

CN- Sea Gull Ltd Builders, Inc

3/1/84

v.
Colts Neck Twp

cover letter

Trial brief on behalf of "Sea Gull, Ltd,
Builders, Inc" in support of "growth
area" ~~area~~ classifications as proper and
that the twp has a regional fair
share obligation to provide low/moderate
income housing + to granting a
builders remedy.

p 32

CN 000 038 B

DRAZIN AND WARSHAW

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
25 RECKLESS PLACE

RED BANK, N.J. 07701

747-3730 AREA CODE 201

LOUIS M. DRAZIN*
THOMAS T. WARSHAW*
DENNIS A. DRAZIN (MEMBER N.J. & N.Y. BARS)*
MICHAEL T. WARSHAW
RONALD S. DRAZIN (MEMBER N.J. & D.C. BARS)
THOMAS J. DICHARA
VINCENT L. STRIPTO
LOUIS F. LOCASCIO*+
ROBERT A. OLKOWITZ
STEVEN L. KESSEL (MEMBER N.J. & D.C. BARS)
JOHN R. CONNELLY, JR.
BRIAN D. DRAZIN (MEMBER N.J. & GA. BARS)

HAZLET OFFICE
3315 HIGHWAY 35
HAZLET, N.J. 07730
264-6900

PLEASE REPLY TO RED BANK

March 1, 1984

* CERTIFIED CIVIL TRIAL ATTORNEY
+ CERTIFIED CRIMINAL TRIAL ATTORNEY

RECEIVED

MAR 2 1984

JUDGE SERPENTELLI'S CHAMBERS

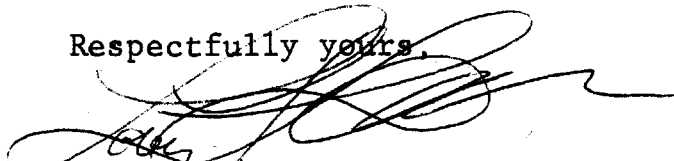
Honorable Eugene Serpentelli
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

RE: Sea Gull Ltd Builders, Inc. v. Colts Neck
Docket No. L 3540-84

Dear Judge Serpentelli:

Pursuant to paragraph 11 of the February 6, 1984 Pretrial Order with respect to the above-captioned matter, I have enclosed herewith an original and copy of Trial Brief submitted on behalf of Plaintiff, Sea Gull Ltd. Builders, Inc.

Respectfully yours,



LOUIS F. LOCASCIO

LFL/br
Encl.

cc: Robert W. O'Hagan, Esq.
David J. Frizell, Esq.
Edward Eastman, Esq.
w/enc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO. L 3299-78 P.W.
L 13769-80
L 003540-84

ORGO FARMS AND GREENHOUSES, :
INC., CONSOLIDATED WITH :
SEA GULL, LTD., BUILDERS, :
INC., :

PLAINTIFF,

v.

TOWNSHIP OF COLTS NECK,

DEFENDANT.

CIVIL ACTION

TRIAL BRIEF ON BEHALF OF PLAINTIFF,
SEA GULL, LTD., BUILDERS, INC.

DRAZIN AND WARSHAW, P.C.
25 RECKLESS PLACE
RED BANK, NEW JERSEY 07701
(201) 747-3730
ATTORNEYS FOR PLAINTIFF,
SEA GULL, LTD., BUILDERS,
INC.

LOUIS F. LOCASCIO
MICHAEL T. WARSHAW
ON THE BRIEF

STATEMENT OF FACTS

PLAINTIFF, SEA GULL, LTD., BUILDERS, INC. (HEREINAFTER REFERRED TO AS "SEA GULL"), IS THE OWNER IN POSSESSION OF APPROXIMATELY 77 ACRES OF LAND LOCATED ON STONE HILL ROAD IN THE TOWNSHIP OF COLTS NECK, DESIGNATED AS BLOCK 41.01, LOT 2. COLTS NECK, WHICH CONSISTS OF APPROXIMATELY 20,000 ACRES OF LAND, INCLUDES A 262 ACRE TRACT ON ITS SOUTHWESTERN BORDER WHICH HAS BEEN DESIGNATED BY THE STATE DEVELOPMENT GUIDE PLAN (HEREINAFTER REFERRED TO AS "SDGP") AS A "GROWTH AREA". SINCE SEA GULL'S AFORESAID 77 ACRES LIE COMPLETELY WITHIN THE AFORESAID GROWTH AREA, IT CONSTITUTES JUST UNDER 30% OF COLTS NECK'S TOTAL GROWTH AREA.

EXCEPT FOR A FEW COMMERCIALLY ZONED PARCELS ALONG ROUTE 34, THE BALANCE OF THE LAND IN COLTS NECK (INCLUDING SEA GULL'S TRACT) IS ZONED A-1, WHICH PERMITS AGRICULTURAL USES AND SINGLE FAMILY RESIDENTIAL USES AT A DENSITY OF APPROXIMATELY ONE UNIT PER 2 ACRES, EACH OF WHICH UNITS MUST HAVE A MINIMUM FLOOR AREA OF 2,000 SQUARE FEET.

