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Ringwood (12)

Certification in support of motion returnable on 01/17/86

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COUNTRYSIDE PROPERTIES, INC., a New Jersey Corporation arid WALLACE and CZURA LAND CO., a New Jersey Partnership, Plaintiffs, vs. MAYOR AND COUNCIL OF THE BOROUGH OF RINGWOOD, ET ALS., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: PASSAIC COUNTY/ MIDDLESEX COUNTY (MOUNT LAUREL II LITIGATION) DOCKET NO. L-42095-81 Civil Action CERTIFICATION IN SUPPORT OF MOTION RETURNABLE ON JANUARY 17, 1986

PATRICK J. WALLACE, of full age, hereby certifies as follows:

1. I am the president of the plaintiff, Countryside Properties, Inc., and partner in the plaintiff, Wallace and Czura Land Co., and I am fully familiar with the facts of this case.

2. On July 25, 1984, the Court ordered Ringwood to adopt a new zoning ordinance which would provide a realistic opportunity for lower income housing within ninety (90) days of the date of the order and further to submit it to the Court

for its review* More than 17 months have passed since the Court's order. To date, the defendant, Borough of Ringwood, has ignored the Court order and has failed to adopt a new zoning ordinance and has failed to submit it to the Court for its review.

3. I believe that the defendant, Borough of Ringwood, has wilfully, and with an intent to deceive this Court, failed to adopt a new zoning ordinance and has failed to provide realistic opportunities for lower income housing because this defendant, like the town of Mount Laurel, obstinately refuses to recognize its constitutional mandates, the direction of the Supreme Court, and the order of this Court to make such housing opportunities available. This defendant has entrenched itself into a position of non-compliance and will not do what it has been ordered to do unless this Court takes more firm measures to ensure compliance.

4. My attorney advises me that the defendant's ignoring of the Court order of July 25, 1984 amounts to a contempt of court. The plaintiffs are therefore asking that the Court hold a summary proceeding to punish the defendant municipality for contempt of court. The plaintiffs believe that unless strong measures are used against this defendant, it will continue to ignore court orders and will not voluntarily provide realistic opportunities for the construction of lower income housing. My attorney also advises me that the court rules provide for an allowance for counsel fees under such a contempt

proceeding and the plaintiffs believe that they are entitled to counsel fees for this application and that they should be awarded counsel fees due to the defendant's wilful! and protracted refusal to comply with an order entered more than a year and a half age.

5. The Court should be aware that a draft of an ordinance was finally prepared on July 8, 1985 after the defendant's planning expert was prodded by the court-appointed master. Since July of 1985, the plaintiffs were involved in at least two meetings with the defendant's professionals in an attempt to create an acceptable zoning ordinance. As of this date the ordinance has not even been introduced by the defendant borough. Additionally, there is not yet even a draft of a site plan review ordinance; and the plaintiffs have been advised by the defendant that if and when this matter is to come before the planning board, there will be a new site plan development review ordinance in effect. Additionally, the plaintiffs have been advised that the new ordinances will require new standards that have never been imposed on any other housing project. For instance, the plaintiffs have been advised the defendants intend to have a rather lengthy ordinance regulating blasting in place by the time any housing project that the plaintiffs are proposing comes before the planning board. Additionally, the defendants have indicated to the plaintiffs that they intend to set up a wet lands ordinance and a sewer line inspection ordinance, specifically for the plaintiffs'

proposed projects. The problem with all of this is that more than 17 months have passed since the defendants were supposed to adopt a new ordinance that would provide for a realistic opportiimity for lower income housing, and the defendant Borough of Ringwood has made it clear that new land use regulations it intends to pass will be as cost generative as possible in order to discourage lower income housing from being constructed. The plaintiffs believe that the defendants, through the use of insidious rather than overt means will continue to ignore its court imposed obligation to re-zone. The defendant municipality will not voluntarily make lower income housing realistically possible. Since the defendants have had more than adequate opportunity to comply, the plaintiffs ask that the Court direct the master, Allan Mallach, to draft the requisite zoning ordinances andland use regulations. The plaintiffs also ask that the costs for the preparation of these regulations be borne by the defendant. Mr. Mallach is completely familiar with the defendant municipality, its existing regulations, the plaintiffs' property, and the plaintiffs' proposed projects. The plaintiffs believe that Mr. Mallach is more than well suited and qualified to draft the requisite regulations. Since the defendants have indicated their reluctance to comply, the plaintiffs ask that this matter be taken out of the hands of the defendant and given to a professional who can draft the needed regulations within a reasonable time.

