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General

21-Oct.-1985

Notice of Motion for Leave to appeal an interlocutory order, for stay of trial court proceedings pending appeal and for consolidation. Exhibits A-E

(Motion for stay of trial court proceedings pending Judge Serpentelli's ruling on the COAH transfer).

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Notes: Exhibit B has Double-Sided pages

MLECC0486N0{M}

**KIRSTEN, FRIEDMAN & CHERIN**  
A PROFESSIONAL CORPORATION

17 ACADEMY STREET  
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(201) 623-3600

ATTORNEYS FOR Defendant, TOWNSHIP OF PISCATAWAY

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY/OCEAN COUNTY

URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, ET AL., :

Plaintiffs, :

vs. :

THE MAYOR AND COUNCIL :  
OF CARTERET, ET AL., :

Defendants. :  
\_\_\_\_\_ x

DOCKET NO. C-4122-73

Civil Action

NOTICE OF MOTION FOR LEAVE  
TO APPEAL AN INTERLOCUTORY  
ORDER, FOR STAY OF TRIAL  
COURT PROCEEDINGS PENDING  
APPEAL AND FOR CONSOLIDATION

TO: Eric Neisser, Esq.  
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Somerville, New Jersey 08876

Hon. Eugene D. Serpentelli  
Superior Court of New Jersey  
Ocean County Courthouse  
CN-2191

Toms River, New Jersey 08753

PLEASE TAKE NOTICE that on the date and time to be  
set by the Court, the undersigned, attorneys for the defen-  
dant/appellant, Township of Piscataway (herein "Piscataway"<sup>11</sup>)

will move for an Order (a) granting Piscataway leave to appeal an interlocutory order dated October 11, 1985, issued by the Superior Court of New Jersey, Chancery Division, Middlesex/Ocean Counties, denying Piscataway<sup>f</sup>s application to transfer litigation presently pending in this matter before the Honorable Eugene D. Serpentelli, Judge of the Superior Court of New Jersey, to the Affordable Housing Council, (b) staying further proceedings pending in the trial court pending the resolution of the within application, and (c) consolidating this matter with applications brought or to be brought by other municipalities similarly situated, including, but not limited to, Cranbury, Monroe, South Plainfield, Warren, Holmdel and Bernardsville.

The basis for the within application is that the decision of the trial court denying Piscataway<sup>1</sup>s application to transfer this matter to the Affordable Housing Council is contrary to the intent of the Legislature in adopting the Fair Housing Act, promotes manifest injustice against Piscataway and other defendant municipalities similarly situated, will cause irreparable harm to Piscataway and, further, that the requested interlocutory appeal is mandated by the interest of justice, as is more particularly set forth in the accompanying brief in support of motion for leave to appeal an interlocutory order and for stay of enforcement pending appeal and in the accompanying Certification of the undersigned in support of this application.

The defendant Township of Piscataway respectfully requests oral argument on this application.

Respectfully submitted,

KIRSTEN, FRIEDMAN & CHERIN  
A Professional Corporation  
Attorneys for Defendant Township of  
Piscataway

By: 

PHILLIP LEWIS PAILEY

Dated: October 21, 1985

**KIRSTEN, FRIEDMAN & CHERIN**  
A PROFESSIONAL CORPORATION

17 ACADEMY STREET  
NEWARK, NEW JERSEY 07102  
(201) 623-3600

ATTORNEYS FOR Defendant, TOWNSHIP OF PISCATAWAY

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY/OCEAN COUNTY

URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, ET AL., :

Plaintiffs, :

VS. :

THE MAYOR AND COUNCIL :  
OF CARTERET, ET AL., :

Defendants. :

DOCKET NO. C-4122-73

Civil Action

CERTIFICATION OF  
PHILLIP LEWIS PALEY

PHILLIP LEWIS PALEY, of full age, hereby certifies  
as follows:

1. I am the Township attorney for, and Director  
of Law of, Township of Piscataway, a Municipal Corporation  
of the State of New Jersey. I have personally represented  
the Township of Piscataway in all aspects of the within  
matter following its remand to the Superior Court of New

Jersey by the New Jersey Supreme Court. I have close familiarity with, and personal knowledge of, those matters reflected in this Certification, which I respectfully submit in support of the application of the Township of Piscataway ("Piscataway") for leave to appeal an interlocutory order entered by the trial court on October 11, 1985, denying Piscataway's application to transfer the pending litigation to the Affordable Housing Council, in support of Piscataway's application for a stay of all proceedings pending in the trial court until this Court rules definitively upon the merits of Piscataway's application, and in support of consolidating this matter with applications brought or to be brought by other municipalities similarly situated.

2. I further respectfully submit this Certification to seek to clarify, relatively briefly, the procedural history of the within matter, insofar as it is relevant to this application.

3. In 1976, the Honorable David D. Furman, Judge of the Superior Court, rendered an opinion which held that a number of municipalities within Middlesex County were required to adopt new zoning ordinances providing for the development of a number of low and moderate income dwelling units [142 N.J. Super. 11 (Ch. Div., 1976)]. Piscataway, a defendant municipality, appealed. Judge Furman's decision was reversed by the Appellate Division [170 N.J. Super. 461 (A.D., 1971)]; plaintiff, the Urban League (now "Civic League") of Greater New Brunswick

appealed that reversal to the New Jersey Supreme Court. During 1983, the Supreme Court, in a landmark decision reported at 92 N.J. 158 (1983), reversed the Appellate Division and directed a remand of the matter to the Chancery Division of the Superior Court of New Jersey. As this Court well knows, the Supreme Court proceeded by designating three judges throughout the State to hear all "Mt. Laurel" litigation; the Honorable Eugene D. Serpentelli was selected to hear all cases involving municipalities within central New Jersey.

4. Judge Serpentelli, along with Judges Skillman and Gibson, the other two Mt. Laurel judges assigned by the Supreme Court, determined to proceed with the trial of all remanded and all new matters by adopting a common formula in order to determine, at least prima facie, the fair share of dwelling units affordable by low and moderate income households to be reflected in the zoning of each defendant municipality. Because of the number of defendant municipalities in the instant litigation, and the number of developer and non-developer plaintiffs which had brought suit on Mt. Laurel grounds against Cranbury, Monroe and other defendant municipalities, Judge Serpentelli decided to appoint an expert to assist the Court. The expert, Carla Lerman, scheduled a series of conferences of those experts retained by all parties to this lawsuit, approximately 17 in

number. As a result of those conferences, a "consensus methodology" was derived. This methodology is reflected in an opinion of Judge Serpentelli in litigation entitled "AMG, etc., et al. v. Township of Warren," to date unpublished. The methodology involved a complex statistical analysis applicable to each municipality, including, among other things, the use of an eleven county region to determine present need? the use of a commutershed region, varying from municipality to municipality, to determine prospective need; the use of ratios involving the number of jobs within each municipality as a proportion of the number of regional jobs which existed in 1980, the growth of jobs in each municipality between 1970 and 1980 as a percentage of the regional job growth, the proportion of municipal land area as compared to land area in the present need and commuter shed regions, the employment of population projections based upon the averaging of two population models propounded by the Department of Community Affairs of the State of New Jersey, and other statistics. In Piscataway's case, because of the huge influx of jobs as a function of the location of Route 287 (which bisects the municipality) and the zoning which permitted industrial and commercial development along Route 287, the number of Mt. Laurel dwelling units called for by the consensus methodology was 4,192.



5. In order to place this number into proper perspective, this Court should be aware that the policy of the trial courts in this matter has been to permit the construction of four dwelling units to sell at market prices for every Mt. Laurel dwelling unit to sell at a price affordable to lower income households. Therefore, Piscataway's obligation of 4,192 translates into an overall obligation of just under 21,000 housing units. This, in a municipality which, according to the 1980 census, has only 12,300 dwelling units contained within its borders. This too, in a municipality which has a population approximating 43,000, as of 1980. Effectively, the consensus methodology would have nearly doubled the number of dwelling units and substantially increased the population.

6. During the deliberations regarding the adoption of the consensus methodology, a number of planners felt that some consideration should be given to the relative income levels of each municipality in determining the fair share number. The assumption underlying this view was that the existence of a municipal median household income would evidence past exclusion of the poor. In Piscataway's case, the median household income ratio, based upon census data determined by the trial court to be reliable in all respects, is 102%. Therefore, 49% percent of the households living in Piscataway in 1980 had a median household income

below the median household income of Piscataway<sup>1</sup>'s region. Thus, virtually half of Piscataway's households lie below the regional income median.

7. The trial of Piscataway's case (together with Cranbury, Monroe, South Plainfield and other municipalities) commenced on April 30, 1984, and consumed 19 trial days. The focus of that trial was to determine a fair share number for each municipality. It soon became apparent, as to Piscataway, that the strict application of the consensus methodology was inappropriate, because Piscataway had developed at a pace over the past two decades which left relatively little vacant land suitable for residential development. Indeed, according to the testimony presented at trial, Piscataway has approximately 1800 to 1900 vacant acres of land, of which no more than 1100 is suitable for residential development at any density. Clearly, in order to house 4,192 Mt. Laurel dwelling units to be constructed at a density of 2 to the acre, approximately 100 acres of suitable vacant land would be required. Recognizing this dilemma, the trial court concluded in early June, 1984, that it should hear testimony on a site specific basis as to the suitability of Piscataway's vacant land. Accordingly, it commissioned Ms. Lerman to prepare an analysis of each vacant site within Piscataway and directed her to draw conclusions as to the suitability of each site for high

density residential development and to recommend appropriate densities for each site.

8. During November, 1984, the trial court received Ms. Lerman's recommendations. Ms. Lerman identified approximately 37 suitable sites within Piscataway ranging in area from 2.8 acres to 110 acres, and recommended densities for the development of each site. Later, Ms. Lerman prepared a supplemental report identifying two or three additional sites within the Township which she had inadvertently overlooked in her initial analysis. In the aggregate, Ms. Lerman concluded that approximately 1100 acres of vacant land within Piscataway was suitable for high density residential development, at an approximate average density of 10 units to the acre. The trial court permitted Piscataway to present evidence seeking to persuade the Court that particular sites included in Ms. Lerman's inventory were unsuitable, evidence to that effect was presented to the Court in February, 1985. The trial court rendered an opinion on July 23, 1985, concluding that the fair share number attributable to Piscataway was 2,215 (a copy of Judge Serpentelli's opinion is appended hereto as Exhibit A and a copy of the Order dated September 17, 1985 is appended hereto as Exhibit D).

9. On July 5, 1985, approximately eighteen days prior to the date of Judge Serpentelli's written opinion addressing Piscataway, the Legislature of the State

of New Jersey adopted the Fair Housing Act. While certain salient aspects of this enactment will be addressed in the accompanying brief, it is sufficient to reflect here only that the law was a direct response to the mandate of Mt. Laurel II; that the law instituted an Affordable Housing Council to adjudicate the obligation of municipalities to accomodate lower income households; that the law provided for specific mandatory deadlines for municipal actions; and the law provided for the transfer of existing litigation from the Superior Court of New Jersey to the Affordable Housing Council, utilizing a standard of "manifest injustice". A copy of the Fair Housing Act is appended hereto as Exhibit B.

10. The Fair Housing Act adopts a procedure permitting the transfer of existing litigation from the Court to the Affordable Housing Council. Specifically, Section 16 of the Fair Housing Act provides as follows:

For those exclusionary zoning cases instituted more than 60 days before the effective date of this Act, any party to the litigation may file a motion with the Court to seek a transfer of the case to the Council. In determining whether or not to transfer, the Court shall consider whether or not the transfer would result in a manifest injustice to any party to the litigation.

Pursuant to this authority, a motion seeking a transfer of the existing litigation was filed with the

Court during early September, 1985. A copy of the motion and certification in support thereof is appended hereto as Exhibit C.

11. Roughly contemporaneously with the filing of Piscataway's motion, a number of other municipalities sought similar relief, among them being Warren Township, Cranbury Township, Monroe Township, and the Borough of South Plainfield. The Court elected to set all these motions for transfer for argument on Friday, September 27, 1985. The visit of Hurricane Gloria compelled a last minute adjournment of the argument, which took place on Wednesday, October 2, 1985.

12. On that date, a number of parties to the various lawsuits appeared before Judge Serpentelli. to present argument in support of, and in opposition to, the transfer applications. Following extensive argument, Judge Serpentelli concluded that all transfer applications returnable before him that date would be denied. (A copy of the Order as to Piscataway entered October 11, 1985, is appended heeto as Exhibit E). His decision was based on a consideration of several factors, specifically including the following:

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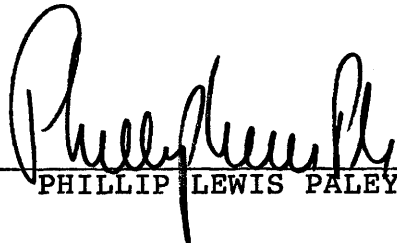
The said motion sought two aspects of affirmative reliefs first, the transfer to the Affordable Housing Council, and second, a lifting of a general restraint imposed by the trial court on December 11, 1984, against non-Mt. Laurel development of any of the thirty seven sites deemed suitable by Ms. Lerman in her orginal report. This application for leave to appeal and an accompanying stay is addressed only to the first aspect of relief sought, namely, the transfer.

A. Given the present status of the litigation, in which all five municipalities appearing before the Court had concluded trial and were in one phase or another of the compliance proceeding, the Court felt that a final adjudication of compliance and the adoption of compliance ordinances could be completed before the Court much more quickly than before the Affordable Housing Council.

B. The Court felt that households of low and moderate income would be deprived of their right to housing within each municipality, should further substantial delay occur, and the Court expressed the opinion that low and moderate income households, as a class, constituted a party to this litigation whose interests the Court felt necessary to protect.

13. The Township of Piscataway respectfully contends that Judge Serpentelli's decision represents an incorrect view of the intent of the New Jersey State Legislature as expressed in the Fair Housing Act. The Township of Piscataway further contends that to continue with the litigation without obtaining appellate review of Judge Serpentelli's decision will effect manifest injustice to Piscataway, and to other municipalities similarly situated, which will be compelled to adopt ordinances changing the land use patterns of each municipality in violation of sound planning criteria and in opposition to strong and substan-

tial public sentiment. The enactment of zoning ordinances, whether by consent or under protest, will effect irreparable damage to each municipality, particularly those in which developers have filed suit as plaintiffs to obtain rezoning of specific tracts at higher density, such as Piscataway. For these reasons, Piscataway respectfully submits this Certification, and the accompanying brief, in support of its urgent request for a stay of the trial court proceedings, pending the appellate review of Judge Serpentelli's ruling on the transfer motion, and it respectfully urges the appellate review of Judge Serpentelli's ruling on the transfer motion on an expedited basis, in the public interest.

  
PHILLIP LEWIS PALEY

Dated: October 21, 1985



# Superior (Exmri of New Jersey

CHAMBERS OF  
JUDGE EUGENE D. SERPENTELLI  
ASSIGNMENT JUDGE

OCEAN COUNTY COURT HOUSE  
C.N. 2191  
TOMS RIVER, N.J. 08754

July 23, 1985

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LETTER-OPINION

Raymond R. Trombadore,  
Trombadore & Trombadore  
33 East High Street  
Somerville, N. J. 08876

Re: Urban League of Greater New Brunswick v. Carteret  
Docket No. C-4122-73

Counsel:

In April, 1984 this court began hearings for the purpose of establishing the fair share of the seven remaining municipalities in the above case. The fact that each of those municipalities had not adopted ordinances complying with Mount Laurel II has already been established.

