

Palmer Ass'n. Holmdel

10/17

(1984)

Letter requesting a protective order sealing
the report for Kasler's anticipated testimony

2 pgs

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October 17, 1984

JUDGE SERPENTELLI'S CHAMBERS

Hon. Eugene D. Serpentelli, J.S.C.
Court House, CN-2191
Toms River, New Jersey 08754

Re: Palmer Associates v. Township of Holmdel

Dear Judge Serpentelli:

We represent the Planning Board of the Borough of Old Tappan, in Bergen County.

It has been called to our attention by Malcolm Kasler that, in connection with his anticipated testimony before the Court in the above-captioned matter, he has been subpoenaed to provide and produce all Mt. Laurel reports prepared by his office for other municipalities since February of 1984.

Mr. Kasler was recently engaged by the Borough of Old Tappan to serve as a professional planning consultant and to prepare a report to assist the Borough in determining its fair share housing obligation under the New Jersey Supreme Court's decision in Mt. Laurel II. In September of 1984 Mr. Kasler submitted a draft of a "Fair Share Housing Study", which was presented to a committee of the Old Tappan Planning Board for its initial review. Such report has clearly been designated as a "preliminary document, for review purposes". We understand that same may be the subject of the subpoena issued by the attorneys for the Township of Holmdel in the present litigation.

We are writing to advise the Court of the Old Tappan Planning Board's position with respect to the possible disclosure of this report. The Borough of Old Tappan is, voluntarily and without any pending or anticipated litigation, engaged in the early phases of a study and determination regarding its fair share housing obligation. The draft report prepared

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by Mr. Kasler has not yet been reviewed by the Planning Board, let alone accepted or recommended for adoption. The Board submits that the premature disclosure of the report at this time by making it part of the public record of the proceedings before Your Honor could jeopardize the Board's on-going study and prejudice its good faith efforts to comply with Mt. Laurel II.

We would therefore respectfully suggest that if the report is produced and used at the time of trial in cross-examination of Mr. Kasler or otherwise, that a protective order be issued sealing such report and the testimony in connection therewith and directing that such report and testimony not be made part of the public trial record.

Respectfully submitted,

Wittman, Anzalone, Bernstein,
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Attorneys for the Old Tappan
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By *Michael I. Lubin*
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MIL:bjm
cc: Malcolm Kasler
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Old Tappan Planning Board