6. On July 25, 1984, the Court invalidated the defendant's zoning ordinances. The Court, however, did not invalidate the land use regulations and site plan review ordinance that accompany the.defendant's zoning ordinances. The plaintiffs believe that unless the Court invalidates all of the defendant Borough's land use regulations, including its site plan review ordanaice, the defendant municipality will use the existing regulations and the proposed new regulations outlined above as a means to discourage or prohibit the actual development of any property for lower income housing. The plaintiffs firmly believe that all of the defendant's zoning land use regulations and site plan review regulations must be totally revamped and stripped of all cost-generative devices to ensure the constitutional mandate. The plaintiffs ask that the master be given the task of drafting all of the necessary regulations to ensure compliance with the Court's previous order.

7. The Plaintiffs are seeking a plenary hearing to fix the number of over-crowded units within the defendant borough that are not dilapidated and which are occupied by low or moderate income families. This number is needed in order to fix the defendant borough's indigenous need obligation. The plaintiffs agree that there are 63 dilapidated units occupied by low and moderate income families that now exist in

the Borough of Ringwood and which comprise a part of the defendant's indigenous need obligation. However, as the Court knows well, the indigenous need comprises not only dilapidated units, but over-crowded as well. The Court, in an attempt to come up with an acceptable methodology to determine the indigenous need obligation of the defendant borough, has used, in part, the RUTGERS REPORT methodology. As the Court is aware, however, the Rutgers group and Dr. Burchell in particular, refuses to acknowledge over-crowded units as a separate surrogate of housing need. Additionally, the Rutgers methodology can be refined only to the subregional level. Because of the nature of the sampling used by the Rutgers group, the plaintiffs believe there is an inherent likelihood for error when using this methodology at the municipal level.

8. In rendering its opinion in July of 1984, this Court asked Dr. Burchell to develop the number for over-crowded units and he came up with a formula based on the U.S. Census PUMS "A" sample. This "A" sample is merely a smaller sampling of data already in published tables and the Census Bureau advises that their published tables are more reliable than their PUMS files because they represent much larger samplings. As the Court is aware, Table 35, based on the long-form Census Report indicates there are a total of 98 over-crowded units in the Borough of Ringwood and which are also not dilapidated.

A copy of Table 35 is annexed hereto as Exhibit 1. Generally speaking, PUMS microdata are not large enough to support reliable tabulations, and their use is discouraged by the Census Bureau when the only purpose is to create tables and tabulations already provided by the Census Bureau in published form. Specifically, Table 35 represents a 16.2% sampling of Ringwood's housing units, while the PUMS "A" file represents a subsample of 5% of a much larger geographical area (minimum size - 100,000 persons)]

9. While it may have been desireable to use the PUMS "A" sample to select out dilapidated units, it is clearly neither necessary nor desirable to do so on the issue of over-crowded since Table 35 generates a precise number of over-crowded units after disaggregating all dilapidated units. On August 9, 1984, the plaintiffs wrote to the Bureau of Census to inquire about the reliability of the PUMS information versus the information found in Table 18 and 35. See plaintiffs' letter of August 9, 1984 annexed hereto as Exhibit 2. On August 15, 1984 the agency responded to our questions and generally indicated that the "A" sample represents 5% of all housing units for places of 100,000 or more population. Table 35, on the other hand, represents a 16.2% sample of Ringwood housing units. See letter of William F. Hill dated August 15, 1984 annexed hereto as Exhibit 3.

10. On August 22, 1984, the plaintiffs again corresponded with William F. Hill, Regional Director of The Bureau of Census, concerning reporting. In this correspondence,

we asked: "How-many-unit's from Ringwood could be expected to be included in the Public Use Microdate "A" Sample for sub-region 3?" See letter directed to William F. Hill dated August 22, 1984 annexed hereto as Exhibit 4. On August 28, 1984, I had a conversation with Margaret Padin-Bialo of" th|| Census Bureau concerning our August 22nd correspondence. She advised me that PUMS "A" sample is from the long-form census report and includes 5% of the housing units in subregion 3. She advised me that the likelihood of 5% of the Ringwood housing stock being included in this "A" sample is* quite remote. She also advised me that the "A" sample is good for county-wide research and not for pinpointing need within a specific municipality, such as Ringwood. In fact, she indicated that one should not use a PUMS sample when there is already data published that can be used such as Table 35. To do so, sfee indicated, is like trying to "pull a rabbit out of a hat." Finally, she also advised me that one cannot disaggregate low and moderate income persons in Ringwood using the PUMS file. This information was confirmed to us by letter dated September 4, 1984, which we annex hereto as Exhibit 5.