The fair share of six of the municipalities has since been determined. With regard to Piscataway Township, the court appointed master concluded that the fair share of the township was 3744 if calculated in



accordance with the methodology approved by this court in AMG Realty v. Warren Twp. et al., decided July 16, 1984. However, all parties and the master recognized that because of the amount of vacant developable land within the Township of Piscataway, it was highly unlikely that the fair share of the township as calculated pursuant to AMG could be satisfied. As a result, the court authorized the master to conduct a physical inventory of all vacant developable land within the township and to make recommendations concerning the suitability of that land for Mount Laurel development and the densities which would be appropriate for each suitable tract. The Urban League also conducted such a study. Upon conclusion of those studies, the Urban League was able to agree with the master upon the parcels which were suitable for lower income development. The defendant disagrees with that conclusion.

A hearing was held with respect to the suitability of each tract. The master testified as to each site and was subjected to cross-examination by the plaintiffs, defendants and interested property owners. The township presented its proofs with regard to each of the sites and each property owner also presented proofs either in favor of or opposed to a finding of suitability for lower income housing as to their individual parcels.

At the conclusion of the hearing the township attorney urged the court to make an actual site inspection before reaching any determination concerning the fair share of the township. The court agreed and an inspection was held on May 16, 1985. During the tour, the court recorded its observations. Thereafter, the recording was transcribed and was made available to counsel.

Piscataway Township, unlike many other townships involved in Mount Laurel litigation before this court, possesses a wide variety of housing.

That is not to suggest, however, that much of the housing is affordable to lower income households. Nevertheless, it does appear that there is a mixture of housing within Piscataway not present in some of the more affluent communities engaged in Mount Laurel litigation. There is a significant quantity of middle class housing and even some older lower income units. On the other hand, it is also evident that Piscataway Township has attracted a very substantial amount of industrial and office construction. The court viewed large tracts of land devoted almost exclusively to impressive corporate headquarters, office buildings, professional structures and other commercial development.

The site inspection confirmed virtually all of the conclusions made by the court appointed master in her reports of November 10, 1984 and January 18, 1985 and also confirmed her testimony before this court. There were no sites found suitable by the master which the court could conclude were not suitable based upon a site inspection. The court recognizes that the defendant has raised potential problems with some of the sites as they relate to the possible presence of toxins. However, the site inspection certainly did not confirm those concerns and the proofs in that regard were totally inadequate. Therefore, the court cannot exclude the sites based upon supposition or speculation. If they are to be excluded, a more detailed site analysis must be conducted. The township also asserted various other justifications to support a finding of unsuitability for numerous sites. The principal objections related to traffic, drainage, infrastructure inadequacies, overhead powerlines, wetlands and incompatibility of adjacent land uses. Again, the site inspection did not demonstrate that any site was clearly rendered unsuitable by any such condition and the proofs concerning these constraints do not support a finding of lack of suitability. That is

not to suggest that a careful site analysis of any given site during the compliance process may not warrant a different conclusion.

Therefore, it is appropriate to calculate the fair share of the township based upon the finding made by the master and accepted by the court that the sites designated in her two reports are suitable for Mount Laurel housing. The township did not dispute the densities allocated to each of the sites by the master. In her testimony, the master concluded that the density estimates were "conservative". She provided a range of density for some sites. Though I believe it would be appropriate, for the purposes of establishing the fair share, to utilize the higher level within those ranges, I have opted, in light of the large fair share obligation of the township and the need for some adjustment to the fair share as discussed later, to use the lower level of density for each site for which a density range was provided. The township retains the right to demonstrate, after careful analysis during the compliance stage, that the densities may not be attained. Furthermore, since the fair share number need not be satisfied on every site, the township will have to analyze whether the overall fair share can be satisfied on the sites which it chooses for Mount Laurel zoning.

As a result, the court finds that the fair share of the township is 2215. That number is arrived at by multiplying the density number assigned for each of the tracts found suitable by the court by the total acreage within the sites which may be utilized for Mount Laurel housing. It should be noted that with respect to site 60, the master's report was somewhat unclear. It was clarified in supplemental testimony. Her findings were that the site, which includes several other sites shown by separate numberings in the exhibits, could accommodate 270 senior citizen units within site 53 and 300 to 400 units, most of which would be lower income, within the balance of

sites 51, 52, 53, 54 and 60. A recapitulation of the fair share calculation is attached as an appendix. Counsel should examine the calculation carefully to be sure that the court has accurately reflected the numerical data.

It is important to note that the court does not expect the Township of Piscataway to satisfy its fair share obligation by rezoning each of the sites found suitable by the court. In fact, it would be preferable for the township to develop fewer of those sites so as to avoid a patchwork of development throughout the community. However, at this point, there is simply no evidence before the court to demonstrate that the township does not have the capacity to satisfy the fair share through rezoning of a more limited number of sites. That rezoning need not take the character of four to one development. The court has already seen in other communities that there "are many devices available to the township to accommodate lower income housing development without utilizing the mandatory set-aside of 20% and turning all of the sites over to private developers. Site 60, for example, is an area in which the township owns substantial property. It could undertake housing development in that area itself, through a non-profit corporation or through the use of land dedication to that purpose in cooperation with private enterprise. That is only one example of the options available to the town. If, after careful review, the township can demonstrate that it cannot accommodate the fair share number as established in this opinion without a substantial negative impact upon the zone plan or environment of its community, it may attempt to do so. However, it must be noted that the court has been extremely careful in attempting to bring greater precision to the fair share number developed in Piscataway through the use of an actual inventory of available sites and an on-site inspection by both the master and the court. Therefore, the municipality has a

significant burden to carry if it attempts to demonstrate that it cannot satisfy its fair share number.

The township offered some evidence with respect to potential credits for fair share compliance. The court need not analyze each of the credits claimed in depth. By and large, the claimed credits relate to the existence of university housing within the municipality or the large number of apartment complexes throughout the municipality.

There is no claimed "credit" that can pass the technical requirements needed to establish a true numerical credit in the pure sense. All the units asserted by the township to be credits were built prior to 1980 and, therefore, would have been in response to the need existing prior to that date. The present need category of the AMG methodology identifies only a need for housing from 1980 forward. Secondly, none of the housing claimed as credits is price-controlled or subject to resale restrictions. Third, the testimony showed most of it is beyond lower income levels as established in Mount Laurel II.

The Urban League's expert conceded that some portion of the married student housing (348 units) might be given consideration towards reduction of the fair share - not as a pure credit - but from an equitable standpoint, I have made such an allowance and a good deal more by utilizing a density figure for all the Mount Laurel sites which is even more conservative than the "conservative" estimate made by the master. The difference between using the higher range of density and the lower range, together with a 200 unit reduction on sites 51, 52, 53, 54 and 60, amounts to approximately 473 units - a more than fair credit for any adjustment for which the township could claim "credits" based on the equities.

The fact is that there has been virtually no lower income housing created since 1980 which would fall into the category of credits towards

C

present need. Certainly there has been no housing developed which would constitute credits towards prospective need. Dormitory housing or group quarters would not constitute a credit inasmuch as that type of housing is not included in the inventory of present housing need as calculated under the AMG methodology.


As noted, the most that could be argued by the township is that it does have some variety of housing, which other municipalities do not have and that the married student housing warrants some adjustment. Any equity considerations should be weighed in light of the evident fact that Piscataway Township is one of those types of communities which the Court had in mind when it referred to those towns which have invited the factories and excluded the workers. (Mount Laurel II at 211) The township has experienced a commercial boom which has generated very attractive ratables and the boom is not over. The fair share established for Piscataway in this opinion is likely to be its last because most of its vacant developable land for lower income purposes could reasonably be expected to be gone by 1990 and much of it has or will be consumed by very desirable ratables. Therefore, the township should do whatever it can do now.

As a result, the township is hereby ordered to start work immediately upon the adoption of a compliance ordinance to satisfy the fair share number of 2,215. It shall have a period of 90 days to do so. However, given the substantial delay which has occurred in establishing this fair share and recognizing that the township should have known that it would have a significant fair share number, the township should not expect that this court will permit any significant extension of this 90 day period. While such extensions have been liberally granted in many other municipalities,

in this case it would be unfair and inappropriate to do so. The township should expect that if it is unable to satisfy the 90 day requirement, it will have to present compelling reasons why the court should not have the master establish a compliance ordinance in accordance with this opinion.

Very truly yours,

EDSrRDH

  
Eugene D. Serpentelli,  
A. J. S. C.

COPY TO:

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Carla L. Lerman, P. P.

APPENDIX

<u>SITE NUMBER</u>	<u>ACREAGE</u>	<u>DENSITY</u>	<u>TOTAL UNITS</u>
1	10.7	5	53.5
2	110	8	880
3	27.7	8	221.6
4	10	7	70
6	55.6	12	667.2
7 & 8	123	8	984
9 & 13	81	8	648
	(subject to possible reduced density for buffer ring to approximately 6 per acre)		
10 & 12	68	8	544
31	11.9	10	119
32,33 & 34	- 114.02	7	798.14
35	74.65	10	746.5
37	7.82	12	93.84
38	30	12,	360
40	15	8 (120)	
	5	15 ( 75)	195
42	32.4	10	324
43	14.7	10	147
44	20	8	160
45	40.9	8	327.2
46	55.64	8	445.12
47	9.4	10	94
48 & 63	9	5	45
49	17.3	12	207.6



57	40	10	400
75 & 76	10.5	6	63
77	6.45	5	32.25
78	3	7	21
80	10	8	80
			<u>8,726.95</u>

8,726.95 divided by 5 = 1,745.39

	1,745.39
51,52,53	270.00 (senior citizen)
54,60	200.00*
	<u>2,215.39</u>

\*Using the lower estimate of the master (300) and reducing it because of her testimony that most of the units would be lower income.

No units charged against site 79 which was found suitable in conjunction with site 38.

C

P. L. 1985, CHAPTEK 222, approved July 2, 1985

Senate Committee Substitute For  
1985 Senate Nos. 2046 and 2334 (*Second Official Copy Reprint*)

AN ACT concerning housing, **\*\*andj\*\*** making an appropriation  
**\*\*and amending P. L. 1975, c. 291\*\*.**

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Fair Housing  
2 Act."

1 2. The Legislature finds that:

2 a. The New Jersey Supreme Court, through its rulings in *South*  
3 *Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975)  
4 and *South Burlington County NAACP v. Mount Laurel*, 92 N.J.  
5 158 (1983), has determined that every municipality in a growth  
6 area has a constitutional obligation to provide **\*\*through its land**  
7 **use regulations\*\*** *SL* realistic opportunity for a fair share of its  
8 region's present and prospective needs for housing for low and  
8A moderate income families.

9 b. In the second Mount Laurel ruling, the Supreme Court stated  
10 that the determination of the methods for satisfying this consti-  
11 tutional obligation "is better left to the Legislature," that the court  
12 has "always preferred legislative to judicial action in their field,"  
13 and that the judicial role in upholding the Mount Laurel doctrine  
14 "could decrease as a result of legislative and executive action."

15 c. The interest of all citizens, including low and moderate income  
16 families in need of affordable housing, would be best served by  
17 a comprehensive planning and implementation respoiise to this  
18 constitutional obligation.

19 d. There are a number of essential ingredients to a comprehen-  
20 sive planning and implementation response, including the estab-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly committee amendments adopted February 28, 1985.

\*\*—Senate amendments adopted in accordance with Governor's recommenda-  
tions May 13, 1985.

C. 222-2

21 lishment of reasonable fair share housing guidelines and standards,  
22 the initial determination of fair share by officials at the municipal  
23 level and the preparation of a municipal housing element, State  
24 review of the local fair share study and housing element, and con-  
25 tinuous State funding for low and moderate income housing to  
26 replace the federal housing subsidy programs which have been  
27 almost completely eliminated.

28 e. The State can maximize the number of low and moderate  
29 income units provided in New Jersey by allowing its municipalities  
30 to adopt appropriate phasing schedules for meeting their fair  
31 share, so long as the municipalities permit a timely achievement  
32 of an appropriate fair share of the regional need for low and  
33 moderate income housing as required by the Mt. Laurel I and II  
34 opinions.

35 f. The State can, also, maximize the number of low and moderate  
36 income units by rehabilitating existing, but substandard, housing  
37 in the State, and, in order to achieve this end, it is appropriate  
38 to permit the transfer of a limited portion of the fair share obli-  
39 gations among municipalities in a housing region, so long as the  
40 transfer occurs on the basis of sound comprehensive planning,  
41 with regard to an adequate housing financing plan, and in relation  
42 to the access of low and moderate income households to employ-  
43 ment opportunities.

44 \*\*g. Since the urban areas are vitally important to the State,  
45 construction, conversion and rehabilitation of housing in our urban  
46 centers should be encouraged. However, the provision of housing  
47 in urban areas must be balanced with the need to provide housing  
48 throughout the State for the free mobility of citizens.

49 h. The Supreme Court of New Jersey in its Mount Laurel deci-  
50 sion demands that municipal land use regulations affirmatively  
51 afford a reasonable opportunity for a variety and choice of housing  
52 including low and moderate cost housing, to meet the needs of peo-  
53 ple desiring to live there. While provision for the actual construc-  
54 tion of that housing by municipalities is not required, they are en-  
55 couraged but not mandated to expend their own resources to help  
56 provide low and moderate income housing.\*\*

1 3. The Legislature declares that the statutory scheme set forth  
2 in this act is in the public interest in that it comprehends a low  
3 and moderate income housing planning and financing mechanism  
4 in accordance with regional considerations and sound planning  
5 concepts which satisfies the constitutional obligation enunciated  
6 by the Supreme Court. *\*The Legislature declares that the State's*  
7 *preference for the resolution of existing and future disputes in-*

8 *volving exclusionary zoning is the mediation and review process*  
9 *set forth in this act and not litigation, and that it is the intention of*  
10 *this act to provide various alternatives to the use of the builder's*  
11 *remedy as a method of achieving fair share housing.\**

1 4. As used in this act:

2 a. "Council" means the Council on Affordable Housing estab-  
3 lished in this act, which shall have primary jurisdiction for the  
4 administration of housing; obligations in accordance with sound  
5 regional planning considerations in this State.

6 b. "Housing region" means a geographic area of no less than  
7 two nor more than four contiguous, whole counties which exhibit  
8 significant social, economic and income similarities, and which  
9 constitute to the greatest extent practicable the primary metro-  
10 politan statistical areas as last defined by the United States Census  
11 Bureau prior to the effective date of this act.

12 c. "Low income housing" means housing affordable according  
13 to federal Department of Housing and Urban Development or  
14 other recognized standards for home ownership and rental costs  
15 and occupied or reserved for occupancy by households with a gross  
16 household income equal to 50% or less of the median gross house-  
17 hold income for households of the same size within the housing  
18 region in which the housing is located.

19 d. "Moderate income housing" means housing affordable accord-  
20 ing to federal Department of Housing and Urban Development  
21 or other recognized standards for home ownership and rental costs  
22 and occupied or reserved for occupancy by household with a gross  
23 household income equal to more than 50% but less than 80% of the  
24 median gross household income for households of the same size  
25 within the housing region in which the housing is located.

26 e. "Resolution of participation" means a resolution adopted by  
27 a municipality in which the municipality chooses to prepare a fair  
28 share \*[study]\* \*plan\* and housing element in accordance with  
28A this act.

29 f. "Inclusionary development" means a residential housing de-  
30 velopment in which a substantial percentage of the housing units  
31 are provided for a reasonable income range of low and moderate  
32 income households.

33 g. "Conversion" means the conversion of existing commercial,  
34 industrial, or residential structures for low and moderate income  
35 housing purposes where a substantial percentage of the housing  
36 units are provided for a reasonable income range of low and  
37 moderate income households.

38 h. "Development" means any development for which permission

C 222-4

39 may be required pursuant to the "Municipal Land Use Law," P. L.  
40 1975,c.291(C.40:55D-1etseq.).

