

Verified petition for Stay and Other Relief

Pg. 23

note: verified petition not signed by petitioner atty.

CA002621M

MAILED
 SUPREME COURT
 OF NEW JERSEY

WILLIAM F. DOWD, ESQ.
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 (201) 222-4700

Attorney for Amici Curiae

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TOWNSHIP OF CRANBURY      :
                            : SUPREME COURT OF NEW JERSEY
                            :
      Petitioner,         : DOCKET No. _____
                            :
URBAN LEAGUE OF GREATER   : CIVIL ACTION
NEW BRUNSWICK; GARFIELD & COMPANY :
CRANBURY LAND COMPANY,   : NOTICE OF MOTION
LAWRENCE ZIRINSKY; and   : FOR LEAVE TO APPEAR
TOLL BROTHERS, INC.,     : AS AMICI CURIAE PURSUANT
                            : TO RULE 1:13-9
      Respondents.       :
                            :
-----x                   : IN THE MATTER OF
                            : MOUNT LAUREL II
                            : 92 N.J. 158 (1983)
    
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TO: STEPHEN W. TOWNSEND, Clerk
 Supreme Court of New Jersey
 Hughes Justice Complex
 CN 970
 Trenton, New Jersey 08625 20

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Attorneys for Respondent Toll Brothers, Inc.

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S I R S:

PLEASE TAKE NOTICE that the undersigned hereby moves before the New Jersey Supreme Court on behalf of the municipalities of Berlin, Bernardsville, Cherry Hill, Colts Neck, Danville, Far Hills, Franklin Lakes, Freehold Township, Holmdel, Howell, Long Branch, Manalapan, Marlboro, Middletown, Moorestown, Ocean, Old Bridge, Paramus, Passaic, Princeton Township, South Plainsfield and Warren for an order pursuant to Rule 1:13-9 for leave to appear as amici curiae in the Petition filed before this Court by the Township of Cranbury. In support of this motion, proposed amici curiae shall rely upon the annexed affidavit of William F. Dowd and the proposed Amici Brief.

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William F. Dowd
Dated: March 28, 1985

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HUFF, MORAN & BALINT
William C. Moran, Jr.
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(609) 655-3600

Attorneys for Petitioner

-----x
: TOWNSHIP OF CRANBURY, : SUPREME COURT OF NEW JERSEY
: :
: Petitioner, :
: :
: vs. : DOCKET NO. _____
: :
: URBAN LEAGUE OF GREATER :
: NEW BRUNSWICK and :
: GARFIELD AND COMPANY; : VERIFIED PETITION FOR STAY
: CRANBURY LAND COMPANY; : AND OTHER RELIEF
: LAWRENCE ZIRINSKY; :
: TOLL BROTHERS, INC. : IN THE MATTER OF
: MOUNT LAUREL II
: Respondents. : 92 N.J. 158 (1983)
: :
-----x

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JURISDICTION

1) The Petitioner, Township of Cranbury (hereinafter "Cranbury"), applies to this Court pursuant to this Court's implied retention of jurisdiction over this matter in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (hereinafter Mount Laurel II) 92 N.J. 158, 242 (1983); 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.

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NATURE OF THIS APPLICATION

2) Cranbury seeks to call this Court's attention to imminent legislation which will comprehensively address this State's housing problems and to request a stay of all pending litigation brought under Mount Laurel II until either the end of the present legislative session or the enactment and implementation of such legislation, whichever occurs first; and in the event such legislation is not passed before the end of this legislative session or if this Court denies Cranbury's stay application for this purpose, then, in the alternative, Cranbury requests this Court to reexamine the builder's remedy aspects of its Mount Laurel II decision and the use of the State Development Guide Plan (hereinafter "SDGP") as the primary determinant of prospective need obligation, together with such other aspects of the decision, including the effect of its implementations on residents of urban areas, as to this Court shall seem appropriate.

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3) Cranbury is a member along with over two dozen other municipalities of the Mayor's Task Force on Mount Laurel II, and brings this Petition in the public interest to advise this Court formally of the widespread and continuing negative impact of its Mount Laurel II decision, as that doctrine is now being implemented in some 126 suits now pending in the special Mount Laurel courts.