11. On September 7, 1984, the plaintiffs again wrote to Mr. Hill to clarify that which we had been told by phone and correspondence. Again, this letter had to do with the efficacy of the PUMS "A" sample versus the information found in Tables 18 and 35 of the Census as it applies to Ringwood.

See plaintiffs[1] correspondence dated September 7, 1984 annexed hereto as Exhibit 6. On October 3, 1984, the plaintiffs received correspondence from Paul T. Zeisset, Assistant Chief of the Data Users Service Division of the Bureau of the Census. Mr. Zeisset advised us that the PUMS is a subsample of the full sample and "generally offers less reliability than published data." He further advised us that the PUMS is not reliable for Ringwood and he confirmed that the Census Bureau discourages the use of the PUMS samples to create tables and tabulations already provided by the Census in published form such as Tables 18 and 35. See correspondence of the United States Department of Commerce, Bureau of the Census dated October 3, 1984 and annexed hereto as Exhibit 7. It should be pointed out that the RUTGERS REPORT does not recognize over-crowded as a single surrogate for Mount Laurel housing even though the Supreme Court in Mount Laurel II specifically and clearly so directed. In addition, the Housing Allocation Report of 1970 clearly defined the number of over^crowded units in Passaic County and the state as a whole. In fact, when the HAR was done, dilapidated units and over-crowded units were specifically disaggregated. See Table I, 1970 - Present Housing Needs of the Revised State-Wide Housing Allocation Report for New Jersey, annexed hereto as Exhibit 8. In examining these tables, it is ,clear that the state, in 1970, believed that over-crowded units equaled the number of dilapidated units. When Dr. Burchell was asked to come up with an over-crowded

number, his bias against over-crowded as a measure of housing need continued to spill over into his new report as the bulk of it was spent attacking the premise of over-crowded as a singular surrogate for Mount Laurel housing. Clearly, to use RUTGERS as a sole basis for determining over-crowded is akin to hiring the fox to guard the henhouse.

12. If, in fact, the Court was to use the percentage of low and moderate families occupying dilapidated units as generated by the RUTGERS REPORT and apply that to the number of over-crowded units that actually exist in Ringwood as shown in Table 35, then it would appear clear that the number of over-crowded units that are not dilapidated that are occupied by low and moderate income families that exist in Ringwood is 57 (98 x .586 = 57). Clearly, that is a more reliable number than that which had been generated by Dr. Burchell under duress. One other thing should be pointed out to the Court -- Ringwood[1]s expert, Malcom Kasler , in his April, 1983 report on "Indigenous Housing Need for Ringwood" (Page 9) determined that Ringwood had a total of 69 over-crowded units. Mr. Kasler then added those units into the number he found to be dilapidated to come up with a number for indigenous need. The plaintiffs[1] expert, CarlHintz^ in his April, 1984 report on "Indigenous Need in Ringwood" (Page 2) also determined that there were 69 over-crowded units. Mr. Hintz, however, went one step further and factored this number down to 827o, using the Urban League methodology (69 x .82 = 56.6, say 57).

It is of some interest to note that both the Urban League methodology and the Rutgers methodology, after adjustment, generate the same total over-crowded number of 57. Additionally, the proportion between Ringwood[1]s over-crowded of 57 and dilapidated of 63 bears some semblance of consistency with the proportions found in the HAR at page 7. The plaintiffs therefore believe that the more reliable numbers are as outlined in this Certification.

13. . The plaintiffs are seeking a plenary hearing on the nature and scope of the builder's remedy to be awarded to it. The plaintiffs believe--that they are entitled to such a remedy without question. The only question is whether or not the Court should issue a building permit for the plaintiffs' existing proposed projects due to the defendant's adamant refusal to provi.de a realistic opportunity for the creation of housing opportunities for low and moderate income persons within the borders of the defendant municipality. The plaintiffs believe that with a few modifications to existing plans, the plaintiffs can accommodate all of the defendant's present indigenous need obligation on plaintiffs' property. The existing proposed plans have been reviewed by the Court appointed master, Allan Mallach, and the plaintiffs believe that with Mr. Mallach drafting the requisite zoning and land use ordinances, the Court can readily issue a building permit for plaintiffs' proposed

projects to ensure that low and moderate income units will actually be constructed. The plaintiffs have all along maintained that they are ready, willing and able to build the low and moderate income units and otherwise accommodate the defendant borough's indigenous need obligation. The plaintiffs ask that the Court hold a hearing to determine whether or not such a building permit should be issued.