41 \*i. "Agency" means the New Jersey Mortgage and Housing  
42 Finance Agency established by P. L. 1983, c. 530 (C. 55H4K-1  
43 et seq.)\*

44 \*\*j. "Prospective Need" means a projection of housing needs  
45 based on development and growth which is reasonably likely to  
46 occur in a region or a municipality, as the case may be, as a result  
47 of actual determination of public and private entities. In deter-  
48 mining prospective need consideration shall be given to approvals  
49 of development application, real property transfers and economic  
50 projections prepared by the State Planning Commission established  
51 by P. L. . . . , c. . . . (now pending before the Legislature as Senate  
52 Bill No. 1464 of 1984).\*\*

1 5. a. There is established in, but not of, the Department of Com-  
2 munity Affairs a Council on Affordable Housing to consist of  
3 nine members appointed by the Governor with the advice and con-  
4 sent of the State, of whom four shall be elected officials represent-  
5 ing the interests of local government, at least one of whom shall be  
6 representative of an urban municipality having a population in  
7 excess of 40,000 persons and a population density in excess of  
8 3,000 persons per square mile, and no more than one of whom  
9 may be a representative of the interests of county government;  
10 \*\*[three]\*\* \*\*two\*\* shall represent the interests of households in  
11 need of low and moderate housing, \*\*[at least]\*\* one of whom  
12 shall represent the interests of the builders of low and moderate  
13 income housing, and shall have an expertise in land use practices  
14 and housing issues *\*\*and one of ivhom shall be the executive director  
15 of the agency, serving ex officio\*\**; and \*\*£two]\*\* \*\*three\*\* shall  
16 represent the public interest. Not more than five of the nine shall  
17 be members of the same political party. The membership shall be  
17A balanced to the greatest extent practicable among the various hous-  
17B ing regions of the State.

18 b. The members shall serve for terms of six years, except that  
19 of the members first appointed, two shall serve for terms of four  
20 years, three for terms of five years, and \*\*£four3\*\* \*\*three\*\* for  
21 terms of six years. All members shall serve until their respective  
22 successors are appointed and shall have qualified. Vacancies shall  
23 be filled in the same manner as the original appointment, but for  
24 the remainder of the unexpired term only.

25 c. The members *\*\*excluding the executive director of the  
26 agency\*\** shall be compensated at the rate of \$150.00 for each six-  
27 hour day, or prorated portion thereof for more or less than six

C

28 hours, spent in attendance at meetings and consultations and all  
29 members shall be eligible for reimbursement for necessary ex-  
30 penses incurred in connection with the discharge of their duties.

31 d. The Governor shall "[appoint]\* *\*nominate\** the members  
32 within 30 days of the effective date of this act and shall designate a  
33 member to serve as chairman throughout the member's term of  
34 office and until his successor shall have been appointed and qualified.

35 e. Any member may be removed from office for misconduct in  
36 office, willful neglect of duty, or other conduct evidencing unfitness  
37 for the office, or for incompetence. A proceeding for removal may  
38 be instituted by the Attorney General in the Superior Court. A  
39 member or employee of the council shall automatically forfeit his  
40 office or employment upon conviction of any crime. Any member  
41 or employee of the council shall be subject to the duty to appear  
42 and testify and to removal from his office or employment in accor-  
43 dance with the provisions of P. L. 1970, c. 72 (C. 2A:81-17.2a  
44 etseq.).

1 6. a. The council may establish, and from time to time alter, such  
2 plan of organization as it may deem expedient, and may incur  
3 expenses within the limits of funds available to it.

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4 b. The council shall elect annually by a majority of its members  
5 one of its members, other than the chairman, to serve as vice-  
6 chairman for a term of one year and until his successor is elected.  
7 The vice-chairman shall carry out all of the responsibilities of the  
8 chairman as prescribed in this act during the chairman's absence,  
9 disqualification or inability to serve.

10 c. The council shall appoint and fix the salary of an executive  
11 director who shall serve at its pleasure. The council may employ  
12 such other personnel as it deems necessary. All employees of  
13 the council shall be in the unclassified service of the Civil Service.  
14 The council may employ legal counsel who shall represent it in  
15 any proceeding to which it is a party, and who shall render legal  
16 advice to the council. The council may contract for the services  
17 of other professional, technical and operational personnel and  
18 consultants as may be necessary to the performance of its duties.  
19 *\*[Members and employees]\* *\*Employees\** shall be enrolled in the*  
20 *Public Employees Retirement System of New Jersey established*  
21 *under P. L. 1954, c. 84 (C. 43:15A-1 et seq.).*

1 7. It shall be the duty of the council, *\*£six]\* *\*seven\** months after*  
2 *the *\*\*[effective date of this act]\*\* *\*\*confirmation of the last mem-***  
2A *her initially appointed to the council, or January 1, 1986, whichever*  
2B *is earlier\*\**, and from time to time thereafter, to:

3 a. Determine housing regions of the State\*[, in the establishment

4 of which the council shall give particular attention to the recom-  
5 mendations of the Center for Urban Policy Research, Rutgers,  
6 the State University]\*;

7 b. Estimate the present and prospective need for low and  
8 moderate income housing at the State and regional level;

9 c. Adopt criteria and guidelines for:

10 (1) Municipal determination of its present and prospective fair  
11 share of the housing need in a given region\*. *Municipal fair share*  
11A *shall be determined after crediting on a one to one basis each*  
11B *current unit of low and moderate income housing of adequate*  
11C *standard, including any such housing constructed or acquired as*  
11D *part of a housing program specifically intended to provide housing*  
HE *for low and moderate income households\* ;*

12 (2) Municipal adjustment of the present and prospective fair  
13 share based upon available vacant and developable land, infra-  
14 structure considerations or *\*environmental or\** historic preserva-  
15 tion factors *\*\*and adjustments shall be made whenever:*

16 (a) *The preservation of historically or important architecture*  
17 *and sites and their environs or environmentally sensitive lands may*  
18 *be jeopardized,*

19 (b) *The established pattern of development in the community*  
20 *would be drastically altered,*

21 (c) *Adequate land for recreational, conservation or agricultural*  
22 *and farmland preservation purposes would not be provided,*

23 (d) *Adequate open space would not be provided,*

24 (e) *The pattern of development is contrary to the planning desig-*  
25 *inations in the State Development and Redevelopment Plan pre-*  
26 *pared pursuant to P. L . . . . , c. . . . (now pending before the Legis-*  
27 *lature as Senate Bill No. 1464 of 1984),*

28 (f) *Vacant and developable land is not available in the munici-*  
29 *polity, and*

30 (g) *Adequate public facilities and infrastructure capacities are*  
31 *not available, or would result in costs prohibitive to the public if*  
32 *provided\*\*; and*

33 (3) Phasing of present and prospective fair share housing re-  
34 quirements pursuant to section 23 of this act.

35 d. Provide population and household projections for the State  
36 and housing regions.

37 *\*\*e. May in its discretion, place a limit, based on a percentage*  
38 *of existing housing stock in a municipality and any other criteria*  
39 *including employment opportunities which the council deems ap-*  
40 *propriate, upon the aggregate number of units which may be allo-*  
41 *cated to a municipality as its fair share of the region's present and*  
42 *prospective need for low and moderate income housing.\*\**

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43 In carrying out the above duties, *\*including, but not limited to,*  
 44 *present and prospective need estimations\** the council shall give  
 45 appropriate weight to pertinent research studies, government  
 46 reports, decisions of other branches of government, implementation  
 47 of the State Development and Redevelopment Plan prepared pur-  
 48 suant to P. L. . . . , c. . . . (now pending before the Legislature as  
 49 Senate Bill No. 1464 of 1984) and public comment. *\*To assist the*  
 50 *council, the State Planning Commission established under that act*  
 51 *shall provide the council annually with economic growth, develop-*  
 52 *ment and decline projections for each housing region for the next*  
 53 *six years.\** The council shall develop procedures for periodically  
 54 adjusting regional need based upon the low and moderate income  
 55 housing that is provided in the region through *\*\*[the Fair Hous-*  
 56 *ing Trust Fund Account established in section 20 of this act orj\*\**  
 57 *any \*\*[other3\*\* federal, State, municipal or private housing pro-*  
 58 *gram.*

1 , 8. Within four months after the *\*\*[effective date of this actj\*\**  
 2 *\*\*confirmation of the last member initially appointed to the council,*  
 3 *or January 1,1986, whichever is earlier\*\**, the council shall, in ac-  
 4 cordance with the "Administrative Procedure Act," P. L. 1968,  
 5 c. 410 (C. 52:14B-1 et seq.), *\*Xadoptj{\* \*propose\* procedural rules.*

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1 9. *\*a.\** Within four months after the effective date of this act, each  
 2 municipality which so elects shall, by a duly adopted resolution  
 3 of participation, notify the council of its intent to submit to the  
 4 council its fair share housing plan. Within *\*J[four3\* \*five\* months*  
 5 after the council's adoption of its criteria and guidelines, the muni-  
 6 cipality shall prepare and file with the council a housing element,  
 7 based on the council's criteria and guidelines, and any  
 8 *\*\*£adopted[\*\* \*\*fair share housing\*\* ordinance \*\*[revisions3\*\**  
 8A *\*\*introduced and given first reading and second reading in a hear-*  
 8B *ing pursuant to R. S. 40:49-2\*\* which \*\*[implement]\*\* \*\*implc-*  
 8C *ments\*\* the housing element.*

9 *\*b\** A municipality which does not notify the council of its parti-  
 10 cipation within four months may do so at any time thereafter. In  
 11 any exclusionary zoning litigation instituted against such a mu-  
 12 nicipality, however, there shall be no exhaustion of administrative  
 13 remedy requirements pursuant to section 16 of this act unless the  
 14 municipality also files its fair share plan and housing element with  
 15 the council prior to the institution of the litigation.

1 10. A municipality's housing<sup>1</sup> element shall be designed to achieve  
 2 the goal of access to affordable housing to meet present and  
 3 *\*[future]\* "prospective\* housing needs, with particular attention*  
 4 to low and moderate income housing, and shall contain at least:



5 a. An inventory of the municipality's housing stock by age,  
6 condition, purchase or rental value, occupancy characteristics, and  
7 type, including the number of units affordable to low and moderate  
8 **income household** *\*\*and substandard housing capable of being re-*  
8A *habilitated, and in conducting this inventory the municipality shall*  
8B *have access, on a confidential basis for the sole purpose of conduct-*  
8C *ing the inventory, to all necessary property tax assessment records*  
8D *and information in the assessor's office, including but not limited*  
8E *to the property record cards\*\*;*

9 b. A projection of the municipality's housing stock, including the  
10 probable future construction of low and moderate income housing,  
11 for the next six years, taking into account, but not necessarily  
12 limited to, construction permits issued, approvals of applications  
13 for development and probable residential development of lands;

14 c. An analysis of the municipality's demographic characteristics,  
15 including but not necessarily limited to, household size, income  
16 level and age;

17 d. An analysis of the existing and probable future employment  
18 characteristics of the municipality;

19 e. A determination of the municipality's present and prospective  
20 fair share for low and moderate income housing and its capacity  
21 to accommodate its present and prospective housing needs, includ-  
22 ing its fair share for low and moderate income housing; and

23 f. A consideration of the lands that are most appropriate for  
24 construction of low and moderate income housing and of the exist-  
25 ing structures most appropriate for conversion to, or rehabilitation  
26 for, low and moderate income housing, including a consideration of  
27 lands of developers who have expressed a commitment to provide  
28 low and moderate income housing.

1 11. a. In adopting its housing element, the municipality may  
2 provide for its fair share of low and moderate income housing  
3 by means of any technique or combination of techniques which pro-  
4 vide a realistic opportunity for the provision of the fair share. The  
5 housing element shall contain an analysis demonstrating that it  
6 will provide such a realistic opportunity, and the municipality  
7 shall establish that its land use and other relevant ordinances have  
8 been revised to incorporate the provisions for low and moderate  
9 income housing. In preparing the housing element, the municipality  
10 shall consider the following techniques for providing low and  
11 moderate income housing within the municipality, as well as such  
12 other techniques as may be published by the council or proposed  
13 by the municipality:

14 (1) Rezoning for densities necessary to assure the economic

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15 viability of any inclusionary developments, either through manda-  
16 tory set asides or density bonuses, as may be necessary to meet  
17 all or part of the municipality's fair share;

18 (2) Determination of the total residential zoning necessary to  
19 assure that the municipality fair share is achieved;

20 (3) Determination of measures that the municipality will take  
21 to assure that low and moderate income units remain affordable  
22 to low and moderate income households *\*over a 30-year period\**

22A *\*for an appropriate period of not less than six years\**;

23 (4) A plan for infrastructure expansion and rehabilitation if  
24 necessary to assure the achievement of the municipality's fair  
25 share of low and moderate income housing;

26 (5) Donation or use of municipally owned land or land con-  
27 demned by the municipality for purposes of providing low and  
28 moderate income housing;

29 (6) Tax abatements for purposes of providing low and moderate  
30 income housing;

31 (7) Utilization of funds obtained from *\*\*the Fair Housing*  
32 *Trust Fund Account* established pursuant to section 20 of this act  
33 *or* *\*\*any other* State or federal subsidy toward the con-  
34 struction of low and moderate income housing; and

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35 (8) Utilization of municipally generated funds toward the con-  
36 struction of low and moderate income housing.

37 b. The municipality may provide for a phasing schedule for the  
38 achievement of its fair share of low and moderate income housing  
39 which is not inconsistent with section 23 of this act.

40 c. The municipality may propose that a portion of its fair share  
41 be met through a regional contribution agreement. The housing  
42 element shall demonstrate, however, the manner in which that  
43 portion will be provided within the municipality if the regional  
44 contribution agreement is not entered into. The municipality shall  
45 provide a statement of its reasons for the proposal.

46 *\*d. Nothing in this act shall require a municipality to raise or*  
47 *expend municipal revenues in order to provide loiv and moderate*  
48 *income housing.\**

1 12. a. A municipality may propose the transfer of up to  
2 *\*\*133Y3%J\*\** *\*\*50%\*\** of its fair share to another municipality  
3 within its housing region by means of a contractual agreement into  
4 which two municipalities voluntarily enter. A municipality pro-  
5 posing to transfer to another municipality shall provide the council  
6 with the housing element and statement required under subsection  
7 c. of section 11 of this act, and shall request the council to deter-  
8 mine a match with a municipality filing a statement of intent pur-

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9 pursuant to subsection e. of this section. Except as provided in sub-  
10 section b. of this section, the agreement may be entered into upon  
11 obtaining substantive certification under section 14 of this act, or  
12 anytime thereafter. The regional contribution agreement entered  
13 into shall specify how the housing shall be provided by the second  
14 municipality, hereinafter the receiving municipality, and the amount  
15 of contributions to be made by the first municipality, hereinafter  
16 the sending municipality.

17 In a municipality which is a defendant in an exclusionary zoning  
18 suit which has not obtained substantive certification pursuant  
19 to this act may request the court to be permitted to fulfill a portion  
20 of its fair share by entering into a regional contribution agree-  
21 ment. If the court believes the request to be reasonable, the court  
22 shall request the council to review the proposed agreement and  
23 to determine a match with a receiving municipality or muni-  
24 cipality pursuant to this section. The court may establish time  
25 limitations for the council's review, and shall retain jurisdiction  
26 over the matter during the period of council review. If the court  
27 determines that the agreement provides a realistic opportunity  
28 for the provision of low and moderate income housing within the  
29 housing region, it shall provide the sending municipality a credit  
30 against its fair share for housing to be provided through the  
31 agreement in the manner provided in this section.

