

Mahwah + Middlesex finding 6/9/83 (1983)

Proposed draft finding for Mahwah/Middlesex
cases

11 pgs

MA 000001 D

**National Committee
Against Discrimination
in Housing**

1425 H Street, N.W., Washington, D.C. 20005 · (202) 783-8150

MA000001D

June 9, 1983

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Re: Mahwah and Middlesex
Funding Proposal

Dear Dick,


Please review the enclosed draft funding proposal and provide me with your comments and suggestions by ~~early next week~~. My hope is that the proposal can be prepared in final form, signed, and sent to the Veech Foundation and the Fund for New Jersey by the end of next week or the beginning of the following week. I need from someone the names and addresses of the appropriate contact at each foundation.

In preparing this preliminary draft, I considered including as additional appendices edited-down versions of Exhibits II, III, and IV, contained in Peter O'Connor's earlier draft. I would like your opinion on whether that would be appropriate or helpful.

With respect to the Public Advocate, I have asked Ken to see if Mr. Rodriguez would be willing to prepare a cover letter expressing his support for the proposal.

I look forward to hearing from you.

Sincerely,


Bruce S. Gelber
General Counsel

cc: ✓ Alan Mallach
Ken Meiser

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Veech Foundation

The Fund for New Jersey

RE: Mount Laurel
Litigation

Dear

The National Committee Against Discrimination in Housing, the Center for Metropolitan Action, and the American Civil Liberties Union of New Jersey submit this emergency request for grant assistance in the amount of \$65,000 in order to support the cost of continued litigation in two of the successful cases involved in the state-wide Mount Laurel Litigation: Urban League of Greater New Brunswick, et al. v. Mayor and Council of the Borough of Carteret, et al. (the "Middlesex County case") and Urban League of Essex County, et al. v. Township of Mahwah (the "Mahwah case"). This grant request represents the minimum amount of

foundation assistance necessary to enable the non-profit sponsors and their attorneys to bring these cases to a successful conclusion.

On January 30, 1983, the New Jersey Supreme Court issued what undoubtedly is one of the most significant municipal land use decisions in history. In its 270-page opinion, the Court unanimously reaffirmed the doctrine first announced in its 1975 landmark decision in Southern Burlington County NAACP v. Mount Laurel Township, 67 N.J. 151, (Mount Laurel I). That doctrine provides that each developing municipality in the state has an affirmative obligation to provide, through its land use regulations, a realistic opportunity for the construction of its fair share of the regional need for low and moderate income housing. As the Court stressed, this obligation derives from concepts of "fundamental fairness in the exercise of governmental power." Thus, in exercising its power to zone on behalf of the "general welfare," municipalities may not favor rich over poor or arbitrarily exclude the poor, many of whom are black or Hispanic, from attractive suburban areas which could afford to accommodate them but do not wish to do so. The Court described this as a "vision not only at variance with the requirement that the zoning power be used for the general welfare but with all concepts of fundamental

fairness and decency that underpin many constitutional obligations."

In evaluating the steps taken since the Mount Laurel doctrine was first announced, the Court expressed dissatisfaction with what it perceived as "widespread non-compliance with the constitutional mandate of our original opinion." The reaction of many suburban communities to the decision has been one of recalcitrance and delay. This has led to more litigation with its excessive expenditure of time and money, its waste of judicial resources, and the inconsistent application of the doctrine by the lower courts. Stating that it is "more firmly committed to the original Mount Laurel doctrine than ever," the Supreme Court declared that it intended, with its 1983 ruling, to "put some steel" into the Mount Laurel doctrine and "make it work" by strengthening it, clarifying it, and making it easier to apply.