12. The plaintiffs are seeking to amend their, Complaint to include as parties defendant: The Ringwood Borough Sewerage Authority, The Wanaque Valley Sewerage Authority, and The Passaic County Planning Board. A copy of the proposed amended Complaint is included with the Notice of Motion. The plaintiffs would like the Court to be aware that since as early as 1981 the plaintiffs have been attempting to get approval to use dry lines now located within the Ringwood Borough Sewerage Authority service area for its townhouse project. As indicated in the Complaint, the defendant, Ringwood Borough Sewerage Authority owns dry lines in a subdivision knowns as Kensington Wood and in another subdivision known as Painted Forest. With two small interconnections, the plaintiffs can easily reach the existing Wanaque trunk line that feeds into the Itfanaque Valley Regional Sewer Plant. See copy of map annexed hereto as Exhibit 9. Also please see letter of March 2, 1982, which basically outlines the plaintiff's position to the Ringwood Sewerage Authority concerning these interconnects. See letter dated March 2, 1982 to Ringwood Sewerage Authority annexed

hereto' as Exhibit .10. Prior to the plaintiff's application to the Ringwood Sewerage Authority for permission to use the dry lines, the plaintiffs made application to the Wanaque Valley Regional Sewerage Authority for hook-up to the regional sewer plant. On January 12, 1982, the proposed defendant, Wanaque Valley Regional Sewerage Authority, passed a resolution accepting sewerage from the plaintifxs' property to its regional plant. See extract of minutes of Wanaque Valley Regional Authority dated January 12, 1982 annexed hereto as Exhibit 11. The plaintiffs believe that they are entitled to capacity at the Wanaque Valley Regional Authority treatment facility. The plaintiffs have committed themselves to the purchase of a 150,000 gallons . of capacity at the plant and have asked the proposed defendant, Wanaque Valley Regional Authority to commit itself to this purchase. While the plaintiffs have been invited to and have in fact attended numerous meetings with the Ringwood Borough Sewerage Authority and the Wanaque Valley Regional Sewerage Authority, neither authority has committed itself to either a reservation of sewerage capacity or even the use of existing infrastructure within the confines of the borough. See plaintiffs letter dated April 26, 1985 directed to the attorney for the Wanaque Valley Regional Sewerage Authority annexed hereto as Exhibit 12. Also see letter of the plaintiff directed to the jRingwood Borough Sewerage Authority dated November 27, 1985

annexed hereto as Exhibit 13. The defendant Ringwood Sewerage Authority has failed and refused to authorize the use of dry lines located within the Borough of Ringwood for any proposed project of the plaintiffs, including the proposed project that would enable the defendant borough to meet its indigenous need obligation. Indeed, the plaintiffs are aware that the Ringwood Sewerage Authority, in concert with the defendant municipality, will delay and/or deny the plaintiffs the right to use the existing infrastructure in the borough in order to prevent the construction of low and moderate income housing. . Unless the sewerage authorities are made parties defendant to this action, the plaintiffs may ultimately be delayed or denied sewerage capacity and/or access to the regional treatment plant in order to prevent the construction of low and moderate income housing. The two sewerage authorities have a history of discussing sewers. Ringwood Borough has discussed this issue for 14 years. Aside from constructing some dry lines, the defendant, Ringwood Borough Sewerage Authority, has yet to make sewers a reality in Ringwood. There is no reason for the plaintiffs to believe that the proposed defendant, Ringwood Borough Sewerage Authority will make the plaintiffs connection to the regional plant any more of a reality. The Wanaque Valley Regional Sewerage Authority, on the other hand, has constructed a regional treatment plant. This proposed defendant is also in the process of discussing the construction of an additional module to handle additional flows

fran various places including the Borough of Ringwood. Despite demands from this plaintiff to the proposed defendant, Wanaque Valley Regional Sewerage Authority, to reserve capacity for it, the Wanaque Valley Regional Sewerage Authority has failed and neglected to commit itself to a reservation of capacity for the plaintiff's project.

13. On December 7, 1985, the plaintiffs, through their legal representative, attended a meeting of the Wanaque Valley Regional Sewerage Authority at the direct invitation of the Authority. Purportedly, this meeting was for getting commitments from prospective developers for capacity in the proposed modular addition to the existing treatment plant. It became apparent during the meeting that there is conflict within the Authority itself as to the reservation of capacity to any user in Ringwood. Several of the members indicated their preference for reserving all of the additional capacity to prospective users in Wanaque Borough. In any event, and as a result of the dissension within the Authority itself, the Authority took no action to commit itself to the construction of an additional module to the regional treatment plant.