32 The agreement shall be entered into prior to the entry of a final  
33 judgment in the litigation. In cases in which a final judgment was  
34 entered prior to the date this act takes effect and in which an  
35 appeal is pending, a municipality may request consideration of a  
36 regional contribution agreement provided that it is entered into  
37 within 120 days after this act takes effect. In a case in which a  
38 judgment has been entered, the court shall consider whether  
39 or not the agreement constitutes an expeditious means of provid-  
40 ing a fair share of the fair share.

41 \* Regional contribution agreements shall be approved by the  
42 county planning board or agency of the county in which the receiving municipality is located. The  
43 county planning board or agency shall determine whether or not the agreement provides  
44 a realistic opportunity for the provision of low and moderate  
45 income housing within convenient access to employment oppor-  
46 tunities. The council shall refer the agreement to the county plan-  
47 ning board or agency which shall review whether or not the  
48 agreement is in accordance with sound comprehensive  
49 regional planning. In its review, the county planning board or  
50 agency shall consider the master plan and zoning ordinance of  
51

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52 the sending and receiving municipalities, its own county master  
53 plan, and the State-development and redevelopment plan. \*\*£The  
54 county planning board or agency shall receive a fee from the Fair  
55 Housing Trust Fund to reimburse it for the expenses of reviewing  
56 the regional contribution agreement.]\*\* In the event that there is  
57 no county planning board or agency in the county in which the  
58 receiving municipality is located, the council shall also determine  
59 whether or not the agreement is in accordance with sound com-  
60 prehensive regional planning. After it has been determined that  
61 the agreement provides a realistic opportunity for low and mod-  
62 erate income housing within convenient access to employment  
63 opportunities, and that the agreement is consistent with sound  
64 comprehensive regional planning, the council shall approve the  
65 regional contribution agreement by resolution. All determinations  
66 of a county planning board or agency shall be in writing and shall  
67 be made within such time limits as the council may prescribe,  
68 beyond which the council shall make those determinations and no  
69 fee shall be paid to the county planning board or agency pursuant  
70 to this subsection.

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71 d. In approving a regional contribution agreement, the council  
72 shall set forth in its resolution a schedule of the contributions to  
73 be appropriated annually by the sending municipality. A copy of  
74 the adopted resolution shall be filed promptly with the Director  
75 of the Division of Local Government Services in the Department  
76 of Community Affairs, and the director shall thereafter not approve  
77 an annual budget of a sending municipality if it does not include  
78 appropriations necessary to meet the terms of the resolution.  
79 Amounts appropriated by a sending municipality for a regional  
80 contribution agreement pursuant to this section are exempt from  
81 the limitations or increases in final appropriations imposed under  
82 P.L.1976,c.6S(C.40A:4-45.1etseq.).

83 e. The council shall maintain current lists of municipalities which  
84 have stated an intent to enter into regional contribution agreements  
85 as receiving municipalities, and shall establish procedures for  
86 filing statements of intent with the council. No receiving munic-  
87 ipality shall be required to accept a greater number of low and  
88 moderate income units through an agreement than it has expressed  
89 a willingness to accept in its statement, but the number stated  
90 shall not be less than a reasonable minimum number of units, not  
91 to exceed 100, as established by the council. The council shall  
92 require a project plan from a receiving municipality prior to the  
93 entering into of the agreement, and shall submit the project plan  
94 to the \*[Department of Community Affairs]\* \*agency\* for its

95 review as to the feasibility of the plan prior to the council's  
96 approval of the agreement. The \*[department]\* \*agency\* may  
97 recommend and the council may approve as part of the project plan  
98 a provision that the time limitations for contractual guarantees or  
99 resale controls for low and moderate income units included in the  
100 project shall be less than 30 years, if it is determined that modifiea-  
101 tion is necessary to assure the economic viability of the project.

102 f. The council shall establish guidelines for the duration and  
103 amount of contributions in regional contribution agreements. In  
104 doing so, the council shall give substantial consideration to the  
105 average of: (1) the median amount required to rehabilitate a  
106 low and moderate income unit up to code enforcement standards;  
107 (2) the average internal subsidization required for a developer to  
108 provide a low income housing unit in an inclusionary development;  
109 (3) the average internal subsidization required for a developer to  
110 provide a moderate income housing unit in an inclusionary develop-  
111 ment. Contributions may be prorated in municipal appropriations  
112 occurring over a period not to exceed six years *\*\*and may include*  
113 *an amount agreed upon to compensate or partially compensate the*  
114 *receiving municipality for infrastructure or other costs generated*  
114A *to the receiving municipality by the development\*\**. Appropria-  
114B tions shall be made and paid directly to the receiving municipality  
114c or municipalities.

115 g. The council shall require receiving municipalities to file an-  
116 nual reports with the \*[Department of Community Affairs]\*  
117 \*agency\* setting forth the progress in implementing a project  
118 funded under a regional contribution agreement, and the \*fdepartment]\*  
119 \*agency\* shall provide the council with its evaluation of  
120 each report. The council shall take such actions as may be necessary  
121 to enforce a regional contribution agreement with respect to the  
122 timely implementation of the project by the receiving municipality.

1 13. A municipality which has filed a housing element may, at any  
2 time during a six year period following the filing of the housing  
3 element, petition the council for a substantive certification of its  
4 element and ordinances or institute an action for declaratory judg-  
5 ment granting it six-year repose in the Superior Court. The mu-  
6 nicipality shall publish notice of its petition in a newspaper of  
7 general circulation within the municipality and county and shall  
8 make available to the public information on the element and ordi-  
9 nances in accordance with such procedures as the council shall  
10 establish. The council shall also establish a procedure for pro-  
11 viding public notice of each petition which it receives.

1 14. Unless an objection to the substantive certification is filed

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2 with the council by any person within 45 days of the publication  
3 of the notice of the municipality's petition, the council shall review  
4 the petition and shall issue a substantive certification if it shall  
5 find that:

6 a. The municipality's fair share plan is consistent with the rules  
7 and criteria adopted by the council and not inconsistent with  
8 achievement of the \*[region's]\* low and moderate income housing  
9 needs *\*of the region as adjusted pursuant to the council's criteria*  
9A *and guidelines adopted pursuant to subsection c. of section 7 of this*  
9B *act\**; and

10 b. The combination of the elimination of unnecessary housing  
11 cost generating features from the municipal land use ordinances  
12 and regulations, and the affirmative measures in the housing  
13 element and implementation plan make the achievement of the  
14 municipality's fair share of low and moderate income housing  
15 realistically possible after allowing for the implementation of any  
16 regional contribution agreement approved by the council.

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17 In conducting its review, the council may meet with the municipi-  
18 pality and may deny the petition or condition its certification upon  
19 changes in the element or ordinances. *\*Any denial or conditions for*  
20 *approval shall be in writing and shall set forth the reasons for the*  
21 *denial or conditions.\** If, within 60 days of the council's denial or  
22 conditional approval, the municipality refiles its petition with  
23 changes satisfactory to the council, the council shall issue a sub-  
24 stantive certification.

25 *\*\*Once substantive certification is granted the municipality shall*  
26 *have 45 days in which to adopt its fair share housing ordinance*  
27 *approved by the council.\*\**

1 15. a. The council shall engage in a mediation and review process  
2 in the following situations: (1) if an objection to the municipality's  
3 petition for substantive certification is filed with the council within  
4 the time specified in section 14 of this act; or (2) if a request for  
5 mediation and review is made pursuant to section 16 of this act.

6 b. In cases in which an objection is filed to substantive certifica-  
7 tion the council shall meet with the municipality and the objectors  
8 and attempt to mediate a resolution of the dispute. If the media-  
9 tion is successful, the council shall issue a substantive certification  
10 if it finds that the criteria of section 14 of this act have been met.

11 c. If the mediation efforts are unsuccessful, *\*\*[then the council*  
12 *shall conduct a review process in which objectors shall have the*  
13 *right to present their objections in the form of written submissions*  
14 *or expert reports and a reasonable opportunity shall be given*  
15 *to the objectors, the municipality, and their experts to be heard,*

16 but the review process shall not be considered]\*\* *the matter shall*  
17 *be transferred to the Office of Administrative Law as* & contested  
18 case as defined in the "Administrative Procedure Act," P. L. 1968,  
18A C. 410 (C. 52:14B-1 et seq.).

19 *[The council may impose reasonable time limitations, such as*  
20 *one or two days, or such other period as the council determines to*  
21 *be appropriate in a particular case, upon the length of the hearing.*  
22 *The council may also impose reasonable limitations upon the*  
23 *length of presentation by both the municipality and by the ob-*  
24 *jectors who challenge the adequacy of the housing element or the*  
25 *revisions of the land use ordinance, and upon the length of cross*  
26 *examination. The review process may be conducted by a panel of*  
27 *three council members, one from each category, [staff,] or an*  
28 *administrative law judge, as the council determines. After consider-*  
29 *ing the submissions, reports, and testimony, the council, or a panel*  
30 *of three council members consisting of one local government, one*  
31 *housing and one public member, shall determine whether to grant*  
32 *substantive certification pursuant to section 14 of this act, to deny*  
33 *the petition, or to grant conditional approval. The representative*  
34 *of an urban municipality shall be considered a public member*  
35 *for the purpose of establishing panels. The council shall give*  
36 *detailed reasons for its decision. Any appeal of a council decision*  
37 *granting or denying substantive certification shall be to a trial*  
38 *court, which shall conduct an adjudicatory hearing.*

39 d. In review and mediation processes instituted in accordance  
40 with section 16 of this act, the council shall attempt to mediate a  
41 resolution of the dispute between the litigants, provided that no  
42 agreement shall be entered by which a developer provides less  
43 than a substantial percentage of low and moderate income housing.  
44 The mediation process shall commence as soon as possible after  
45 the request for mediation and review is made, but in no case prior  
46 to the council's determination of housing regions and needs pur-  
47 suant to section 7 of this act. In the event that the mediation  
48 between the litigants is successful, the municipality shall have the  
49 option of choosing whether or not to also seek substantive certi-  
50 fication as provided in section 13 of this act. If mediation is not  
51 successful, the council shall conduct a review process as set forth  
52 in subsection c. to determine whether or not the municipality is  
53 entitled to substantive certification.]\* *The Office of Administra-*  
54 *tive Law shall expedite its hearing process as much as practicable*  
55 *by promptly assigning an administrative law judge to the matter;*  
56 *promptly scheduling an evidentiary hearing; expeditiously conduct-*  
57 *ing and concluding the evidentiary hearing; limiting the time al-*

**C** 58 lotted for briefs, proposed findings of fact, conclusions of law, forms  
59 of order or other disposition, or other supplemental material; and  
60 the prompt preparation of the initial decision. A written transcript  
61 of all oral testimony and copies of all exhibits introduced into evi-  
62 dence shall be submitted to the council by the Office of Adminis-  
63 trative Law simultaneously with a copy of the initial decision. The  
64 evidentiary hearing shall be concluded and the initial decision issued  
65 no later than 90 days after the transmittal of the matter as a con-  
66 tested case to the Office of Administrative Law by the council, un-  
67 less the time is extended by the Director of Administrative Law for  
68 good cause shown.\*\*

1 16. For those exclusionary zoning cases instituted more than 60  
2 days before the effective date of this act, \*X<sup>n0</sup> exhaustion of the  
3 review and mediation procedures established in sections 14 and 15  
4 of this act shall be required unless the court determines that a  
5 transfer of the case to the council is likely to facilitate and expedite  
6 the provision of a realistic opportunity for low and moderate  
7 income housing^\*. *any party to the litigation may file a motion with*  
8 *the court to seek a transfer of the case to the council. In determining*  
9 *whether or not to transfer, the court shall consider whether or not*  
10 *the transfer would result in a manifest injustice to any party to the*  
11 *litigation\**. If the municipality fails to file a housing element and  
11A fair share plan with the council within \*four]j\* *five\** months from  
11B the date of transfer, or promulgation of criteria and guidelines by  
11C the council pursuant to section 7 of this act, whichever occurs later,  
11D jurisdiction shall revert to the court.

12 b. Any person who institutes litigation less than 60 days before  
13 the effective date of this act or after the effective date of this act  
14 challenging a municipality's zoning ordinance with respect to the  
15 opportunity to provide for low or moderate income housing, shall  
16 file a notice to request review and mediation with the council  
17 pursuant to sections 14 and 15 of this act. In the event that the  
18 municipality adopts a resolution of participation within the period  
19 established in *subsection a. of\** section 9 of this act, the person  
20 shall exhaust the review and mediation process of the council be-  
21 fore being entitled to a trial on his complaint.

1 17. a. In any exclusionary zoning case filed against a municipality  
2 which has a substantive certification and in which there is a re-  
3 quirement to exhaust the review and mediation process pursuant  
4 to section 16 of this act, there shall be a presumption of validity  
5 attaching to the housing element and ordinances implementing the  
6 housing element. To rebut the presumption of validity, the com-  
7 plainant shall have the burden of proof to demonstrate *\*\*by clear*



8 *and convincing evidence*\*\* that the housing element and ordinances  
9 implementing the housing element do not provide a realistic op-  
10 portunity for the provision of the municipality's fair share of low  
11 and moderate income housing after allowing for the implementation  
12 of any regional contribution agreement approved by the council.

13 b. There shall be a presumption of validity attaching to any  
14 regional contribution agreement approved by the council. To  
15 rebut the presumption of validity, the complainant shall have the  
16 burden of proof to demonstrate *\*\*by clear and convincing evi-*  
17 *dence\*\** that the agreement does not provide for a realistic op-  
18 portunity for the provision of low and moderate income housing  
18A within the housing region.

19 c. The council shall be made a party to any exclusionary zoning  
20 suit against a municipality which receives substantive certification,  
21 and shall be empowered to present to the court its reasons for  
22 granting substantive certification.

1 18. If a municipality which has adopted a resolution of partici-  
2 pation pursuant to section 9 of this act fails to '[submit]\* *\*meet*  
3 *the deadline for submitting\** its housing element to the council prior  
4 to the institution of exclusionary zoning litigation, the obligation to  
5 exhaust administrative remedies contained in subsection b. of  
6 section 16 of this act automatically expires. The obligation also  
7 expires if the council rejects the municipality's request for sub-  
8 stantive certification or conditions its certification upon changes  
9 which are not made within the period established in this act or  
10 within an extension of that period agreed to by the council and all  
11 litigants.

1 19. If the council has not completed its review and mediation  
2 process for a municipality within six months of receipt of a request  
3 by a party who has instituted litigation, the party may file a motion  
4 with a court of competent jurisdiction to be relieved of the duty  
5 to exhaust administrative remedies. In the case of review and  
6 mediation requests filed within nine months after this act takes  
7 effect, the six-month completion date shall not begin to run until  
8 nine months after this act takes effect.

1 20. *\*\**[There is established in the State General Fund an account  
2 entitled the "Fair Housing Trust Fund Account." There shall be  
3 established within that account the following subaccounts: a gen-  
4 eral account and an account for each housing region established  
5 by the council to be entitled the "(insert names of counties in the  
6 housing region) Regional Housing Trust Fund Account." Funds  
7 in the account shall be maintained by the State Treasurer and  
8 may be held in depositories as the State Treasurer may select,

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9 and be invested and reinvested as are other funds in the custody  
10 of the State Treasurer in the manner provided by law, provided  
11 that all revenues from investments shall be credited to the account.

12 The State Treasurer shall credit to the general account all  
13 moneys appropriated to the "Fair Housing Trust Fund Account"  
14 pursuant to this act and 10% of the annual amount of realty  
15 transfer fees collected pursuant to P. L. 1968, c. 49 (C. 46:15-5  
16 et seq.) and paid to the State Treasurer pursuant to section 4 of  
17 that act (C. 46:15-8).