Accordingly, the Court in its January 30th decision, known as Mount Laurel II, reexamined the doctrine and proceeded to resolve the principal legal ambiguities which have plagued its effective application. Specifically, the Court ruled, inter alia, that:

- o The existence of a municipal obligation to provide for a fair share of the regional housing need will no longer be determined by whether or not a town is "developing," but will extend to every municipality which is designated by the New Jersey State Development Guide Plan (SDGP) as having a "growth area";
- o The municipal obligation to provide a

realistic opportunity for development of low and moderate income housing will no longer be satisfied by proof that the municipality made a "good faith" attempt to provide the opportunity, but rather will be determined on the basis of whether it in fact has provided this opportunity

- o To meet this obligation, municipalities will be required not only to remove all municipally created, cost producing barriers to the construction of their fair share of lower income housing, but also will be required to adopt specific affirmative measures, such as density bonuses, mandatory set-asides and other inclusionary zoning devices, where necessary to encourage development of their fair share of such housing.
- o Providing the opportunity for construction of least-cost housing will satisfy a municipality's Mount Laurel obligation only if it cannot otherwise be satisfied and if all alternatives have been explored and all affirmative devices considered
- o In all cases, courts will be required to make a precise determination of region, regional need and the specific number of units needed to meet the municipality's fair share; "numberless" resolution of these issues will no longer be sufficient.

To ensure greater compliance and increase the effectiveness of the judicial remedy, the Court also adopted simpler, more efficient procedures for handling Mount Laurel litigation.

These included:

- o providing for the liberal use of housing and zoning experts to assist the court in resolving questions relating to region, regional need and fair share;
- o providing for closer judicial supervision and the appointment of a master to assist in formulating and implementing a proper remedy when a municipality has been found to be in noncompliance with Mount Laurel;

- o limiting the number of appeals in order to reduce delays in resolving these cases; and
- o assigning all future Mount Laurel cases to one of three judges specially appointed to handle all such cases within their region of the state.

The Court's Mount Laurel II decision resolved six cases that had been consolidated for consideration by the Court. Three of these cases -- Middlesex County, Mahwah, and the original Mount Laurel case -- were initiated by non-profit civil rights organizations and several individuals on behalf of a class of low and moderate income households seeking to reside in these suburban communities. The other three cases were brought by for-profit housing development firms which sought local approvals for development of specific tracts.

In all three of the non-profit sponsored cases, the Court ruled in favor of the plaintiffs and remanded for further proceedings. In Mount Laurel, the Supreme Court affirmed the granting of a builder's remedy to allow construction of a mobile home park, but reversed the judgment of the trial court in all other respects. Noting that Mount Laurel's revised ordinance fell far short of meeting the constitutional obligation, the Court remanded for a determination of Mount Laurel's fair share and for proceedings to revise the ordinance.

In Mahwah, the Court reversed the trial court's determination that the township had satisfied its Mount Laurel obligation by allowing for the construction of "least- cost" housing. The Court remanded to the trial


court for a determination of Mahwah's fair share and the appointment of an expert to assist in the fair share hearing. The Court added that, assuming Mahwah's ordinance is found not to comply with Mount Laurel (which the Court indicated "seems certain from the record before us"), the trial court must enter judgment for the plaintiffs, require Mahwah to revise its ordinance, and appoint a master to aid in development of a remedy.

Finally, in the Middlesex County case, in which plaintiffs challenged the zoning ordinances of all but two of the municipalities in Middlesex County, the trial court in 1976 ruled that 11 of the municipalities were in violation of Mount Laurel. Seven of these municipalities appealed and secured a reversal from the Appellate Division. The Supreme Court reversed. Although affirming large portions of the trial court's decision, the Court remanded for a redetermination of region, regional need and fair share allocation for each of the defendant municipalities and, thereafter, for revision of the ordinances and adoption of affirmative measures. The Court added that on remand there would be no need for a new trial concerning municipal non-compliance with Mount Laurel, unless the municipality's ordinance has been substantially amended. Because several of the defendants' land use ordinances have been amended, plaintiffs expect additional compliance hearings with respect to at least some of the defendants.

For several reasons, these three cases are of critical importance to the future development of exclusionary land

use principles in New Jersey, as well as nationwide. First, as part of the Mount Laurel II sextent, these cases have been remanded with specific instructions from the Supreme Court. Each will be required to test and apply the holdings of that decision. Their success in implementing ^{the} Court's mandate will have a direct bearing on the future success of all Mount Laurel litigation. Second, each of these cases is relatively old -- having been filed in _____, 1972 and 1974, respectively -- and has a lengthy procedural history. Accordingly, each can expect to receive ~~an~~ expedited consideration on remand. As a result, these cases will be among the first to apply the principals laid down in Mount Laurel II. Indeed, in two of the cases -- Mount Laurel and Mahwah-- experts have already been appointed and fair share hearings have been scheduled for early fall. Finally, being among the first cases to apply the Mount Laurel II, each will have enormous precedential impact on other cases in their region: Mount Laurel in South Jersey, Middlesex in Central Jersey, and Mahwah in North Jersey. This is especially true of the Middlesex County case which involves more than one jurisdiction and which has been assigned to one of the three judges recently appointed by the Supreme Court to handle Mount Laurel litigation.