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4) Cranbury is a small, predominately agricultural community of approximately 13.5 square miles. As set forth in detail hereinbelow, under the Mount Laurel II decision Cranbury could be

forced to grow far beyond its capacity to provide basic infrastructure and services such as water, sewer, roads and education; the effect of which being the total and irreparable destruction of the character of Cranbury and the permanent loss of a traditional way of life that is nearly 300 years old.

5) Upon information and belief, as a result of the Mount Laurel II decision, numerous other municipalities are in a similar, if not more precarious position than Cranbury. These municipalities, like Cranbury, are faced with substantial, and in some instances physically impossible, problems in attempting to comply with the mandates Mount Laurel II as well as the traumatic and irreparable alteration of their very character. A tabular summary of the fair share growth impact on certain municipalities is attached hereto as Exhibit A.)

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6) Upon information and belief, the Court's use of the SDGP to determine prospective need obligation is producing chaotic results in other municipalities; for example, Colts Neck where the entire municipality was held subject to a Mount Laurel II prospective need obligation, even though only one small sliver of land in Colts Neck is designated on the SDGP as "growth area." Orgo Farms & Greenhouses, Inc. v. Colts Neck, 192 N.J. Super. 599 (1983).

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7) Upon information and belief, Mount Laurel II is producing equally grievous results in urban communities which have no Mount Laurel obligation, such as Long Branch, because such municipalities cannot offer a financial incentive which is sufficient to attract

private developers who are pursuing windfall profits under the builder's remedy.

8) Finally, the Mount Laurel II decision has made rational long-term planning in this State an impossibility; this State's housing problems can only be remedied by the Legislature.

PARTIES

9) The Respondent Urban League of Greater New Brunswick (hereinafter "Urban League") filed suit in July of 1974 (Docket No. C-4122-73) against Cranbury and 22 other municipalities, all of which are located in Middlesex County.

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10) The Urban League's suit requested, inter alia, a declaration that the Cranbury Township Zoning Ordinance was invalid because it failed to provide racially and economically integrated housing within the means of the individual plaintiffs to that action.

11) The Urban League's suit was tried in the Chancery Division before Hon. David Furman during February and March of 1976. Thereafter, Judge Furman ordered Cranbury and ten other municipalities to rezone to provide for specified numbers of low and moderate income housing; 1,351 units of low and moderate income housing were expressly assigned to Cranbury. Urban League of Greater New Brunswick v. Carteret, 142 N.J. Super. 11 (1976).

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12) Cranbury, along with seven other Defendant municipalities appealed to the Appellate Division and the Appellate

Division reversed Judge Furman without remand. Urban League of Greater New Brunswick v. Carteret, 170 N.J. Super. 461, (1979).

13) The Urban League appealed the decision of the Appellate Division to this Court and certification was granted. 74 N.J. 262 (1977). The appeal was decided jointly along with five other appeals in the Mount Laurel II decision, wherein this Court reversed the Appellate Division and remanded to the trial court for further proceedings to determine region, regional need, fair share and revision of ordinances in accordance with the Mount Laurel II decision.

14) The Urban League's suit is now pending in the Superior Court before Hon. Eugene D. Serpentelli. 10

15) Subsequent to this Court's remand, separate Mount Laurel II actions were brought against Cranbury by four real estate developers: Garfield & Company, a New Jersey Partnership (hereinafter "Garfield"); Cranbury Land Company, a New Jersey Limited Partnership (hereinafter "C.L.C."); Lawrence Zirinsky, a New York resident (hereinafter "Zirinsky"); and Toll Brothers, Inc., a Pennsylvania Corporation (hereinafter "Toll").

16) The Garfield action (Docket No. L 055956-83 P.W.) was filed in August of 1983 and is also pending in the Superior Court. 20
Garfield never made an application to Cranbury for permission to construct low and moderate housing or any other type of housing. Moreover, the complaint demands that Cranbury rezone to permit Garfield to construct approximately 2000 units including low and moderate income units but fails to either describe or designate any specific project which the plaintiff wants to construct.

17) The C.L.C. action (Docket No. L 070841-83 P.W.) was filed in November of 1983 and is pending in the Superior Court. C.L.C. originally made a proposal to Cranbury in the early 1970's, when the Township had no sewer system.