18 There shall be credited to each regional housing trust fund  
19 account 90% of the annual amount of realty transfer fees collected  
20 pursuant to P. L. 1968, c. 49 (C. 46:15-5 et seq.) in the housing  
21 region to which a regional housing trust fund account pertains  
22 and paid to the State Treasurer pursuant to section 4 of that act  
23 (C. 46:15-8).

24 Notwithstanding any other law to the contrary, the Fair Housing  
25 Trust Fund Account shall be an eligible fund for the purposes of  
26 providing housing to low and moderate income households, and  
27 any federal, State or local government, agency or instrumentality  
28 may appropriate, deposit or invest or reinvest its funds in the  
29 account for those purposes. No such funds shall be deposited  
30 therein without the approval of the council and the State Treas-  
31 urer, and the State Treasurer shall provide for the separate  
32 maintenance, holding and accounting for those funds within the  
33 general account of the Fair Housing Trust Fund Account to the  
34 extent required by lawj\*\* \*\*The Neighborhood Preservation Pro-  
35 gram within the Department of Community Affairs' Division of  
36 Housing and Development, established pursuant to the Commis-  
37 sioner of the Department of Community Affairs' authority under  
38 section 8 of P. L. 1975, c. 248 (C. 52-27D-149), shall establish a  
39 separate Neighborhood Preservation Nonlapsing Revolving Fund  
40 for monies appropriated by section 33 of this act.

41 a. The commissioner shall award grants or loans from this fund  
42 to municipalities whose housing elements have received substantive  
43 certification from the council, to municipalities subject to builder's  
44 remedy as defined in section 31 of this act or to receiving munici-  
45 palities in cases where the council has approved a regional con-  
46 tribution agreement and a project plan developed by the receiving  
47 municipality. The commissioner shall assure that a substantial  
48 percentage of the loan or grant awards shall be made to projects  
49 and programs in those municipalities receiving State aid pursuant  
50 to P. L. 1978, c. 14 (C. 52:27D-178 et seq.).

51 b. The commissioner shall establish rules and regulations gov-

52 ernening the qualifications of applicants, the application procedures, s~  
53 and the criteria for awarding grants and loans and the standards ( ^  
54 for establishing the amount, terms of conditions of each grant or  
55 loan.

56 c. During the first 12 months from the effective date of this act  
57 and for any additional period which the council may approve, the  
58 commissioner may assist affordable housing programs which are  
59 not located in municipalities whose housing elements have been  
60 granted substantive certification or which are not in furtherance of  
61 a regional contribution agreement; provided that the affordable  
62 housing program will meet all or part of a municipal low and moderate  
63 income housing obligation.

64 d. Amounts deposited in the Neighborhood Preservation Fund  
65 shall be targeted to regions based on the region's percentage of the  
66 State's low and moderate income housing need as determined by  
67 the council. Amounts in the fund shall be applied for the following  
68 purposes in designated neighborhoods:

69 (1) Rehabilitation of substandard housing units occupied or to  
70 be occupied by low and moderate income households;

71 (2) Creation of accessory apartments to be occupied by low and  
72 moderate income households;

73 (3) Conversion of nonresidential space to residential purposes f  
74 provided a substantial percentage of the resulting housing units U  
75 are to be occupied by low and moderate income households;

76 (4) Acquisition of real property; demolition and removal of  
77 buildings; or construction of new housing that will be occupied by  
78 low and moderate income households; or any combination thereof;

79 (5) Grants of assistance to eligible municipalities for costs of  
80 necessary studies, surveys, plans and permits, engineering, archi-  
81 tectural and other technical services, costs of land acquisition and  
82 any buildings thereon, and costs of site preparation, demolition  
83 and infrastructure development for projects undertaken pursuant  
84 to an approved regional contribution agreement;

85 (6) Assistance to a local housing authority, nonprofit or limited  
86 dividend housing corporation or association for rehabilitation or  
87 restoration of housing units which it administers which: (a) are  
88 unusable or in a serious state of disrepair; (b) can be restored in  
89 an economically feasible and sound manner; and (c) can be retained  
90 in a safe, decent and sanitary manner, upon completion of rehabili-  
91 tation or restoration; and

92 (7) Other housing programs for low and moderate income hous-  
93 ing, including infrastructure projects directly facilitating the con-  
94 struction of low and moderate income housing not to exceed a

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95 reasonable percentage of the construction costs of the low and mod-  
96 erate income housing to be provided.

97 e. Every grant or loan agreement entered into pursuant to this  
98 section shall incorporate contractual guarantees and procedures by  
99 which the division will ensure that any unit of housing provided  
100 for low and moderate income household, shall continue to be oc-  
101 cupied by low and moderate income households for at least 20 years  
102 following the award of the loan or grant, except that the division  
103 may waive a guarantee for a period of less than 20 years where  
104 necessary to ensure project feasibility.\*\*

1 21. \*\*CFunds in the Fair Housing Trust Fund Account shall be  
2 appropriated annually by the Legislature, and shall be used solely  
3 by the council for awards of assistance, loans or grants to or on  
4 behalf of public or private housing projects or programs which  
5 will provide affordable low and moderate income housing.

6 Amounts appropriated to the general account pursuant to this  
7 act shall be used within the first 18 months following the organi-  
8 zation of the council. Except as provided below, amounts deposited  
9 in the general account thereafter shall be applied by the council  
10 generally in the State for the purposes not forth in subsections a.  
11 through h. of this section. Amounts deposited annually in the  
12 general account from realty transfer taxes shall be used annually  
13 by the council for personnel, administrative and technical services,  
14 for litigation costs incurred by the council, and for reimbursing  
15 county planning boards and agencies for costs incurred in review-  
16 ing regional contracts and agreements. The State Treasurer shall  
17 adopt regulations under which county planning boards and agencies  
18 shall report costs incurred in performing these duties, for the  
19 purpose of making payments from the general account within the  
20 limits established by legislative appropriations.

21 Airports deposits shall be used only in a regional housing trust fund  
22 account shall be used exclusively within the housing region to  
23 which the account pertains.

24 Except as provided in this act, amounts in the general account of the  
25 Fair Housing Trust Fund and amounts in the regional  
26 housing trust fund shall be applied for the following  
27 purposes:

28 a. Rehabilitation of housing units occupied or to be  
29 occupied by low and moderate income households pursuant to con-  
30 tractual guarantees for at least 20 years following the awarding  
31 of the loan or grant:

32 b. Accessory construction for housing units occupied or to be  
33 occupied by low and moderate income households pursuant to

34 contractual guarantees for at least 30 years following the awarding  
35 of the loan or grant;

36 c. Conversion of nonresidential space to residential purposes  
37 provided a substantial percentage of the resulting housing units  
38 are occupied or to be occupied by low and moderate income house-  
39 holds pursuant to contractual guarantees for at least 30 years  
40 following the awarding of the loan or grant;

41 d. Inclusionary developments of which a substantial percentage  
42 of the housing units will be occupied by low and moderate income  
43 households for at least 30 years pursuant to contractual guarantees;

44 e. Grants of assistance to receiving municipalities under regional  
45 contribution agreements entered into under this act for costs of  
46 necessary studies, surveys, plans and permits, engineering, archi-  
47 tectural and other technical services, costs of land acquisition and  
48 any buildings thereon, and costs of site preparation, demolition  
49 and infrastructure development for projects undertaken pursuant  
50 to a regional contribution agreement;

51 f. Assistance to a local housing authority, nonprofit or limited  
52 dividend housing corporation or association for rehabilitation or  
53 restoration of housing units which it administers which: (1) are  
54 unusable or in a serious state of disrepair; (2) can be restored in  
55 an economically feasible and sound manner; and (3) can be re-  
56 tained in a safe, decent and sanitary manner, upon completion of  
57 rehabilitation or restoration.

58 g. Such **other** housing programs for low and moderate income  
59 housing, including infrastructure projects directly facilitating the  
60 construction of low and moderate income housing not to exceed a  
61 reasonable percentage of the construction costs of the low and  
62 moderate income housing to be provided, as the council may deem  
63 necessary.

64 The council shall assure that a substantial percentage of the loan  
65 or grant awards made from the general account of the Fair  
66 Housing Trust Fund Account shall be made available to projects  
67 and programs in those municipalities receiving State aid pursuant  
68 to P. L. 1978, c. 14 (C. 52:27D-17S et seq.). The council shall assure  
69 that priority shall be accorded in loan and grant awards from a  
70 regional housing trust fund account to projects and programs in  
71 municipalities in the housing region which have filed statements  
72 of intent to enter into regional contribution agreements us receiv-  
73 ing municipalities for grants of assistance pursuant to subsection e.  
74 of this section. Receiving municipalities entering into regional  
75 contribution agreements shall receive priority for additional assis-  
76 tance set forth in subsections a. through g. of this section from a  
77 regional housing trust fund account for at least one other low and

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**C** 78 moderate income housing unit for each housing unit accepted under  
79 a regional contribution agreement. Priority accorded under this  
80 section shall be subject to the availability of funds in the regional  
81 housing trust funds account and to a favorable evaluation of  
82 feasibility pursuant to section 22 of this act.

83 The council shall establish rules and regulations governing the  
84 qualifications of applicants, the application procedures, and the  
85 criteria for awarding grants and loans and the standards for  
86 establishing the amount, terms and conditions of each grant or  
87 loan.]\*\* \*\*The agency shall establish affordable housing programs  
88 to assist municipalities in meeting the obligation of developing  
89 communities to provide low and moderate income housing:

90 a. Of the bond authority allocated to it under section 20 of P. L.  
91 1983, c. 530 (C. 55:14K-20) the agency will allocate, for a reason-  
92 able period of time established by its board, no less than 25% to  
93 be used in conjunction with housing to be constructed or rehabili-  
94 tated with assistance under this act.

**C** 95 b. The agency shall to the extent of available funds, award assis-  
96 tance to affordable housing programs located in municipalities  
97 whose housing elements have received substantive certification from  
98 the council, or which have been subject to a builder's remedy or  
99 which are in furtherance of a regional contribution agreement ap-  
100 proved by the council. During the first 12 months from the effective  
101 date of this act and for any additional period which the council may  
102 approve, the agency may assist affordable housing programs which  
103 are not located in municipalities whose housing elements have been  
104 granted substantive certification or which are not in furtherance of  
105 a regional contribution agreement provided the affordable housing  
106 program will meet all or in part a municipal low and moderate in-  
107 come housing obligation.

108 c. Assistance provided pursuant to this section may take the form  
109 of grants or awards to municipalities, prospective home purchasers,  
110 housing sponsors as defined in P. L. 1983, c. 530 (C. 55:14K-1 et  
111 seq.), or as contributions to the issuance of mortgage revenue  
112 bonds or multi-family housing development bonds which have the  
113 effect of achieving the goal of producing affordable housing.

114 d. Affordable housing programs which may be financed or as-  
115 sisted under this provision may include, but are not limited to:

116 (1) Assistance for home purchase and improvement including  
117 interest rate assistance, down payment and closing cost assistance,  
118 and direct grants for principal reduction;

119 (2) Rental programs including loans or grants for developments  
120 containing low and moderate income housing, moderate rehabilita-

121 tion of existing rental housing facilities; aggregate care and retirement  
122 facilities;

123 (3) Financial assistance for the conversion of nonresidential  
124 space to low and moderate income housing;

125 (4) Other programs which facilitate the construction or  
126 ing, including the construction of low and moderate income housing; and  
127 structure of low and moderate income housing; and

128 (5) Grants to housing sponsors and community or neighborhood  
129 approaches to affordable housing development of innovative ap-  
130 proaches to affordable housing development of innovative ap-

131 (a) Such grants shall be used for training and educational ser-  
132 vices as well as for instruction, rehabilitation and  
133 operation of housing; and

134 (b) Encourage research in demonstration projects to de-  
135 velop new better techniques and methods for increasing the  
136 supply, type and financing of housing and housing projects in the  
137 State.

138 e. The agency shall establish procedures and guidelines govern-  
139 ing the qualifications of applicants, application procedures and  
140 the criteria for awarding grants for affordable housing  
141 programs and standards for establishing the amount, terms  
142 and conditions of each grant or loan.

143 f. In consultation with the council, the agency shall establish  
144 requirements for the maintenance of housing  
145 assisted under this act as affordable to low and moderate income  
146 households for a period of not less than 20 years; provided that  
147 the agency may establish a shorter period upon a determination  
148 that the program is jeopardized by the

149 requirements for the period served by the program out-  
150 weights that the program is jeopardized by the  
151 others, requirements for the period served by the program out-  
152 to the act if equity in the event of failure

153 to meet the requirements of this program. With respect to rental  
154 housing, the agency is subject to this act or otherwise  
155 which provisions of the agency maintenance of low and moderate  
156 income housing are subject to restrictive restrictions on return on  
157 equity requirements for the agency maintenance of low and moderate  
158 which is subject to the provisions of 3, c. 530 (C. 55:14K-1 et seq.)  
159 in the property or of any interest in the housing sponsor.

160 g. The agency may establish affordable housing programs  
161 through the establishment of subsidiary corporations or de-  
162 velopment of subsidiary corporations as provided in P. L. 1983, c. 530 (C.  
163 55:14K-1 et seq.) The subsidiary corporations or development

164 corporations shall be eligible to receive funds provided under this  
165 a. for any permitted purpose. \*\*

1 22. \*\*fa. Except for housing receiving assistance under subsec-  
2 r. on b. of this section, the council shall refer all housing proposed  
3 to be funded in whole or in part from amounts deposited in the Fair  
4 Housing Trust Fund Account to the \*[Division of Housing in the  
5 Department of Community Affairs]\* \*agency\* for evaluation as to  
6 the feasibility of the housing. The council shall not finance any  
7 housing for which the \*[division]\* \*agency\* does not provide a  
8 favorable evaluation of feasibility. With respect to housing to be  
9 undertaken in municipalities which have filed statements of intent  
10 to enter into regional contribution agreements, or which have  
11 entered into agreements, the \*[division]\* \*agency\* may recommend  
12 as part of the feasibility evaluation, and the council may approve, a  
13 provision that the low and moderate income housing units shall be  
14 subject to contractual guarantees or resale controls for a time of  
15 less than 30 years, if it is determined that modification is necessary  
16 to assure the economic viability of the housing. The council may  
17 establish procedures and time limitations for the conduct of the  
18 feasibility evaluations, beyond which the council may proceed with  
19 the housing notwithstanding the \*[division's]\* \*agency's\* failure  
19A to complete a feasibility evaluation.

20 b. The council, may enter into agreement with the New Jersey  
21 Housing and Mortgage Financing Agency under which amounts  
22 credited to the Fair Housing Trust Fund Account shall be used  
23 to assist, in whole or in part, low and moderate income housing  
24 to be financed by the agency. An agreement shall be specific as to  
25 the housing, and shall set forth the times and schedule according  
26 to which amounts in the account shall be provided to the agency.  
27 A copy of the agreement shall be filed with the State Treasurer,  
28 who shall administer the agreement in the course of his mainte-  
29 nance of the account. Agreements entered into under this sub-  
30 section shall be subject to the requirement that amounts credited  
31 to a regional housing trust fund account shall be used exclusively  
32 within the housing region to which the account pertains.]\*\* \*\*Any  
33 municipality which has reached a settlement of any exclusionary  
34 zoning litigation prior to the effective date of this act, shall not be  
35 subject to any exclusionary zoning suit for a six year period follow-  
36 ing the effective date of this act. Any such municipality shall be  
37 deemed to have a substantively certified housing element and ordi-  
38 nances, and shall not be required during that period to take any  
39 further actions with respect to provisions for low and moderate  
40 income housing in its land use ordinances or regulations.\*\*



1 23. a. A municipality which has an action pending or a judgment <sup>^</sup>  
2 entered against it after the effective date of this act, or which had <sup>(</sup>  
3 a judgment entered against it prior to that date and from which <sup>V</sup>  
4 an appeal is pending, or which brings an action for declaratory  
5 judgment pursuant to section 13 of this act, shall upon municipal  
6 request be allowed to phase in its obligation for a fair share of low  
7 and moderate income housing. If such a phase-in is requested by  
8 the municipality, the court shall implement a phase-in for the  
9 issuance of final approvals, as defined in section 3.1 of P. L. 1975,  
10 c. 291 (C. 40:55D-4), for low and moderate income housing, which  
11 shall be based on an analysis of the following factors:

- 12 (1) The size of the municipal \*[obligation3\* *fair share*];
- 13 (2) The present and projected capacity of the community's in-  
14 frastructure, taking into account expansion and rehabilitation of  
15 existing facilities;
- 16 (3) Vacant developable land;
- 17 (4) Likely absorption rate for housing in light of market forces;
- 18 (5) Reasonable development priorities among areas of the com-  
19 munity; and
- 20 (6) Past performance in providing low and moderate income  
21 housing, including credit for low and moderate income senior or  
22 disabled citizen housing.