14. It is apparent to the plaintiff that the proposed defendant, Wanaque Valley Regional Sewerage Authority, will either not commit itself to constructing an addition to the existing treatment plant, or if it does, will not commit itself to reserving any of that capacity for the plaintiffs' project. This, despite the fact that the proposed defendant on

January 12, 1982 by way of resolution, committed itself to accepting flows from the plaintiffs' project. The plaintiffs believe that unless the two sewerage authorities are made parties defendant to this action, low and moderate income housing will never become a reality in Ringwood.

15. The proposed defendant, Wanaque Valley Regional Sewerage Authority, owns and operates a package treatment plant known as the Meadowbrook Plant in the Borough of Wanaque. This treatment plant is easily reachable by the creation of a small amount of infrastructure from *thm*plaintiffs * property. Current users of the Meadowbrook Plant are about to be connected to the Wanaque Valley Regional Sewerage Authority Treatment Plant. The Meadowbrook Plant will thereafter become abandoned. The plaintiffs are aware that the Wanaque Valley Regional Sewerage Authority would like to dismantle and/or sell the Meadowbrook Plant. The Meadowbrook Plant can be made to service the plaintiffs proposed housing project on an interim basis until the sewerage authority constructs an addition to the plant. The Meadowbrook Plant is functioning properly, even though at the moment it is over-subscribed. The number of units proposed by plaintiffs and the type of use contemplated by the plaintiffs would enable the efficient and appropriate use of the Meadowbrook Plant. The plaintiffs are aware that unless Wanaque Valley Regional Sewerage Authority is made a party defendant to this

action and is compelled to maintain that plant, the plant may not be available at the time any proposed housing project which meets the defendant Borough of Ringwood[1]s housing obligation, becomes a reality. The plaintiff, therefore, asks that the Court allow the plaintiff to amend its Complaint to bring in the two sewerage authorities as indicated.

16* Additionally, the plaintiffs are seeking the same relief against the Passaic County Planning Board. The Passaic County Planning Board has not enacted a proper resolution authorizing it to review site plans or development plans. In fact, the only authority the board has to act is a resolution authorizing the review of subdivisions. The plaintiffs are aware that any proposed housing project of the plaintiffs will be referred to the Passaic County Planning Board for its review and comments. The plaintiffs are also aware that the defendant, Borough of Ringwood Planning Board, will deny a site plan review application if it receives adverse comments from the Passaic County Planning Board even though the defendant Borough of Ringwood Planning Board knows that the comments of the Passaic County Planning Board are non-binding.

17. The plaintiffs have had experience with the Passaic County Planning Board concerning other site plan applications and are only too aware of Passaic County politics.

Inasmuch as the Passaic County Planning Board does not have any statutory authority to review site plan applications and has not passed a requisite resolution authorizing such review, these plaintiffs request that the Court allow the plaintiffs to amend their Complaint to include as a party defendant the Passaic County Planning Board in order to prevent that body from acting adversely to the housing project that encompasses low and moderate income housing units.

18. Even if the proposed defendant, Passaic County Planning Board, had authority to review such an application, then the plaintiffs believe that unless that body is made a party defendant to this action, there will be no ligitimate way to prevent the Passaic County Planning Board from denying or unduly delaying a proposed housing project of the plaintiffs, The plaintiffs believe that the defendant Borough of Ringwood will use whatever means available to it to ensure that a housing project containing low and moderate income units is not approved in the Borough of Ringwood, including the use of the Passaic County Planning Board as the agency for denial.

19. The plaintiffs are seeking a plenary hearing on the issue of whether "Exception #3" as outlined in "Mount Laurel II" at Pages 240 through 243 should be employed in this case. Since January 20, 1983, the defendant Borough of Ringwood has actively and overtly encouraged and allowed the construction of residential subdivisions and has at least attempted to attract development of an industrial and commercial nature. It is a fact that the SDGP has not been revised by the Court imposed deadline of January 1, 1985. It is apparent to the plaintiffs that the SDGP is no longer a realistic planning document. The plaintiffs believe that the Court must now reconsider the defendant Borough of Ringwood[1]s status as a "non-growth" community.

20. Since the date of the Court's decision in "Mount Laurel II" on January 20, 1983, the defendant municipality has issued 321 building permits for the period from January 20, 1983 through December 31, 1983. It has issued 270 building permits for the year 1984, and 366 building permits for the year 1985. Additionally,, it has approved five site plans for such diverse commercial and industrial uses as a gas station in a commercial zone and a manufacturing plant in the industrial park. In addition, since the date of the decision, the defendant planning board has approved 28 residential subdivisions of various sizes. Several other applications are still pending before the board, and during that time, there has been only one denial.