C.L.C. made no further proposals before it filed its complaint. The complaint does not describe or designate a specific development proposal, but simply demands, inter alia, a builder's remedy to allow the construction of an unspecified number of dwelling units, of which an unspecified percentage are to be set aside for low and moderate income persons.

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18) The Zirinsky action (Docket No. L 079309-83 P.W.) was filed in December of 1983 and is pending in the Superior Court. Zirinsky acquired options on approximately 1,800 acres of land, all of which is located in Cranbury's agricultural zone. In the Spring of 1983, Zirinsky requested zoning approval to construct office and commercial developments on this property. Cranbury denied the request. Zirinsky made no subsequent requests to Cranbury before bringing suit. Zirinsky's complaint also fails to describe or designate a specific development proposal and simply demands a builder's remedy to allow the construction of an unspecified number of dwelling units of which an unspecified percentage are to be set aside for low and moderate income persons.

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19) The Toll action (Docket No. L 005652-84) was filed in February 1984 and is pending in the Superior Court. In January of 1984, Toll sent a letter to the Cranbury Township Committee, which threatened suit unless approval was given to Toll's demand to

construct 940 units at a density of 9 units per acre. Toll is demanding a builder's remedy to allow the construction of a total of 940 dwelling units, of which an unspecified number are to be set aside for low and moderate income persons.

FIRST COUNT

20) Cranbury repeats and realleges the allegations hereinabove as though fully set forth in full.

21) At present, there are approximately 750 housing units in Cranbury. Cranbury's population was listed on the 1980 Census as 1,927 persons.

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22) Cranbury's fair share of its regions' low and moderate income housing was determined by Judge Serpentelli under the Warren Township formula in May of 1984 during the trial of the first phase of the Garfield action at 816 units. Cranbury was given 90 days in which to rezone to meet that need. Cranbury has since submitted a proposed compliance plan under protest.

23) If all 816 units of lower income housing are constructed with a "private subsidy" using the standard 20% set aside formula, Cranbury will be forced to add approximately 4,080 units of new housing which will result in a 544% -- over six-fold -- increase in the total number of housing units in the Township.

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24) Although neither C.L.C. or Zirinsky have demanded the number of units they wish to build, the total number of units demanded by Garfield (2000) and Toll (940) alone would increase by 392% the number of dwelling units in Cranbury.

25) The above growth will have a disasterous effect upon Cranbury, will require the expenditure of vast sums of money, and will irreparably alter the character of the Township.

26) Most of the village area of Cranbury -- 218 acres -- is 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.

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27) Three of the four pending Mount Laurel suits in Cranbury threaten to build high density housing on prime agricultural land.

28) The construction of high density housing next to agricultural land will result in substantial conflicts in the use and enjoyment between owners of the adjoining parcels, including, but not limited to, the introduction of pesticides and agricultural agents on a large scale basis which will invade residential premises, the added annoyance of the dust from plowing field and odors from the application of fertilizer, the use of rural roads by both farm machinery and passenger vehicles from the residential area, and the disruption of residents at early hours in the morning due to noise generated by various farm machinery, including helicopters used for spraying.

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29) Cranbury Township has a municipal water system which was originally constructed in the early 1900s as a private water

33) Cranbury Township has no mass transit currently serving the Township directly. The nearest mass transit consists of the main line of Amtrak, approximately 7 miles to the west of the village area, and a commuter bus service to New York City approximately 5

32) 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. If the above projections come to pass, Cranbury's school system will be dealt a crushing blow, and the Township will become unable to provide its young with the quality education which is their constitutional right.

31) 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.

30) 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.

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.

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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.

34) Added to 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.

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35) Upon information and belief, there are currently bills pending before the New Jersey State Legislature which will, when enacted, set forth express statutory provisions as to the scope of the builder's remedy, create administrative agencies to determine fair share and regional planning needs, and provide subsidies and grant monies for the construction of low and moderate income housing.

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SECOND COUNT

36) Cranbury repeats and realleges the allegations hereinabove as fully as though set forth in full.