23 b. The phase-in schedule shall provide for the grant of pre- <sup>s-</sup>  
24 liminary approvals to the developer subject to the phase-in <sup>(</sup>  
25 schedule for final approvals in accordance with time periods set <sup>V^</sup>  
26 forth in sections 34, 36 and 48 of P. L. 1975, c. 291 (C. 40:55D-46,  
27 48 and 61), provided that such preliminary approvals shall confer  
28 vested rights as defined in subsection a. of section 37 of P. L. 1975,  
29 c. 291 (C. 40:55D-49) for the period until the developer has the  
30 ability to proceed to final approval pursuant to the phase-in  
31 schedule. In any phase-in schedule for a development, all final  
32 approvals shall be cumulative.

33 c. The court shall, where appropriate, also implement a phase-in  
34 schedule for the market units in the inclusionary development  
35 which are not low and moderate income, giving due consideration  
36 to the plan for low and moderate income housing established in  
37 this section and the need to maintain the economic viability of the  
38 development.

39 d. In entering the phase-in order, the court shall consider whether  
40 or not it is necessary to condition the phase-in order upon a phase-  
41 in schedule for the construction of other development in the mu-  
42 nicipality to minimize an imbalance between available housing units  
43 and available jobs, or to prevent the sites which are the most  
44 appropriate or the only possible sites for the construction of low <sup>(</sup>

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45 and moderate income housing from being used for other purposes,  
46 or to prevent limited public infrastructure capacities from being  
47 entirely utilized for other purposes.

48 e. In entering a phasing order, the court, upon municipal request,  
49 shall implement a specific phasing schedule for the issuance of  
50 final approvals in inclusionary developments. The court shall take  
51 into account the six analysis factors enumerated in subsection a.  
52 of this section, giving particular attention to:

53 (1) The size of the municipal \*J[obligationJ\* *\*fair share\** which  
54 is to be provided in inclusionary developments;

55 (2) The extent and projected capacity of the community's infra-  
56 structure, taking into account expansion and rehabilitation of  
57 existing facilities; and

58 (3) The extent and pattern of growth within the municipality  
59 and region during the six years prior to the implementation of the  
60 phase-in plan.

61 The following time periods shall be guidelines for a phasing  
62 schedule for the issuance of final approvals in inclusionary de-  
63 velopments, subject, however, to upward or downward modification  
64 based upon a review of the analysis factors:

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65 Any municipality which has a fair share obligation *to* provide  
66 2,000 or more low and moderate income units in inclusionary  
67 developments shall be entitled to consideration of a phase-in  
68 schedule for the issuance of final approvals in inclusionary develop-  
69 ments of at least 20 years from the effective date of this act.

70 Any municipality which has a fair share obligation to provide  
71 between 1,500 and 1,999 low and moderate income units in inclu-  
72 sionary developments shall be entitled to consideration of a phase-  
73 in schedule for the issuance of final approvals in inclusionary  
74 developments of at least 15 years from the effective date of this act.

75 Any municipality which has a fair share obligation to provide  
76 between 1,000 and 1,499 low and moderate income units in inclu-  
77 sionary developments shall be entitled to consideration of a phase-  
78 in schedule for the issuance of final approvals in inclusionary  
79 developments of at least 10 years from the effective date of this act.

80 Any municipality which has a fair share obligation to provide  
81 between 500 and 999 low and moderate income units in inclusionary  
82 developments shall be entitled to consideration of a phase-in  
83 schedule for the issuance of final approvals in inclusionary de-  
84 velopments of at least six years from the effective date of this act.

85 Any municipality which has a fair share obligation to provide  
86 less than 500 low and moderate income units in inclusionary de-  
87 velopments shall be entitled to consideration of a phase-in schedule  
88 for the issuance of final approvals in inclusionary developments

for such period of time, including a period of at least six years, as is determined to be reasonable pursuant to the analysis factors.

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f. As part of a phasing order concerning inclusionary developments, the court may approve a municipal plan, or implement another plan, concerning priorities among developers and sites, and the timing in the issuance of final approvals to particular developers. Any plan concerning priorities and the timing of final approvals shall take into consideration :

(1) The location of various sites and their suitability for development pursuant to environmental protection and sound planning criteria, including their consistency with reasonable provisions of municipal master plans;

(2) Infrastructure capacity or the ability to provide the capacity for the site, and the readiness of a particular developer to commence construction;

(3) Any settlements or court orders establishing priorities among developers.

Consistent with the overall phasing schedule adopted pursuant to the analysis factors, the municipality shall make a good faith effort to time the issuance of final approvals for particular developments which it approves in a manner which enables the realistic and economically viable construction of the development. To this end, the municipality shall take into consideration the need for sufficient development in a particular project to permit timely recovery of infrastructure costs, and, in the case of a development which will have a homeowners' association, to prevent the imposition of excessive homeowners' fees because of the failure to achieve economies of scale. In the case of developers who have previously constructed residential developments in this State, a municipality shall also take into consideration the greatest number of units which the developer has constructed in any one development in the State within any one year period; this factor shall be considered if the municipality seeks to phase the issuance of final approvals for the inclusionary development over a period greater than one year.

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24. The \*[Division of Housing in the Department of Community Affairs]\* \*agency\* shall establish procedures for entering into, and shall enter into, contractual agreements with willing municipalities and developers of inclusionary developments whereby the \*[division]\* \*agency\* will administer resale controls and rent controls in municipalities where no appropriate administrative agency exists. The contractual agreements shall be for the duration of the controls and shall involve eligibility determinations, determination of initial occupants, the marketing of units, maintenance of eligibility lists

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10 for subsequent purchasers or renters, and determination of maxi-  
 11 mum resale prices or rents. \*[The division may enter into agree-  
 12 ments whereby some or all of these responsibilities are performed  
 13 by the New Jersey Housing and Mortgage Finance Agency.]\* The  
 14 \*[division]\* \*agency\* may charge the municipality or inclusionary  
 15 developer a reasonable per unit fee for entering into such an agree-  
 16 ment, or may charge a reasonable fee to a low or moderate income  
 17 household at the time the home is sold subject to the resale control  
 18 or both. \*£Division]\* \*Agency\* fees shall be established according  
 19 to methods or schedules approved by the \*[[council]\* \*State  
 20 Treasurer\* ;

1 25. Notwithstanding any other law to the contrary, a municipi-  
 2 tality may purchase, \*#[condemn or otherwise acquire]\*\* \*\*lease  
 3 or acquire by gift\*\* real property and any estate or interest therein,  
 4 which the municipal governing body determines necessary or useful  
 5 for the construction or rehabilitation of low and moderate income  
 6 housing or conversion to low and moderate income housing.

7 The municipality may provide for the acquisition, construction  
 8 and maintenance of buildings, structures or other improvements  
 9 necessary or useful for the provision of low and moderate income  
 10 housing, and may provide for the reconstruction, conversion or  
 11 rehabilitation of those improvements in such manner as may be  
 12 necessary or useful for those purposes.

13 Notwithstanding the provisions of any other law regarding the  
 14 conveyance, sale or lease of real property by municipalities, the  
 15 municipal governing body may, by resolution, authorize the private  
 16 sale and conveyance or lease of a housing unit or units acquired  
 17 or constructed pursuant to this section, where the sale, conveyance  
 18 or lease is to a low or moderate income household or nonprofit  
 19 entity and contains a contractual guarantee that the housing unit  
 20 will remain available to low and moderate income households for  
 21 a period of at least 30 years.

1 26. Within \*£24]\*\* \*\*12\*\* months after the effective date of this  
 2 act and every \*[two years]\*\* \*\*year\*\* thereafter, the \*£council]\*  
 3 \*agency\* ~\*\*and the council\*\* shall report \*\*separately\*\* to the Gov-  
 4 ernor and the Legislature on the effects of this act in promoting the  
 5 provision of low and moderate income housing in the several hous-  
 6 ing regions of this State. \*£The report shall give specific attention  
 7 to the manner in which amounts expended from the Fair Housing  
 8 Trust Fund Account, and amounts transferred between sending  
 9 municipalities and receiving municipalities, have or have not been  
 10 sufficient in promoting this end.]\*\*\* The \*[report]\*\* \*\*reports\*\*  
 11 may include recommendations for any revisions or changes in this

11 A act which the\*[council]\* \*agency\* \*\*[believes]\*\*\* \*\*and the coun-  
11 B cil believe\*\* necessary to more nearly effectuate this end.

12 Within 36 months after the effective date of this act, the council  
13 shall report to the Governor and the Legislature concerning the  
14 actions necessary to be taken at the State, regional, county and  
15 municipal levels to provide for the implementation and admin-  
16 istration of this act on a regional basis, including any revisions  
17 or changes in the law necessary to accomplish that end. The council  
18 may include in the report any recommendations or considerations  
19 it may wish to provide regarding the advisability of implementing  
20 and administering the act on a regional basis.

1 27. Amounts expended by a municipality in preparing and im-  
2 plementing a housing element and fair share plan pursuant to this  
3 act shall be considered a mandated expenditure exempt from the  
4 limitations on final appropriations imposed pursuant to P. L. 1976,  
5 c. 68 (C. 40A A-45.1 et seq.).

1 \*28. \*\**For a period of 12 months following the effective date of  
"2 this act, no judicial judgment or judgments issued on or after Janu-  
3 ary 20,1983, which require the provision of low and moderate in-  
4 come housing in a municipality, shall be implemented to the extent  
5 that the judgment or judgments require provision of any housing  
5 in the municipality which is not affordable to low or moderate in-  
7 come households, provided that nothing in this section shall affect  
S any rights heretofore granted to a developer pursuant to municipal  
9 approval of a development application, or as a result of any court  
10 judgment or order, or any settlement of litigation.*

11 *The Attorney General shall, not later than 30 days after this act  
12 becomes effective, file a complaint in the Superior Court for a  
13 declaratory judgment determining the constitutionality of this  
14 section. If that complaint is not filed ivithin 30 days after the  
15 effective date of this act, this section shall be null and void."\*\*  
16 \*\*No builder's remedy shall le granted to a plaintiff in any ex-  
17 clusionary zoning litigation ichich has been filed on or after January  
1? 20,1983, unless a final judgment providing for a builder's remedy  
19 has already been rendered to that plaintiff. This provision shall  
29 terminate upon the expiration of the period set forth in subsection  
21 a. of section 9 of this act for the filing with the council of the mu-  
22 nicipality's housing element.*

23 *For the purposes of this section, "final judgment" shall mean a  
24 judgment subject to an appeal as of right for which all right to  
25 appeal is exhausted.*

25 *For the purposes of this section "exclusionary zoning litigation"  
27 shall mean lawsuits filed in courts of competent jurisdiction in this*

C 22:-

28 State challenge to a municipality's zoning and land use regulations  
29 on a 2 basis: (c) The regulations do not make realistically possible  
30 the opportunity for an appropriate variety and choice of housing  
31 for all categories of people living within the municipality's housing  
32 resource base. These of low and moderate income, who may desire  
33 to live in the municipality.

34 7. "the remedy of this section "builder's remedy" shall mean a  
35 court-imposed remedy for a litigant who is an individual or a profit-  
36 seeking entity, which the court requires a municipality to utilize  
37 certain techniques such as mandatory set asides or density bonuses  
38 that provide for the economic viability of a residential develop-  
39 ment in housing which is not for low and moderate in-  
40 come households. \*\*

1 —: Section 1.5 of P. L. 1975, c. 291 (C. 40:55D-28) is amended  
2 to read as follows:

3 reparation: contents; modification.

4 a. The planning board may prepare and, after public hearing,  
5 adopt or amend its master plan or component parts thereof, to guide  
6 the use of land within the municipality in a manner which protects  
7 public health and safety and promotes the general welfare,

8 b. The master plan shall generally comprise a report or state-  
9 ment and land use and development proposals, with maps, diagrams  
10 and text, prescribing, where appropriate, the following elements:

11 (1) A statement of objectives, principles, assumptions, policies  
12 and standards upon which the constituent proposals for the phys-  
13 cal, economic and social development of the municipality are based;

14 (2) A land use plan element (a) taking into account the other  
15 master plan elements and natural conditions, including, but not  
16 necessarily limited to, topography, soil conditions, water supply,  
17 drainage, flood plain areas, marshes, and woodlands; (b) showing  
18 the existing and proposed location, extent and intensity of develop-  
19 ment of land to be used in the future for varying types of resi-  
20 dential, commercial, industrial, agricultural, recreational, educa-  
21 tional and other public and private purposes or combination of  
22 purposes; (c) showing the existing and proposed location of any  
23 airports and their boundaries of any airport hazard areas delineated  
24 pursuant to title "Air Safety and Hazardous Zoning Act of 1983,"  
25 P. L. 1955, c. 26: (C. 6:1-80 et seq.); and (d) including a statement  
26 of the standard of population density and development intensity  
27 recommended for the municipality;

28 (3) A zoning plan element pursuant to section 10 of P.L. . . . .  
29 c. . . . . (C. . . . .) (now pending before the Legislature as  
30 Senate Committee Substitute for Senate Bill No. 2046 and Senate

31 *Bill No. 2334*), including, but not limited to, residential standards  
32 and proposals for the construction and improvement of housing;

33 (4) A circulation plan element showing the location and types of  
34 facilities for all modes of transportation required for the efficient  
35 movement of people and goods into, about, and through the municipi-  
36 pality;

37 (5) A utility service plan element analyzing the need for and  
38 showing the future general location of water supply and distribu-  
39 tion facilities, drainage and flood control facilities, sewerage and  
40 waste treatment, solid waste disposal and provision for other  
41 related utilities;

42 (6) A community facilities plan element showing the location  
43 and type of educational or cultural facilities, historic sites, librar-  
44 ies, hospitals, firehouses, police stations and other related facilities,  
45 including their relation to the surrounding areas;

46 (7) A recreation plan element showing a comprehensive system  
47 of areas and public sites for recreation;

48 (8) A conservation plan element providing for the preservation,  
49 conservation, and utilization of natural resources, including, to the  
50 extent appropriate, open space, water, forests, soil, marshes, wet-  
51 lands, harbors, rivers and other waters, fisheries, wildlife and other  
52 natural resources;

53 (9) An energy conservation plan element which systematically  
54 analyzes the impact of each other component and element of the  
55 master plan on the present and future use of energy in the mun-  
56 icipality, details specific measures contained in the other plan  
57 elements designed to reduce energy consumption, and proposes  
58 other measures that the municipality may take to reduce energy  
59 consumption and to provide for the maximum utilization of re-  
60 newable energy sources; and

61 (10) Appendices or separate reports containing the technical  
62 foundation for the master plan and its constituent elements.

63 c. The master plan and its plan elements may be divided into  
64 subplans and subplan elements projected according to periods of  
65 time or staging sequences.