Also, during this time period, the defendant Borough of Ringwood had two of its own subdivisions approved -- one, for the creation of three commercial lots and another, for the creation of a number of industrial lots.

21. The defendant Borough of Ringwood is currently involved in the active marketing of the industrial land it has created and subdivided since the Supreme Court decision in Mount Laurel II. The plaintiff annexes hereto a copy of a legal notice that appeared in the "Argus" on December 29, 1985 concerning the potential sale of four additional and recently created industrial lots owned by the defendant borough. The legal notice is annexed hereto as Exhibit 14.

22. The defendant Borough of Ringwood had this industrial subdivision preliminarily approved in 1984 and a copy of the maps showing the proposed subdivision was submitted to the Court during the previous trial on January 24, 1984 as Exhibits P-195 and 195A. Since that time, the subdivision has received final approval and the sale of the lots is now underway Many more industrial lots are planned as part of this subdivision.

23. The defendant municipality also filed an application with the defendant planning board for subdivision of commercial land that the borough owns. The subdivision application was filed on February 8, 1985, and it was approved by the defendant planning board sometime thereafter. The defendant municipality then undertook the sale of -three of the commercial lots it had

just created and sold them to private investors. On July 23, 1985, the defendants sold one of the two acre lots it had created for $190,000 another one, for $120,000 and a third one for $90,000. The defendant Borough of Ringwood, therefore, subdivided commercial land, marketed commercial land, and realized $400,000 worth of gross profits from the sale of commercial property in the year 1985, long after the decision in Mount Laurel II and post the date the SDGP was supposed to be modified.

24. The defendant municipality is actively engaged in the creation and sale of industrial and commercial properties. The defendant municipality is actively attempting to attract commercial and industrial development. The defendant is actively seeking additional tax ratables. The defendant municipality is actively engaged in the installation of a 12" water main into the industrial park area in order to make those properties more attractive. The defendant actively pursued and got PSE&G to install a gas main in 1985, through the industrial area in order to make industrial properties more attractive. It is clear to the plaintiffs that the defendant municipality openly and warmly welcomes industrial and commercial development. It also warmly welcomes single family developments on large lots. The only thing not welcome in the defendant Borough of Ringwood is housing for low and moderate income families. Therefore, the plaintiffs are asking that the Court impose those obligations upon the defendants that it should have as a result of the

Third .Exception esposed in Mount Laurel II. The plaintiffs are seeking a plenary hearing to establish the regional need and regional obligation that this defendant should have as a result of its activity since the decision in Mount Laurel II and because the State of New Jersey has not revised the SDGP by January 1, 1985 as required by the Supreme Court decision.

25 The plaintiffs believe that the State of New Jersey has taken action rendering use of the SDGP inappropriate for Mount Laurel purposes, (note 21, Page 248) The State of MJ has done that by failing to fund the DCA which was the agency in charge of the creation of the SDGP. As the Court is well aware, there is no plan underway to update the SDGP. It would appear to the plaintiffs that the state has deliberately failed to fund the DCA in order to prevent the use of the SDGP as an appropriate tool for Mount Laurel II purposes. The plaintiffs believe that the Supreme Court intended to revert to the standards in Mount Laurel I for determining regional obligation. The plaintiffs believe that the defendant municipality should no longer be deemed exempt from having a regional housing obligation. The SDGP is no longer a viable planning tool. The SDGP is not now being revised and there appears to be no imminent plans for its revision. The defendant municipality has actively encouraged development and growth within its borders. The defendant municipality has long acknowledged its regional obligation under Mount Laurel I standards. In fact, the defendant municipalitj

and its planner, in 1979, acknowledged that the defendant municipality met all of the criteria requisite to make it a "developing community" pursuant to the standards then set forth in "Mount Laurel I". The plaintiffs believe that the Supreme Court intended after January 1, 1985 to revert to Mount Laurel I, except that the so-called "six criteria" test need not be satisfied in order to give a town the status of a developing community.

26. The plaintiffs believe that due to the defendant's and the state's combined actions, the defendant Borough of Ringwood, is wrongfully being accorded a status that it no longer deserves. Ringwood is a developing community. Ringwood has been a developing community and has actively encouraged industrial and commercial and non-Mt. Laurel residential development for many years. There no longer exists a reason to insulate Ringwood from meeting its share of the regional housing need. The plaintiffs ask that this matter be set down for a plenary hearing concerning the extent and nature of the defendant Borough of Ringwood's regional obligation.