37) The 1980 SDGP designated the village area and the easterly portion of Cranbury -- approximately 65% of Cranbury's total land area -- as "growth area". The western portion of Cranbury -- approximately 35% of Cranbury's total land area -- is designated as "limited growth area."

38) In January of 1981, the staff of the Division of State and Regional Planning recommended a modification of the SDGP which would reduce the size of the portion of Cranbury designated as growth area; the remainder of the land in Cranbury would have been designated designated as Agricultural. According to the staff recommenda- 10
tions, approximately 45% of the Township would have been designated as "Agricultural Area".

39) The purpose of the SDGP was to provide state planners with general guidance as to the areas where state funds should be spent to attain long range development goals. The SDGP clearly states in the section discussing the preparation of the "Concept Map" that:

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. 20

SDGP at 43 (emphasis added).

40) The SDGP clearly states that the designation of "growth area" does not require that growth should occur in that area:

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.

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SDGP at 49 (emphasis added).

41) In Mount Laurel II, this Court that the SDGP should be revised no later than January 1, 1985 "[i]n order for it to remain a viable remedial standard." Mount Laurel II 92 N.J. at 242 (1983).

42) Upon information and belief, as of the date of this petition, no such revision of the SDGP has either been undertaken or even authorized. Accordingly, the Mount Laurel courts are now using an outdated S.G.D.P.

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43) Reliance upon the SDGP in making determinations of prospective need obligation or fair share is producing chaotic results, and all such determinations heretofore made in pending Mount Laurel II litigation matters should be reversed and remanded with instructions on how to determine prospective need obligation.

WHEREFORE, petitioners pray for the following relief:

1) A stay of all pending Mount Laurel actions until the end of the present legislative session or the enactment and implementation of Mount Laurel legislation by the New Jersey State Legislature, whichever occurs first.

2) In the event this Court either declines to grant the above requested stay or such stay expires, that this Court set down for immediate hearing reconsideration of the builder's remedy promulgated by this Court in its Mount Laurel II decision and of the use of the SDGP by which an obligation to provide for prospective need is determined, and such other matters rising from the implementation of the Mount Laurel II decision including the effect of the decision on residents of urban areas, as to this Court shall seem appropriate, with a stay of all Mount Laurel actions pending such reconsideration.

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3) For such other and further relief as to this Court may seem just and proper.

HUFF, MORAN & BALINT
Attorneys For Petitioner

OF COUNSEL:

MUDGE ROSE GUTHRIE
ALEXANDER & FERDON
Thomas W. Evans*
180 Maiden Lane
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(212) 510-7000

By _____
William C. Moran, Jr.
Dated: March 28, 1985

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* Motion to Admit Pro Hac Vice Pending.

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

WILLIAM C. MORAN, JR., being duly sworn according to law, upon his oath, states that he is the duly appointed municipal attorney of Colts Neck, the petitioner in this action and that the foregoing Petition is true to his personal knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

William C. Moran, Jr.

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Sworn to before me this
28th day of March, 1985.

Notary Public

EXHIBIT A

Fair Share Growth Impact*

<u>Municipality</u>	<u>Present No. Units</u>	<u>Fair Share (% Increase)</u>	<u>Fair Share Plus Multiplier (% Increase)</u>	
Holmdel	2,250	2,213 (98%)	11,065 (492%)	
Howell	7,822	1,788 (23%)	8,940 (114%)	
Colts Neck	2,500	200 (8%)	1,000 (40%)	10
Warren	3,100	946 (31%)	4,730 (153%)	
Marlboro	6,000	822 (14%)	4,110 (69%)	
Cranbury	750	816 (109%)	4,080 (544%)	
<hr/>				
Totals (% Increase)	N=6 22,422	6,785 (30%)	33,925 (151%)	20
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Average (% Increase)	3,737	1,131 (30%)	5,654 (151%)	

* Data taken from Affidavits of: Danser [Re: Cranbury] (Pala at 6a); Hornik [Re: Marlboro] (Pa46a at 49a); Wadington [Re: Howell] (Pa52a at 53a); Shuster [Re: Warren] (Pa57a at 58a); O'Hagan [Re: Colts Neck] (Pa65a at 70a, 71a); Thomas [Re: Howell] (Pa84a at 86a).