66 d. The master plan shall include a specific policy statement in-  
67 dicating the relationship of the proposed development of the mun-  
68 icipality, as developed in the master plan to (1) the master plans  
69 of contiguous municipalities, (2) the master plan of the county in  
70 which the municipality is located and (3) any comprehensive guide  
71 plan pursuant to section 15 of P. L. 1961, c. 47 (C. 13.-1B-15.52).

1 30. Section 49 of P. L. 1975, c. 291 (C. 40:55D-62) is amended  
2 to read as follows:

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3 49. Power to zone.

4 a. The governing body may adopt or amend a zoning ordinance  
5 relating to the nature and extent of the uses of land and of build-  
6 ings and structures thereon. Such ordinance shall be adopted after  
7 the planning board has adopted the land use plan element *and the*  
8 *housing plan element* of a master plan, and all of the provisions of  
9 such zoning ordinance or any amendment or revision thereto shall  
10 either be substantially consistent with the land use plan element  
11 *and the housing plan element* of the master plan or designed to  
12 effectuate such plan [element] *elements*; provided that the govern-  
13 ing body may adopt a zoning ordinance or amendment or revision  
14 thereto which in whole or part is inconsistent with or not designed  
15 to effectuate the land use plan element *and the housing plan ele-*  
16 *ment*, but only by affirmative vote of a majority of the full autho-  
17 rized membership of the governing body, with the reasons of the  
18 governing body for so acting recorded in its minutes when adopting  
19 such a zoning ordinance; and provided further that, notwithstand-  
20 ing anything aforesaid, the governing body may adopt an interim  
21 zoning ordinance pursuant to subsection 77 b. of this act.

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22 The zoning ordinance shall be drawn with reasonable considera-  
23 tion to the character of each district and its peculiar suitability for  
24 particular uses and *to* encourage the most appropriate use of land.  
25 The regulations in the zoning ordinance shall be uniform through-  
26 out each district for each class or kind of buildings or other struc-  
27 tures or uses of land, including planned unit development, planned  
28 unit residential development and residential cluster, but the regu-  
29 lations in one district may differ from those in other districts.

30 b. No zoning ordinance and no amendment or revision to any  
31 zoning ordinance shall be submitted to or adopted by initiative or  
32 referendum.

33 c. The zoning ordinance shall provide for the regulation of any  
34 airport hazard areas delineated under the "Air Safety and Haz-  
35 arduous Zoning Act of 1983," P. L. 1955, c. 260 {0.6:1-80 *et seq.*}, in  
36 conformity with standards promulgated by the Commissioner of  
37 Transportation.

1 31. Until August 1, 1988, any municipality may continue to regu-  
2 late development pursuant to a zoning ordinance in accordance with  
3 section 49 of the "Municipal Law Use Law," P. L. 1975, c. 291 (C.  
4 40.-55D-62) as same read before the effective date of this act.\*\*

1 \*\*£29.y\* \*\*<sub>32</sub>\*\* *If any part of this act shall be held invalid, the*  
2 *holding shall not affect the validity of remaining parts of this act.*  
3 *If a part of this act is held invalid in one or more of its applications,*  
4 *the act shall remain in effect in all valid applications that are*  
5 *severable from the invalid application.\**



1     **\*[28J\* \*\*/30.\*/\*\*\* \*\*33.\*\*** There is appropriated to the Council f  
2 on Affordable Housing from the General Fund the sum of I  
3 **\$1,000,000.00**, and there is appropriated **\*\*[to the Fair Housing** v  
4 **Trust Fund Account]\*\*** from the General Fund the sum of  
5 **\*\*\$25,000,000.00 to effectuate the purposes of that account.]\*\*\***  
6 **\*\*\$17,000,000.00 to be allocated as follows:**

6A    *a. \$2,000,000.00 to the Neighborhood Preservation Fund estab-*  
7 *lished pursuant to the "Maintenance of Viable Neighborhoods Act"*  
8 *P. L. 1975, c. 248 (C. 52.-27D-146 et seq.) which shall be used to*  
9 *effectuate the purposes set forth in section 20 of this act. b.*  
10 *\$15,000,000.00 to the Housing and Mortgage Finance Agency to be*  
11 *used to effectuate the purpose of section 21 of this act.*

12     *Of the amounts herein appropriated a reasonable sum, approved*  
13 *by the Treasurer may be expended for the administration of this*  
14 *act by the Department of Community Affairs and the agency. \*\**

1     **\*E29J\* \*\*/31.\*2\*\* \*\*34.\*\*** This act shall take effect immedi-  
2 ately but shall remain inoperative until the enactment of P. L.  
3 . . . , c. . . . (now pending before the Legislature as Assembly Bill  
4 No. 3117).

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**KIRSTEN, FRIEDMAN & CHERIN**  
A PROFESSIONAL CORPORATION

17 ACADEMY STREET  
NEWARK, NEW JERSEY 07102  
(201) 623-3600

ATTORNEYS FOR DEFENDANT, TOWNSHIP OF PISCATAWAY

----- X  
URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, ET AL.,  
  
                  Plaintiffs,  
  
                  vs.  
  
THE MAYOR AND COUNCIL OF THE  
BOROUGH OF CARTERET, ET AL.,  
  
                  Defendants.  
----- X

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
  
DOCKET NO. 4172-73  
  
CIVIL ACTION  
  
NOTICE OF MOTION TO TRANSFER ACTION  
TO COUNCIL ON AFFORDABLE HOUSING, FOR  
RECONSIDERATION OF DECISION IN LIGHT  
NEWLY ENACTED LEGISLATIVE STANDARDS,  
FOR DISSOLUTION OF RESTRAINTS IMPOSED  
BY ORDER DATED DECEMBER 11, 1984, AND  
FOR OTHER RELIEF

TO: Barbara Williams, Esq.  
Constitutional Litigation Clinic  
Rutgers Law School  
15 Washington Street  
Newark, New Jersey 07102  
Attorneys for Urban League of  
Greater New Brunswick

Raymond R. Trombadore, Esq.  
Trombadore and Trombadore  
33 East High Street  
Somerville, New Jersey 08876  
Attorneys for Gerichonts

ALL ATTORNEYS ON THE ATTACHED **LI**

PLEASE TAKE NOTICE THAT at a date and time to be fixed by  
the Court, the undersigned, attorneys for Defendant, Township of

Piscataway, a Municipal Corporation of the State of New Jersey, will make application to the Honorable Eugene D. Serpentelli, Judge of the Superior Court of New Jersey, Ocean County Court House, Toms River, New Jersey, for an Order as follows:

A. Directing the transfer of the within litigation in which the Urban League (now Civic League) of Greater New Brunswick is the Plaintiff and the Township of Piscataway is the Defendant, and all matters consolidated therewith in which the Township of Piscataway is a Defendant, to the Council on Affordable Housing established by legislation enacted during July, 1985, and known generally as the "Fair Housing Act";

B. Dissolving all restraints imposed by virtue of an Order of this Court dated December 11, 1984, whereby the Township of Piscataway, the Zoning Board of the Township of Piscataway, and the Planning Board of the Township of Piscataway are restrained from issuing final developmental approvals with respect to any vacant land identified as "suitable" for high density residential development by virtue of a report of Carla Lerman, Court-appointed expert, rendered during November, 1984; and

D. Awarding such other and further relief as this Court deems equitable, just and proper.

Appended hereto is a Certification of Phillip Lewis Paley, Esq., attorney for the Defendant, Township of Piscataway, and a Memorandum of Law upon which counsel will rely at time of argument.

Appended hereto, further, is a form of Order conforming to the relief sought within this application.

The Defendant respectfully requests oral argument on this application.

KIRSTEN, FRIEDMAN & CHERIN  
A PROFESSIONAL CORPORATION  
Attorneys for Defendant,  
Township of Piscataway,  
A Municipal Corporation of  
the State of New Jersey

By: 

PHILLIP LEWIS PALEY

DATED: August 30, 1985

**KIRSTEN, FRIEDMAN & CHERIN**  
A PROFESSIONAL CORPORATION

---

17 ACADEMY STREET  
NEWARK, NEW JERSEY 07102  
(201) 623-3600

ATTORNEYS FOR Defendant, Township of Piscataway

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: MIDDLESEX COUNTY  
DOCKET NO. 4172-73

URBAN LEAGUE OF GREATER )  
NEW BRUNSWICK, ET AL., )

Plaintiffs, )

vs. )

THE MAYOR AND COUNCIL )  
OF THE BOROUGH OF )  
CARTERET, ET AL., )

Defendants. )

---

Civil Action

CERTIFICATION

Phillip Lewis Paley, of full age, hereby certifies  
as follows:

1. I am an attorney-at-law of the State of New Jersey, a member of the firm of Kirsten, Friedman & Cherin, a professional corporation, attorneys for the defendant Township of Piscataway in the within matter; I also serve as Director of Law and Township Attorney for Piscataway. I

have served as trial counsel for Piscataway in this matter at all times subsequent to the remand of this litigation ordered by the Supreme Court of New Jersey in South Burlington NAACP et al. v. Township of Mt. Laurel, 92 N.J. 158 (1983) (herein "Mt. Laurel II").

2. I respectfully submit this Certification in support of Piscataway's application to transfer this suit to the Affordable Housing Council, established by legislation generally known as the Fair Housing Act of July, 1985, and for other affirmative relief as reflected in the Notice of Motion filed simultaneously herewith. The Notice of Motion contains no specific return date in accordance with discussions had between the law secretary to the Honorable Eugene D. Serpentelli and the undersigned; the Court, as I understand it, is to set a return date so that similar applications brought by other municipalities can be decided simultaneously.

3. The starting point for the analysis of the appropriateness of the relief sought is Mt. Laurel II. That decision effectively reaffirmed the thesis that municipal land use regulations must provide a realistic opportunity for low and moderate income housing as a matter of constitutional imperative.

4. Quite clearly, though, that reaffirmation (with the implementing procedures adopted by the Supreme Court) was based upon profound dissatisfaction with, among other social institutions, the Legislature of the State of New Jersey. The Supreme Court sought to encourage the Legislature to act, thereby guaranteeing the continuing viability of the Mt. Laurel doctrine:

"... a brief reminder of the judicial role in this sensitive area is appropriate, since powerful reasons suggest, and we agree, that the matter is better left to the Legislature. We act first and foremost because the Constitution of our State requires protection of the interests involved and because the Legislature has not protected them. We recognize the social and economic controversy (and its political consequences) that has resulted in relatively little legislative action in this field. We understand the enormous difficulty of achieving a political consensus that might lead to significant legislation and forcing the constitutional mandate better than we can, legislation that might completely remove this Court from those controversies. But enforcement of constitutional rights cannot await a supporting political consensus. So, while we have always preferred legislative to judicial action in this field, we shall continue - until the Legislature acts - to do our best to uphold the constitutional obligation that underlies the Mt. Laurel doctrine." 92 N.J. at 213.

5. In a footnote immediately following the above quotation, the Supreme Court added the following language:

Although the complexity and political sensitivity of the issue now before us make it especially appropriate for legislative resolution, we have no choice, absent that resolution, but to exercise our traditional constitutional duty to end an abuse of the zoning power." Footnote 7, 92 N.J. at 213.

Continuing its analysis of the respective roles of the Legislature and the courts in affirming the Mt. Laurel doctrine, the Supreme Court stated, further:

"We note that there has been some legislative initiative in this field. We look forward to more. ... Our deference to ... legislative and executive initiatives can be regarded as a clear signal of our readiness to defer further to more substantial actions.

... in the absence of adequate legislative and executive help, we must give meaning to constitutional doctrine in the cases before us through our own devices, even if they are relatively less suitable." 92 N.J. 213, 214.

6. Further, in its conclusion to the Mt. Laurel II opinion, the Supreme Court crystallized its views:

"As we said at the outset, while we have always preferred legislative to judicial action in this field, we shall continue - until the Legislature acts - to do our best to uphold the constitutional obligations that underlies the Mt. Laurel doctrine. That is our duty. We may not build houses, but we do enforce the Constitution." 92 N.J. at 352.

7. Following months of exhaustive deliberation,



the State Legislature presented to the Governor of the State of New Jersey a bill entitled "The Fair Housing Act" in June, 1985. Clearly, the Fair Housing Act was a specific response to both Mt. Laurel I and Mt. Laurel II. Among other findings issued by the State Legislature is the following:

"In the second Mt. Laurel ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation<sup>1</sup> is better left to the Legislature,<sup>1</sup> that the court has<sup>1</sup> always preferred legislative to judicial action in their field, and that the judicial role in upholding the Mt. Laurel doctrine<sup>1</sup> could be decrease as a result of legislative and executive action.<sup>1</sup> §2b.

The legislation establishes in the Department of Community Affairs of the State of New Jersey a Council on Affordable Housing. Functions assigned to that council include the necessity to determine state-wide housing region and estimates of present and prospective need for low and moderate income housing on state and regional levels. Additionally, the Council is directed to adopt criteria and guides for determining the municipal fair share, both present and prospective, and to adjust the determination and of fair share based upon a variety of factors, including available vacant and developable land, infra-structure, environmental or historic preservation factors, the poten-

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tial for a drastic alteration of the established pattern of development in the community, among others. Section 7(c). The Affordable Housing Council is also authorized to limit the fair share, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the Council deems appropriate.

8. In order to reach conclusions as to the ultimate fair share obligations to be assigned to each municipality, the Affordable Housing Council requires that each municipality appearing before it submit a "housing element", which includes an inventory of the municipality's housing stock, a projection of anticipated construction, an analysis of the municipality's demographic characteristics and employment characteristics, and a review of the land inventory of each municipality. Specific time limits are imposed for each stage of the process leading up to the determination of the municipality's fair share.

9. The emuneration of these factors suggests rather clearly the motivation behind the Court's preference for legislative action - the scope of the problem does not lend itself to adversarial litigation.

10. As to prospective lawsuits, litigation seeking to enforce the Mt. Laurel mandate which is filed after May, 1985 (strictly, within 60 days prior to the effective date

of the Fair Housing Act - Section 16B) must proceed before the Affordable Housing Council. As to existing litigation, the Act provides:

"For those exclusionary zoning cases instituted more than 60 days before the effective date of this Act, any party to the litigation may file a motion with the Court to seek a transfer of the case to the Council. In determining whether or not to transfer, the Court shall consider whether or not the transfer would result in a manifest in justice to any party to the litigation." Section 16.

11. This application is respectfully submitted pursuant to that authority. It is the position of the Township of Piscataway that, at the present level of the litigation before the Court, the failure to transfer would result in a manifest injustice to the Township of Piscataway, and the transfer would result in no injustice to either plaintiff in this litigation.

12. Following the remand of this matter from the Supreme Court of New Jersey, this Court (as it well recalls) set up a series of formal and informal pretrial conferences to narrow the contested issues and to develop an appropriate formulation of methodology for the determination of "fair share". In this particular case, Piscataway was one of seven defendants on the remand. The trial of this matter, specifically addressing the determination of the fair share methodology as to all municipalities, and in-

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cluding some testimony as to Piscataway<sup>1</sup>'s efforts to show compliance with the Mt. Laurel doctrine by virtue of existing municipal legislation, took place during the month of May, 1984. As to Piscataway, that portion of the trial produced a conclusion supported by the Urban League, the Township of Piscataway and the Court that Piscataway lacked sufficient vacant developable land to comply with the "fair share" derived by a methodology adopted by this Court in AMG, et als. v. Township of Warren (the "consensus methodology"). Consequently, this Court appointed Carla Lerman to conduct an inventory of the vacant land extant in the Township and to make written recommendations as to the potential and suitability of each site for high density residential housing and recommended densities. Ms. Lerman's report was submitted in November, 1984; thereafter, the Court extended leave to all parties to present testimony supporting or refuting Ms. Lerman's conclusions. This testimony was presented in February and March, 1985.

