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November 7, 1985

Our File #

Ms. Elizabeth McLaughlin
Clerk, Appellate Division
Superior Court of New Jersey
Hughes Justice Complex
CN 006
Trenton, New Jersey 08625

ML000201W

Re: Urban League of Greater New Brunswick, et al.
vs. The Mayor and Council of Carteret, et al.
(Docket No. C-4122-73)
Great Meadows, et al. vs. Monroe Township
(Consolidated Case)
Motion for Leave to Appeal

Dear Honorable Judges:

Please accept the following Letter Brief, in lieu of more formal brief in opposition to the Motion of defendant Township of Monroe for leave to appeal from the Order of the Honorable Eugene D. Serpentelli, entered October 11, 1985 denying defendant's Motion to Transfer to the Council on Affordable Housing. This Letter Brief is submitted on behalf of plaintiffs Great Meadows Company, et al.

PROCEDURAL AND FACTUAL STATEMENT

Plaintiff Great Meadows Company is in substantial agreement with and relies upon the procedural history and statement of facts as presented in defendant's Brief in Support of Motion for Leave to Appeal.

LEGAL ARGUMENT

DEFENDANT'S MOTION FOR LEAVE TO APPEAL SHOULD BE DENIED BASED UPON THE CLEAR INTENT OF THE MOUNT LAUREL II DECISION

Defendant argues that the Mount Laurel II decision (92 N.J. 158) anticipated considerable appellate activity

throughout the litigation. In support thereof and in support of the proposition that the Mount Laurel II decision does not disfavor interlocutory appeals, defendant cites portions of the decision (defendants brief, page 4, citing 92 N.J. 158 at 218 and 92 N.J. 158 at 285). Defendant fails to cite relevant portions of the decision and those cited are incomplete. In this light, defendant attempts to argue the Mount Laurel II decision as having anticipated considerable appellate activity. This simply is not the law of the case.

The true direction of Mount Laurel II becomes clear when the authority cited by defendant is fully cited:

> (9) The judiciary should manage Mount Laurel litigation to dispose of a case in all of its aspects with one trial and one appeal, unless substantial considerations indicate some other course. This means that in most cases after a determination of invalidity, and prior to final judgment and possible appeal, the municipality will be required to rezone, preserving its contention that the trial court's adjudication was incorrect. If an appeal is taken, all facets of the litigation will be considered by the appellate court including both the correctness of the lower court's determination of invalidity, the scope of remedies imposed on the municipality, and the validity of the ordinance adopted after the judgment of invalidity. The grant or denial of a stay will depend upon the circumstances of each case. The trial court will appoint a master to assist in formulating and implementing a proper remedy whenever that court seems desirable.

92 N.J. 158 at 218 (emphasis added)

The emphasized portion of the above quoted language, not quoted by the defendant, demonstrates the Supreme Court's desire to have Mount Laurel type litigation resolved with one trial and one appeal. Only substantial considerations could alter this course. Defendant brief is devoid of any substantial consideration. In fact, this case is rapidly approaching an all inclusive final judgment which is the subject of the above quoted language from Mount Laurel II. After years of litigation, this case is only three to four

months away from final judgment and the grant of this Motion for Leave to Appeal and for a Stay would only delay that final judgment. (The status of this case is summarized by Judge Serpentelli at Da 48-12 to 50-24).

The Supreme Courts intention that Mount Laurel litigation not be interrupted by interlocutory appeals and stays is further stated in the Mount Laurel II decision:

> [76,77] The municipality may elect to revise its land use regulations and implement affirmative remedies "under protest." If so, it may file an appeal when the trial court enters final judgment of compliance. until that time there shall be no right of appeal, as the trial Court's determination of fair share and non-compliance is interlocutory. Stay of the effectiveness of an ordinance that is the basis for a judgment of compliance where the ordinance was adopted "under protest" shall be determined in accordance with the usual rules. Proceedings as ordered herein (including the obligation of the municipality to revise its zoning ordinance with the assistance of the special master) will continue despite the pendency of any attempted interlocutory appeals by the municipality.

92 N.J. 158 at 285 (emphasis added)

Furthermore, in a passage of Mount Laurel II not cited by defendant, the Supreme Court summarizes its intended procedure for Mount Laurel litigation; specifically, that there be only one proceeding and one appeal:

> The remedies authorized today are intended to achieve compliance with the Constitution and the Mount Laurel obligations without interminable trials and appeals. Municipalities will not be able to appeal a trial court's determination that its ordinance is invalid, wait several years for adjudication of that appeal, and then, if unsuccessful, adopt another inadequate ordinance followed by more litigation and subsequent appeals. We intend by our remedy to conclude in one proceeding, with a single appeal, all questions involved. There will be either a judgment of

> compliance (from which a municipality that acted "under protest" may appeal with or without stays) signifying the trial court's conclusions that there are land use regulations and affirmative devices in place conforming to the constitutional obligation; or there will be a judgment containing one or more of many orders available in the event of non-compliance along with the action of the municipality conforming to such orders. On appeal, the appellate court will have before it everything needed to determine fully the issues.

92 N.J. 158 at 290 (emphasis added)

In light of the above quoted passages from Mount Laurel II, there is no question that interlocutory appeals and stays were intended to be extraordinary in Mount Laurel litigation. Defendant has failed to demonstrate unusual circumstances and, therefore, the Motion for Leave to Appeal and for a Stay should be denied.

POINT II

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO TRANSFER

Defendant's Motion to Transfer to the Council on Affordable Housing, denial of which is the subject of the within Motion, was extensively brief and argued by the more than 15 counsel who participated in the consolidated Motions to Transfer. The relevant provisions of the Fair Housing Act (P.L. 1985, C.222), including subsection 16 which defendant claims was misconstrued by the trial court, were analyzed in depth by counsel and the trial court (see generally, Transcript of Judge's decision, Da 24 to Da 51).

After the above noted intensive inquiry regarding the defendant's Motion to Transfer, the trial court had no difficulty in deciding the consolidated motions. The motions were denied because the facts of each case, including Monroe Township, were "at the one extreme end of the transfer spectrum" (Da 55-22 to 24). The trial court found these cases so egregious that denial of the Motions to Transfer was

required without question. Simply put, these cases were obviously not the type of case intended by the legislature for transfer. (Judge Serpentelli's characterization of the obvious nature of the Motions to Transfer appear at Da 55-22 to 56-16 and Da 60-6 to 61-3).

CONCLUSION

In light of the foregoing, the trial court denied the Motion to Transfer without question or ambiguity. This plaintiff submits that there has been no showing by defendant of exceptional or unusual circumstances which would justify granting the within Motion. Therefore, plaintiff Great Meadows Company requests this Court to deny defendants Motion for Leave to Appeal and for Stay.

Respectfully submitted,

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cc: All Counsel of Record
Steven Denholtz, Esq.