances on their face fail to create a realistic opportunity for the development of South Brunswick's fair share of low and moderate income housing. Plaintiffs further contend that the Court should appoint a master to recommend revisions to the ordinances immediately after determining the Township's fair share.

EAST BRUNSWICK

Plaintiffs contend that East Brunswick's fair share is at least 994 units of low and 539 units of moderate income housing. East Brunswick's density bonus, if fully utilized for complete development of all applicable vacant, developable land, could produce a total of 594 to 898 units of low and moderate income housing. Plaintiffs further contend that only 153 units of low and moderate income housing units have been developed which satisfy Mount Laurel criteria. An additional 31 rehabilitated units may also qualify as low or moderate income housing. Thus, East Brunswick's ordinances, on their face, do not provide for the development of sufficient low and moderate income units to meet the Township's fair share of 1533 units. Furthermore, East Brunswick's ordinances permit the use of the density bonus for housing which is not affordable under

the Mount Laurel guidelines. Consequently, not all of the units produced pursuant to the density bonus would satisfy low and moderate income housing need. The ordinances, further, do not distinguish between low and moderate income households, and, thus, do not ensure that low as well as moderate income housing needs will be met. Plaintiffs therefore contend that the Court should appoint a master to recommend revisions to the ordinances immediately after determining the Township's fair share.

CRANBURY

Plaintiffs contend that Cranbury's fair share is 369 units of low and 208 units of moderate income housing. Cranbury has established a Planned Development - High Density (PD-HD) zone in which a density bonus is offered when at least 15% of the units consist of low and moderate income housing. Plaintiffs contend that Cranbury's density bonus, if fully utilized for complete development of the entire 527 vacant acres in the PD-HD zone, would produce only 395 units of low and moderate income housing. Thus, Cranbury's ordinance, on its face, does not provide for the development of sufficient low and moderate income housing units to meet its fair share of 577 units. Moreover, development at a density greater than .5 units per acre in the PD-HD zone is conditioned on the purchase of massive numbers of transferable development credits (TDC) from farmland in the Township. Plaintiffs contend that this requirement is patently burdensome and all but forecloses the realistic development of any affordable housing. Plaintiffs also contend that the growth areas defined in the SDGP for Cranbury are not arbitrary and capricious and are controlling. Plaintiffs therefore contend that the Court should appoint a master to oversee revisions to the ordinances immediately after determining the Township's fair share.

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

Plaintiffs,)

v.)

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

Defendants.)

DOCKET NO. C-4122-73

CRANBURY LAND COMPANY, a New Jersey Limited Partnership,)

Plaintiff,)

v.)

CRANBURY TOWNSHIP, a municipal corporation of the State of New Jersey, located in Middlesex County, New Jersey,)

Defendant.)

DOCKET NO. L-070841-83P.W.

1. NATURE OF ACTION: Consolidated action in Lieu of Prerogative Writs under Mt. Laurel II seeking declaratory and injunctive relief and monetary damages. Plaintiff also seeks rezoning of his land and the granting of all necessary local approvals for the construction of a PUD on that land. This case has been consolidated with six other actions challenging the Defendants' Land Development Ordinance.

2. ADMISSIONS AND STIPULATIONS: None at this time. However, planning experts for the parties in this matter and the Court are attempting to work out a stipulation as to region, housing need and Cranbury's fair share of that housing need.

3. FACTUAL AND LEGAL CONTENTIONS: Plaintiff contends that Cranbury's Land Development Ordinance renders impossible the construction of any low and moderate income housing anywhere in the Township. Alternatively, Plaintiff contends that under the ordinance it is impossible to construct Cranbury's fair share and the regional need for such housing. In accordance with these contentions, Plaintiff asserts that the Cranbury Zoning Ordinance contains undue cost generating provisions such as unduly restrictive density requirements, requirements for the transfer development credits and other requirements that are more specifically set forth in report of Plaintiff's expert's report and the report and correspondence submitted on behalf of the Urban League Plaintiffs. In addition, Plaintiff contends that Cranbury has failed to take any affirmative steps to secure the construction of low and

moderate income housing in that the one allegedly affirmative step it has taken, the density bonus, is in the PD-HD zone, fails to provide a reasonable incentive for the construction of such housing.

Plaintiff also challenges the transfer of development credit provisions of the ordinance on their face as being ultra vires. There is no legal basis for the assumption by the Township of purported authority to enact such ordinances.

Aside from these general attacks on the ordinance, Plaintiff also contends that the zoning of its property utterly rules out the construction of any housing for low and moderate income people. Since most of plaintiff's property is zoned at 1 unit per 6 acres, there would appear to be no dispute as to this contention. Plaintiff further contends that the zoning of its land, both as to densities and to other requirements imposed, including the transfer of development credit provisions, is unreasonable, arbitrary and capricious and that such zoning requirements both deprive it of any reasonable use of its land and constitute a taking of Plaintiff's property without just compensation being paid therefor.

In respect to each of the claims set forth above, Plaintiff seeks a declaration that Cranbury's Land Development Ordinance is invalid both in general and as applied to Plaintiff's property and an injunction against further enforcement of the ordinance. In addition, Plaintiff seeks a builder's remedy under Mt. Laurel II, under which Plaintiff can proceed with a planned unit development which will include low and moderate income housing, residential uses, and office uses, the revenues from which can offset and help internally subsidize the cost of the low and moderate income housing. Finally, Plaintiff seeks damages in connection with its claim that the zoning of its property is arbitrary, capricious and ultra vires as set forth above.

5. DAMAGE AND INJURY CLAIMS: Plaintiff contends that he has been damaged in that the Defendants have enacted arbitrary, capricious and ultra vires transfer of development credits provisions and 6 acres minimum lot size requirements which have deprived Plaintiff of the use of its property under color of law in violation of the due process clause of the United States and New Jersey Constitutions. These provisions have also taken the Plaintiff's property without just compensation in violation of these Constitutional requirements.

6. AMENDMENTS: The Complaint should be deemed to have been amended to include challenges to each of the specific provisions of the Land Development Ordinance declared to be cost generating in the expert planning reports submitted to date in the consolidated litigation by Queale & Lynch, Inc., on behalf of Plaintiff, Zirinsky, and Allan Mallach, on behalf of the Urban League plaintiffs (including the letter of October 7th sent by Frank Askin, Esq. to William C. Moran, Esq.