12. Thereafter, the Court considered Piscataway's application for an inspection of the vacant sites recommended for high density development by Ms. Lerman; the Court, in the presence of counsel for the Urban League and Piscataway Township, did conduct such an inspection. On July 23, 1985, the Court rendered an opinion which assigned to Piscataway a "fair share" of 2,215, substantial-

ly less than the 4,192 which the strict application of the consensus methodology would have required, but also a number which, using traditional "four for one" zoning, would consume the entirety of the remainder of Piscataway's suitable vacant land and leave no land available for development at less than 10 residential units to the acre.

14. As of the dictation of this Certification, no order resulting from the Court's opinion has yet been executed. No master has yet been appointed to assist the Township in meeting the obligations imposed upon it by the court's opinion. In short, we have only just commenced that portion of the litigation following the determination of the fair share number. Thus, a transfer to the Affordable Housing Council will undo no work and will not render academic any extensive and directed effort either on the part of the Court or on the part of any party to effect compliance with the Court's determination.\*

15. In order to gauge the merits of this application, the Court should examine those steps taken by Piscataway in order to accommodate the Mt. Laurel doctrine. This Court well knows that four vacant sites (Sites 7, 38,

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While it is clear that many individuals (including the Court and its able law clerks) have labored long and hard in this matter, the vast bulk of the effort was directed toward a determination of the methodology to be used which, as the opinion entered reflects, was not directly employed to produce the fair share number.

46 and 57) were previously voluntarily zoned by the Township to accommodate high density dwelling units, with a density bonus for a Mt. Laurel component. One of those sites, site 46, is in the process of being fully developed with 545 housing units, of which 109 will be classified as Mt. Laurel. While there may be conceptual differences between the parties regarding whether this rezoning is sufficient, the rezoning of this acreage on a voluntary basis hardly suggests an attitude equivalent to "standing in the school-house door". Moreover, Piscataway is one of the few municipalities in the State of New Jersey to have construction commence on a site zoned specifically for occupancy by Mt. Laurel housing (site 46).

15. Furthermore, Piscataway is a community which features a broad variety of housing within its borders. As the Court will recall from the testimony, approximately 30% of all housing units within the Township are multi-family, those consisting primarily of several extensive garden apartment developments. More than 1000 housing units within the Township are assessed at values which, upon the application of the County Tax Equalization Ratio, are valued at market at amounts which do meet Mt. Laurel guidelines. More than 10% of the land area of the Township is owned and utilized by Rutgers, The State University, as the largest campus of the state university system; included

within that acreage are dormitories, single student housing, and family housing. This variety of housing is substantially affordable by lower income households, demonstrated by the statistic that, as compared to the median household income for Piscataway's region, the median household income for Piscataway is 102%. The extensive mixture of housing types and the low median income proportion reflected above suggests that, even though (perhaps) not meeting certain statistical criteria, Piscataway has endeavored, in good faith, to place zoning in effect for a wide variety of housing occupants throughout the years. While it may be statistically correct to suggest that Piscataway has been "exclusionary", that is the only parameter of accuracy for the application of the word to Piscataway.

15. I have previously submitted to this Court a lengthy analysis of a report provided by Allan Mallach, expert for the Urban League (now Civic League) in this matter, which applied the consensus methodology to Freehold Township, and concluded by extending substantial "adjustments" to Freehold Township for one reason or another. My analysis demonstrated that, if the identical review were applied to Piscataway, it is quite possible that the number of units required of Piscataway would be substantially less than that ordered by the July 23, 1985, opinion. For example, I suggested that it is fatuous to use a 20% factor

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applicable to communities with ample vacant lands to augment Piscataway<sup>1</sup>'s fair share, when Piscataway clearly has insufficient vacant developable land. I also suggested that substantial reduction should be effected by considering Piscataway<sup>f</sup>'s variety of housing and relatively low median income proportion. The conclusion reached was that the substantial variety of housing stock now affordable and occupied by lower income households should permit Piscataway to receive an adjustment at least equal to that extended to Freehold Township pursuant to Mr. Mallach's report. Freehold Township, as the Court will recall, has a median income proportion of 135% of the median household income of its region and has a far smaller proportion of multi-family dwellings than does Piscataway.

16. I also pointed out that certain applications of the consensus methodology had been reviewed by this Court and other Mt. Laurel courts and had been found to require some modification from the initial report, in the interests of fundamental fairness. For example, a revision was adopted by Judge Skillman regarding the computation of indigenous need; application of that revision to Piscataway would have reduced Piscataway's number by more than 100 units from the initial formula.

17. Of course, the analysis adopted by this

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The Urban League disagreed.



Court in Piscataway was unique, because, presumably, Piscataway is the only municipality contesting the application of the consensus methodology which had insufficient vacant developable land. Because of the Court's analysis, no party is in a position to determine whether the reductions to the consensus methodology fair share number mooted in my earlier letter (and disputed, it must be said, by the Urban League) would have been adopted. The point is that it is eminently possible, and indeed probable, that a fair share analysis applied to Piscataway under the same parameters used in Freehold Township, Ringwood, Paramus, Parsippany, and other municipalities would have produced a lower number.

18. Clearly, this Court understood that the number ascribed to Piscataway was high; to my best knowledge, (and it affords no pride in the undersigned to admit this), the number assigned to Piscataway is the highest number assigned to any municipality in the State. While someone must always be at the bottom of the barrel or at the top of the heap, (the Court may pick whichever metaphor it deems more appropriate), the number assigned to Piscataway, in absolute terms, must be compared to the numbers produced by the consensus methodology in other municipalities, a comparison which the undersigned has endeavored to point out to this Court on numerous occasions in prior communications. Take, for example, Saddle River, a wealthy community in Bergen County, consisting of nothing but single family residences zoned on large lots. The

number produced by the consensus methodology applied to Saddle River is 75; at a four for one rezoning, therefore, Saddle River must zone to permit the construction of 375 additional housing units. Saddle River made the determination decades ago that it would permit no development within its municipality but for homes accommodating the wealthy. Similarly, communities such as Mendham Township, a traditionally wealthy enclave of large individual residences, is obliged to house approximately 35 lower income households. Compare these results with the results in a town like Piscataway, which has 43,000 people; 12,300 housing units; approximately 3,500 garden apartments; extensive light industrial development creating a valuable resource for the entire State; and zoning which, by the stipulation of all parties in this case, accurately reflects the proper and appropriate land use for the Township in each area (by which it is meant that there has been no overzoning for commercial and industrial usage, and that the lot sizes for residential dwellings are generally small by pre-Mt. Laurel standards. In terms of "injustice", it is unjust and inequitable to say to Piscataway that because Piscataway followed the law as it existed and sought to create a diverse community of every economic, racial, social and religious group, it should now be compelled to comply with standards from which the wealthiest communities in the State are exempted, because they chose, in the past, to isolate themselves from households of lower income.

19. The above analysis demonstrates cogently that the requirement imposed by this Court upon Piscataway is unfair and inequitable. Arguably, a fair proportion of the inequity reflected in the Court's determination is a function of the Court's failure to have considered aspects of past performance applicable to Piscataway and aspects of the existing character of the community. The Fair Housing Act specifically requires that these factors be considered by the Affordable Housing Council in effecting a determination of a community's fair share. By analyzing the municipal obligation to make the Mt. Laurel mandate viable in these terms, the Affordable Housing Council will ensure that the "fair" share is fair, not only from the point of view of public interest groups such as the Urban League but also from the point of view of the municipality involved.

20. It also should be noted that the opinion of the Court rendered in Piscataway's case gives to Piscataway substantial discretion in meeting the fair share number which the Court has directed. The Court has said rather explicitly that it does not expect each parcel of vacant land to be zoned for high density development, the implication being that Piscataway is expected to produce innovative approaches towards meeting the number of 2,215. The Court can well understand that the development of a program along the lines suggested by the Court will take

some time and a great deal of effort. Piscataway respectfully submits that this time be far better spent before an administrative agency authorized to consider the variety of factors referred to in the legislation which remain outside the "consensus methodology".

21. In addition, it should be pointed out explicitly that any lawsuits filed after May, 1985, must be brought before the Affordable Housing Council. For this Court to retain jurisdiction in Piscataway\*s case may well mean that two separate governmental entities will continue to make rulings applying to municipalities of this State. If nothing else, the extensive litigation in Mt. Laurel has demonstrated that the implementation of the Mt. Laurel mandate is certainly confusing, even within the parameters of a limited number of judges making decisions and only one judge dealing with each municipality. It is clear, however, that the Affordable Housing Council will be empowered to develop and determine areas which constitute regions throughout the State, which might well vary from those regions determined by this Court as part of the consensus methodology. It is hardly fair to place any municipality in the position of having to respond simultaneously to two different forum, both endeavoring, in good faith, to produce the same result.

22. For the foregoing reasons, the Township of Piscataway respectfully moves before this Court for an Order

transferring this matter to the Affordable Housing Council. The Court's failure to grant the motion will place into effect the following irony: Piscataway, having voluntarily sought to provide housing of substantial variety before Mt. Laurel I, does not obtain credit for its early action, because of the pre 1980 rule; similarly, Piscataway, having resisted what it felt to be an onerous obligation, and having its position vindicated by this Court, to some extent, cannot take advantage of the standards embodied within the legislation because the legislation was enacted too late, given the trial dates held in this matter. Certainly, realizing that no master has yet been appointed in Piscataway's case and that the post-judgment phase of the litigation has not yet commenced, the appropriate remedy is the requested transfer.

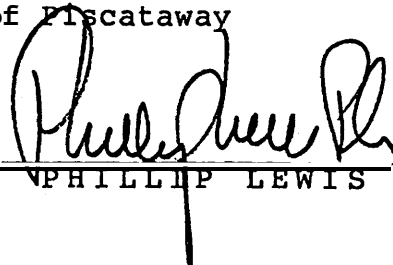
23. Piscataway also requests dissolution of a restraint contained within an Order entered by this Court on December 11, 1984. Without delineating the full background of the events leading up to that Order, it is clear that that Order was a response to the realization that Piscataway had insufficient vacant land to accommodate the consensus methodology number, and it was also clear that that restraint was imposed as a temporary measure, to prevent the necessity for the Urban League to supervise the

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agendas of the Municipal Zoning and Planning Boards. Now that the Court has determined the number, there is no further reason for that restraint. Presumably, the Affordable Housing Council, or whatever forum continues with this matter, will have the authority to supervise Piscataway's land use and to insure that Piscataway deals with a Mt. Laurel obligation in good faith. The Court's opinion, as earlier alluded to, entails substantial flexibility: yet, so long as the restraint remains in effect, the flexibility is non-existent. If Piscataway is to be compelled to meet its number, using a flexible approach, then Piscataway should have the option of taking, say, a particular site which the Court found suitable for high density residential development, and devoting it to some other use. In light of this circumstance, Piscataway respectfully moves for the vacation of the Order dated December 11, 1984.

KIRSTEN, FRIEDMAN & CHERIN  
A Professional Corporation  
Attorneys for Defendant, Township  
of Piscataway

By:

  
PHILLIP LEWIS TALEY

Dated: August 30, 1985

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 On Behalf of ACLU of NJ

SUPERIOR COURT OF  
 NEW JERSEY  
 CHANCERY DIVISION  
 MIDDLESEX COUNTY

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

No. C 4122-73  
 Civil Action

vs.

MAYOR AND COUNCIL OF THE  
 BOROUGH OF CARTERET,  
 Defendants.

JUDGMENT  
 AS TO PISCATAWAY

The above captioned matter having been tried before this Court commencing on April 30, 1984 pursuant to the remand of the Supreme Court in Southern Burlington County NAACP v. Township of Mt. Laurel, 92 N.J. 158 (1983) fMount Laurel III? a further hearing having been held in February, 1985 with respect to the suitability of certain sites within the Township; this Court having personally conducted a site inspection in the Township of Piscataway on May 16, 1985; the Court having heard and considered the testimony and evidence adduced during the trial, the hearing on suitability of vacant land, and during the site inspection, having reviewed all documents filed on behalf of the parties and interested property owners, and the Court having issued a letter-opinion on July 23, 1985, with findings of fact and conclusions of law,

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\* IT IS, THEREFORE, on this 7 day of September, 1985,  
O R D E R E D and A D J U D G E D , that

1. The total fair share of the Township of Piscataway for the decade of 1980 to 1990 is 2215 units of low and moderate income housing.

2. The Township of Piscataway is not entitled to any "credits" against the fair share established in Paragraph 1.

3. The Township of Piscataway's existing zoning ordinance and land use regulations are unconstitutional in that they do not provide a realistic opportunity for satisfaction of the Township's fair share of the regional need for lower income housing.

4. The Township of Piscataway shall within ninety (90) days of the filing of this Court's letter-opinion of July 23, 1985, that is, by October 23, 1985, revise its zoning ordinances to comply with this Judgment and the letter-opinion of July 23, 1985. This ninety (90) day period shall not be extended unless the Township presents compelling reasons for such extension.

5. Carla Lerman, P.P. is hereby appointed as the Master to assist the Township of Piscataway in revising its zoning ordinances to comply with this Judgment and the letter-opinion of July 23, 1985.


6. At the conclusion of the ninety (90) day revision period, or upon enactment of the revised ordinance, whichever occurs first, a hearing shall be scheduled, on notice to all parties and public notice, to determine whether the Township's revised zoning ordinance conforms to this Judgment and the letter-opinion of July 23, 1985.



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7. Pending further Order of this Court, all restraints set forth in the Order of this Court dated December 11, 1984 and all prior restraints continued by said Order and all requirements for notice to plaintiffs of official actions shall remain in full force and effect as to all sites listed in Appendix A of this Court's letter-opinion of July 23, 1985.

  
EUGENE D. SERPEXTELLI, A.J.S.C.

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ATTORNEYS FOR PLAINTIFFS  
On Behalf of the ACLU of NJ

SUPERIOR COURT OF NEW JERSEY  
MIDDLESEX/OCEAN COUNTY  
NO. C 4122-73

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

(Piscataway)

ORDER

vs.

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

Defendants.

Piscataway Township having moved to transfer this case to the Council on Affordable Housing pursuant to Section 16 of the Fair Housing Act, Laws of 1985, c.222, and having filed in support thereof a Certification of Philip Paley, Esq. and the Urban League plaintiffs having filed an Affidavit of Alan Mallach and a Memorandum of Law in Opposition, and the Court having heard oral argument in open court on October 2, 1985 from Philip Paley, Esq. for Piscataway Township and Eric Neisser, Esq. for the Urban League plaintiffs and the Court having rendered an oral decision on October 2, 1985, with findings of fact and conclusions of law,

IT IS HEREBY ORDERED THIS    DAY OF OCTOBER 1985:

1. Piscataway Township's motion to transfer is denied.

- 2, Stay of this Order pending any possible appeal is denied.
3. The restraints imposed by this Court's Order of December 11, 1984 and continued by this Court's Judgment of September 17, 1985 shall remain in full force and effect pending further order of this Court.



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EUGENE D. SERPENTEELLI, A.J.S.C.

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SUPERIOR COURT OF NEW JERSEY  
MIDDLESEX/OCEAN COUNTY  
NO. C 4122-73

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al.,  
  
Plaintiffs,  
  
vs.  
  
THE MAYOR AND COUNCIL OF  
THE BOROUGH OF CARTERET,  
et al.,  
  
Defendants.

(Piscataway)

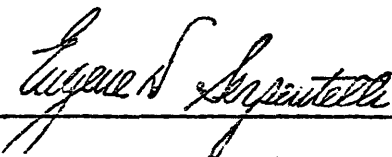
ORDER

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