27. The plaintiffs are aware that the so-called non-growth zone known as "Skylands" no longer exists in Ringwood, Wanaque and West Milford. The Skylands region now encompasses the northwest quadrant of the state from High Point in the north to Lambertville in the south, Phillipsburg and the Delaware Water Gap in the west and Madison in the east. The defendant Borough of Ringwood is now in an area now called "Gateway"

which .encompasses such diverse towns as Paterson, Hackensack, Passaic, Montclair, West Orange, Ft. Lee, Jersey City, Newark, Plainfield, Perth Amboy, New Brunswick, and Englishtown, New Jersey. It would appear to the plaintiff that the state has made a conscious and deliberate revision of Ringwood's designation. Now being encompassed in a clearly growth area, Ringwood must by operation of the intent of "Mount Laurel II" be deemed to have a regional obligation. The plaintiffs annex hereto as Exhibit 15. a copy of two maps from "Your Guide to New Jersey's Marinas and Boat Basins" prepared by New Jersey Department of Commerce and Economic Development, Division of Travel and Tourism in March of 1984.

28. It appears that the defendant municipality no longer is in the Skylands region. It appears that the defendant municipality now exists in a growth corridor acknowledged and recognized by N.J. as the "metropolitan Gateway." It appears then that the Court will have to reassess the defendant borough's status and set forth the extent of its obligation for the regional need. The plaintiffs are asking that the Court schedule such a hearing to determine the nature and extent of the defendant Borough of Ringwood's housing obligation.

29. The plaintiffs also seek as a remedy for non-compliance with the order of the Court, the enforcement of a settlement agreement that had been fairly negotiated between plaintiffs and the defendant municipality. In "Mount Laurel II,"

the Supreme Court apparently recognized the need for remedies for non-compliance. Among other things, I am aware that the Court suggested that "particular applications to construct housing that includes lower income units be approved by the municipality_____" (Mount Laurel II at Page 285, 286)

30. After this Court found Ringwood Borough's zonings and ordinances invalid on July 25, 1984, the defendant municipality took no action until October 11, 1984 when the first meeting between the defendant municipality and plaintiffs took place to explore possible settlement. That meeting was attended by the defendant borough's regular, attorney, August Fischer.

31. On October 16, 1984, an additional meeting took place with representatives of the plaintiff and the borough attorney and the attorney for the Borough of Ringwood in this litigation, Larry Katz. There were additional such meetings on October 30, and November 6, 1984. There were also meetings of the Mayor and the Council during this time and on February 15, 1985 a copy of the proposed settlement agreement was forwarded by the attorney for the defendant borough to the Court. In March of 1985, the proposed agreement was revised after additional negotiations. On March 8, 1985, the Court appointed a master who subsequently set selling prices that are now outlined in the proposed settlement agreement.

32. The first time the plaintiffs met with the Mayor and Council as a body regarding this litigation took place

on March 30, 1985. On that date, all but one issue was apparently resolved. The one issue standing between the plaintiffs and the defendant at that time was ultimately resolved in April of 1985 by the plaintiffs' conceding on the issue. During April and May of 1985 more meetings were held to organize the agreement and to encompass the master's suggestions. On May 17, 1985, the agreement was revised again; and during that same month, the plaintiffs pursuant to a demand of the Mayor and Council submitted a conceptual plan for the Mayor and Council's review for what is known as the "lower tract."

33. After the conceptual plan was submitted, the attorney for the borough called the plaintiff's office and informed me that the defendant borough was "delighted" with the low density shown on the project and asked if we would agree to a six-unit gross density in the agreement. Up until this point, the defendant borough had been seeking a seven and a half-unit gross density. The plaintiffs conceded inasmuch as the scope of the proposed project would not exceed six units per acre in gross density.

34 On June 5, 1985, plaintiffs agreed to purchase an additional 10,000 g.p.d. of sewerage capacity for the borough and to take over the existing sewer lines that the plaintiffs intended to use for its project. This additional agreement was at the request of the defendant borough and the plaintiffs at this point were told that these additional requirements were the only things standing in the way of a signed

agreement – so the plaintiffs again conceded.

35. On July 9, 1985, the attorney for the defendant borough once again re-drafted the proposed settlement agreement to encompass the new concessions. From that date until November 12, 1985, there was additional correspondence and telephonic communications between the plaintiffs and representatives of the defendant. The agreement was not signed, however, by either of the defendants. On November 12, 1985, the attorney for the defendant Borough of Ringwood again re-drafted the agreement encompassing some small changes and forwarded it to the parties.