1985

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 LI
92 N.J. 158 (1983)

BRIEF OF AMICI CURIAE

WILLIAM F. DOWD, ESQ.
121 Monmouth Parkway
West Long Branch, New Jersey
07764
(201) 222-4700

Attorney for Amici Curiae

For the reasons set forth in the brief of Petitioner, Township of Cranbury, dated March 28, 1985, with which we fully concur, amici curiae, the municipalities of Berlin, Bernardsville, Cherry Hill, Colts Neck, Denville, Far Hills, Franklin Lakes, Freehold Township, Holmdel, Howell, Long Branch, Manalapan, Marlboro, Middletown, Moorestown, Ocean, Old Bridge, Paramus, Passaic, Princeton Township, South Plainsfield and Warren, respectfully request that this Court stay the litigation in the special Mount Laurel courts. In the alternative, if the stay is not granted, or, if the Legislature does not act, then the amici curiae respectfully request reconsideration by this Court of the utilization by the special courts of the State Development Guide Plan and of the builder's remedy. In addition, amici curiae request that the Court now reconsider and set down for hearing and review, 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. 10

Respectfully submitted,

By: _____

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Attorney For Proposed Amici Curiae

-----x		
TOWNSHIP OF CRANBURY	:	SUPREME COURT OF NEW JERSEY
	:	
Petitioner,	:	DOCKET No. _____
	:	
vs.	:	CIVIL ACTION
	:	
URBAN LEAGUE OF GREATER	:	
NEW BRUNSWICK; GARFIELD & COMPANY	:	AFFIDAVIT IN SUPPORT
CRANBURY LAND COMPANY	:	OF MOTION TO APPEAR
LAWRENCE ZIRINSKY; and	:	AS AMICI CURIAE PURSUANT
TOLL BROTHERS, INC.,	:	<u>TO RULE 1:13-9</u>
	:	
Respondents.	:	IN THE MATTER OF
	:	<u>MOUNT LAUREL II</u>
-----x	:	92 N.J. 158 (1983)

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

I, WILLIAM F. DOWD, being duly sworn according to law,
deposes and says:

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1. I am the coordinator of the Mayors' Task Force on Mount Laurel II (hereinafter "proposed amici curiae") and am executing this Affidavit in support of a motion by the municipalities of Berlin, Bernardsville, Cherry Hill, Colts Neck, Denville, Far Hills, Franklin Lakes, Freehold Township, Holmdel, Howell, Long Branch, Manalapan, Marlboro, Middletown, Moorestown, Ocean, Old Bridge, Paramus, Passaic, Princeton Township, South Plainsfield and Warren for leave to appear as amici curiae in the Petition filed in this Court by the Township of Cranbury (hereinafter "Cranbury").


2. The proposed amici curiae are all members of the Task Force and support the efforts of the Petitioner Cranbury before this Court.

3. Each of the proposed amici curiae, except for Long Branch and Ocean, are currently involved in one or more Mount Laurel actions pending before the special Mount Laurel courts.

4. In addition to sharing the same or similar problems faced by Cranbury with respect to the Mount Laurel doctrine, the proposed amici curiae have other problems unique to their respective communities stemming from judicial implementation of the doctrine. Unusual but significant in this regard, is Long Branch, which municipality, while not a party to Mount Laurel litigation, takes the position that the implementation of Mount Laurel II is not its best interests or that of its residents because, inter alia, the decision almost totally diverts development dollars from urbanized areas such as Long Branch to suburban and rural areas. 10

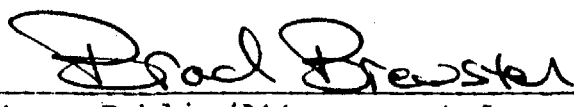
5. The proposed amici curiae seek to inform the Court that the profound problems set forth in Cranbury's brief in support of its stay application beset, to a greater or lesser degree, each of their communities and undoubtedly other municipalities throughout New Jersey. 20

6. I therefore respectfully request that the Supreme Court grant the motion for leave to appear of the proposed amici curiae.



WILLIAM F. DOWD

Sworn to before me this
28th day of March, 1985.



Notary Public/Attorney-at-Law,
State of New Jersey