Because these three cases were brought by public interest organizations on behalf of a class of poor people, rather than by for-profit developers, firms, they have always had to rely on outside support to fund the costs of litigation.



The plaintiffs in these cases can not shoulder the financial burden of this litigation. In this regard, The New Jersey Department of the Public Advocate has committed itself to support the entire cost of the remand proceedings in the Mount Laurel case.

The non-profit sponsors and plaintiffs in the Middlesex County and Mahwah cases, however, need your financial support in order to complete this litigation. Both the National Committee Against Discrimination in Housing (NCDH) and the American Civil Liberties Union of New Jersey (ACLU) are able and willing to make a substantial commitment to the Middlesex County case in terms of attorney time and related support services. As indicated in the budget, attached hereto as Appendix A, they require an additional \$32,000 in order to secure the services of those experts needed to pursue this litigation to a successful conclusion. Neither organization has the funds available for this purpose. In addition, while the Center for Metropolitan Action (formerly Suburban Action Institute) is willing and able to contribute \$2,500 toward litigation costs in the Mahwah case, it needs an additional \$33,000, as indicated in Appendix A, in order to continue with the case.

Each of the non-profit sponsors has been intimately involved in the creation and evolution of the Mount Laurel doctrine. Both the Center for Metropolitan Action and NCDH have been advocating the theory of fair share allocation of housing need since the 1960's. Moreover, all three organiza-

tions have been a primary moving force behind exclusionary land use litigation in New Jersey since the early 1970's.

The remand proceedings in the Middlesex County and Mahwah cases present the first opportunity to test the strength and practical feasibility of the Supreme Court's decision in Mount Laurel II. This new round of hearings will help to determine the altimate impact of the Mount Laurel doctrine on New Jersey's suburbs and inner cities. The plaintiffs, represented by the applicants herein, need your financial aid in order to complete these cases. After twelve years of successful litigation, this effort must not be abandoned for lack of funds, especially at the very time that realization of housing for the poor is within our grasp. We ask your assistance to enable these cases to be continued in order to make suburban housing for the poor a reality.

Thank you for your interest and anticipated support.

Very truly yours,

PAUL A. DAVIDOFF
Executive Director
Center for Metropolitan
Action

BRUCE S. GLEBER
General Counsel
National Committee Against
Discrimination in Housing, Inc.

JEFFREY FOGEL, DIRECTOR
American Civil Liberties
Union of New Jersey

LITIGATION COSTS FOR
PROCEEDINGS ON REMAND IN MIDDLESEX
COUNTY AND MAHWAH CASES

<u>Task</u>	<u>Cost</u>	
	<u>MIDDLESEX COUNTY</u>	<u>MAHWAH</u>
1. Attorney(s)	--	\$20,000
2. Planning Expert on Definition of Region, Determination of Regional Need, Impact of State Development Guide Plan, and Determination of Fair Share	\$ 3,600	2,500
3. Planning Expert on Compliance with Mount Laurel Obligation, Including Review of Revised Zoning Ordinances and On-Site Evaluation of Present and Potential Land Uses	12,000	--
4. Planning Expert on Inclusionary Land Use Regulations, Municipal Infrastructive, and Proposed Housing Developments	10,000	7,500
5. Housing Expert on Federal and State Housing and Community Development Programs and Housing Development Remedies	2,200	2,000
6. Administrative Costs, Including Travel, Lodging, Meals, Transcripts, Exhibits, Aerial Maps, etc.	4,200	1,000
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	Subtotal \$32,000	\$33,000
	Total	\$65,000

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 278
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 24,800 12,000
 1356 240

 > ± 1600