36. On December 9, 1985, the defendant planning board passed a resolution approving the agreement as drafted and authorizing the board to sign it. However, on December 10, 1985, the defendant Borough of Ringwood passed a resolution authorizing it to make application to the Fair Housing Council to by-pass the pending Mount Laurel litigation and no further action was taken on the agreement. On December 21, 1985, the defendant borough held a public meeting to take action on the proposed settlement agreement. At the end of the special meeting, which was opened to the public, the defendant borough raised a number of alleged reasons for not signing the agreement it had authorized its own attorney to draft. Of great interest to the plaintiffs, however, was the announcement by the borough attorney made to the public at that meeting that "at least six and probably nine months would elapse before plaintiff's housing project would be

submitted to the planning board.[11] The attorney also advised the public at that time that the settlement agreement and proposed zoning ordinances would only give the plaintiffs the right to "try for planning board approval." It became apparent to the plaintiffs at this point that the defendants were never going to sign the agreement and would continue to find some reason for not executing the document. In addition, it also became apparent that the defendants, even if they signed the agreement, intended to delay it as much as possible.

37. The proposed settlement agreement and every version thereof has been prepared by the attorney for the defendant Borough of Ringwood. The last revision on November 12, 1985 encompassed all the changes that both of the parties wanted at that point. On December 23, the plaintiffs signed the proposed settlement agreement and forwarded a copy of the signed agreement to the court appointed master, Allan Mallach and to the attorney for the defendant borough.

38. The plaintiffs are seeking an order compelling the defendant municipality and the defendant planning board to sign the proposed settlement agreement. That agreement is annexed hereto as Exhibit 16. The plaintiffs believe that as a remedy for non-compliance, this Court has the authority pursuant to the mandates of "Mount Laurel II" to require the defendants to execute this agreement. The agreement was fairly negotiated between the parties, and whatever concessions had

been asked of the plaintiffs were granted. It wasn't until December 21, 1985 that the plaintiffs came to realize that the defendants would never sign. It was obvious that for each concession the plaintiffs made, the defendants thought of another one to replace it. The plaintiffs believe that the defendants should be made to live up to the terms and conditions of this agreement which were negotiated for well over a year.

39. The plaintiffs also believe that one of the remedies for non-compliance outlined in "Mount Laurel II" is the delay of certain projects or construction within a municipality until satisfactory ordinances are submitted or until all of the fair share lower income housing is constructed and/or committed by responsible developers (See Mount Laurel H at Page 285). The plaintiffs believe that the defendants municipality will continue to have its own projects approved and will continue to ignore the Court imposed mandates. The plaintiffs, therefore, ask that the Court bar and prohibit the defendant municipality from selling or improving any of its industrial and commercial property and to prevent the sale or improvement of any borough owned commercial and industrial property until such time that the defendant comes into compliance and provides for "all or part of its fair share of lower income housing" or has firm commitments for its construction by responsible developers.

40. The Court should be aware that the plaintiffs were duped into believing that the defendants were serious about settling this case. The 18 month delay has added enormous costs and burdens to the plaintiff/developer and there must be some form of compensation by the Court for the extraordinary and unjustifiable delay and wilfull disregard of the Court order. On reflection I now recognize that the only face-to-face meetipg I had with the defendant governing body was on March 30 , 1985. I was called to go to another meeting sometime thereafter and waited two hours outside in the parking lot before being told that the defendant Mayor and Council would not meet with me and told me to go home.

41. During the negotiation stage and specifically, when Mr. Mallach was involved, the defendants promised to submit a draft of the rehabilitation program to him. Months have passed and nothing has ever been done. I believe this is further evidence of the defendant's wilfull decision not to comply with the Court order. Additionally, the Court should be aware that it is now obvious that the defendants waited until the suraner of 1985 for the legislature to act expecting a reprieve. When that didn't happen, negotiations resumed. More recently, the defendants have made application to the Housing Council, hoping for a bail-out from this litigation. However, the Court should be aware that the defendants have absolutely no alternative

housing programs of any sort. In fact, the defendants have absolutely no plans and do not intend to create any plans for meeting their housing obligations. I believe all of these facts show clearly that the defendant municipality intends not to comply and that the Court must take over the task because this defendant has abrogated its responsibilities.

42. The plaintiffs are ready, willing and able to meet the defendant Borough of Ringwood's constitutional obligations through the use of high-density housing, including mobile homes and the like. The plaintiffs are ready, willing and able to begin construction as soon as approvals either through the municipal process or by Court order are granted. This litigation was begun in 1981 -- it is now 1986 and without an additional Court mandate, lower income housing will not be constructed in this municipality.

43. I certify that the foregoing statements made by me are true. I am aware that if any are wilfully false, I am subject to punishment.

Patrick J. Wallace

PATRICK J. WALLACE

Dated: January 4, 1986