ON JULY 3, 1979, THE HONORABLE MERRITT LANE, JR., DECLARED COLTS NECK'S ZONING ORDINANCE VOID FOR FAILURE TO PROVIDE AN APPROPRIATE VARIETY IN CHOICE OF HOUSING TYPES, INCLUDING LEAST COST HOUSING. JUDGE LANE GAVE COLTS NECK 90 DAYS WITHIN WHICH TO ADOPT A REASONABLE ORDINANCE THAT WOULD PROVIDE FOR LEAST COST HOUSING AND A VARIETY OF HOUSING TYPES, INCLUDING TOWNHOUSES, GARDEN APARTMENTS, PATIO

HOUSES AND ZERO LOT LINE HOUSING, AS WELL AS SMALL HOUSES AND MULTI-FAMILY HOUSING.

ALTHOUGH COLTS NECK'S PRESENT ZONING ORDINANCE DOES NOT INCLUDE ANY GROWTH AREAS, COLTS NECK IS PRESENTLY IN THE PROCESS OF AMENDING ITS MASTER PLAN AND ZONING ORDINANCE, THE DRAFTS OF WHICH PROVIDE FOR APPROXIMATELY 100 TO 150 ACRES OF GROWTH AREA IN WHICH DEVELOPMENT WOULD BE PERMITTED AT A DENSITY OF 6.5 DWELLING UNITS PER ACRE. SEA GULL'S 77 ACRES ARE LOCATED WITHIN THE PROPOSED GROWTH AREA OF THE AFORESAID DRAFTS.

SEA GULL PROPOSES TO DEVELOP ITS TRACT AT A DENSITY OF 7.0 TO 7.5 DWELLING UNITS PER ACRE, WHICH WOULD RESULT IN THE PLACEMENT OF 545 TO 575 DWELLING UNITS ON THE SITE, OF WHICH 20% WOULD BE MADE AFFORDABLE TO LOW AND MODERATE INCOME FAMILIES. THE DWELLING UNITS WOULD CONSIST OF TOWNHOUSES AND TWO STORY CONDOMINIUM FLATS WITH THE LOW AND MODERATE INCOME UNITS CONSISTING OF 600 TO 900 SQUARE FEET OF LIVING SPACE. AMENITIES ON SEA GULL'S PROPOSED DEVELOPMENT WOULD INCLUDE A SWIMMING POOL WITH A COMBINATION BATH AND CLUB HOUSE, SEVERAL TOT LOTS AND AT LEAST TWO TENNIS COURTS.

ON SEVERAL OCCASIONS PRIOR TO AUGUST 26, 1983, SEA GULL'S REPRESENTATIVES MET INFORMALLY WITH COLTS NECK TOWNSHIP OFFICIALS IN A GOOD FAITH EFFORT TO OBTAIN MOUNT LAUREL RELIEF WITHOUT LITIGATION. SPECIFICALLY, SEA GULL

REQUESTED A REZONING OF ITS TRACT IN ORDER TO ALLOW THE DEVELOPMENT OF A VARIETY AND CHOICE OF HOUSING, INCLUDING LOW AND MODERATE INCOME HOUSING. ALTHOUGH COLTS NECK'S PLANNER CONCEDES THAT THERE PRESENTLY IS NO VARIETY OF HOUSING IN COLTS NECK, THAT A LOW INCOME FAMILY CANNOT AFFORD A TYPICAL COLTS NECK RESIDENCE, AND THAT SEA GULL'S TRACT IS THE BEST CHOICE FOR A HIGH DENSITY DEVELOPMENT, COLTS NECK, ON AUGUST 26, 1983, REJECTED SEA GULL'S PROPOSAL.

ALTHOUGH THE MONMOUTH COUNTY GROWTH MANAGEMENT GUIDE DOES NOT PROVIDE FOR ANY GROWTH AREA IN COLTS NECK, THE MONMOUTH COUNTY DIRECTOR OF PLANNING CONCEDES THAT THE SDGP DESIGNATION OF THE 262 ACRE GROWTH AREA IN COLTS NECK WAS NOT ARBITRARILY DRAWN BY STATE PLANNERS SITTING IN THEIR "IVORY TOWER" IN TRENTON; IT WAS ARRIVED AT AFTER STATE PLANNERS CONFERRED WITH COUNTY PLANNERS AND MADE AN INTENSIVE AND CAREFUL ANALYSIS OF THE NATURE OF COLTS NECK TOWNSHIP AND THE SURROUNDING AREA. INDEED, THE INITIAL SDGP GROWTH AREA EXTENDED FURTHER INTO COLTS NECK; THE PRESENT GROWTH AREA WAS THE RESULT OF A COMPROMISE WITH THE COUNTY PLANNERS.

THE SEA GULL TRACT REPRESENTS A LOGICAL LOCATION FOR THE EXTENSION OF EXISTING DEVELOPMENT TO THE WEST OUT OF FREEHOLD AND IS PARTICULARLY WELL SUITED FOR INTENSIVE DEVELOPMENT. SEA GULL'S PROPERTY IS APPROXIMATELY 3 MILES FROM THE MAJOR POPULATION AND EMPLOYMENT CENTER OF FREEHOLD

BOROUGH, WHICH IN 1982 HAD ALMOST 12,000 PRIVATE SECTOR JOBS, APPROXIMATELY ONE HALF OF THE PRIVATE SECTOR EMPLOYMENT IN CENTRAL MONMOUTH COUNTY. THE TRACT IS WITHIN WALKING DISTANCE OF MASS TRANSIT, PLACING POTENTIAL FUTURE RESIDENTS OF THE HOUSING DEVELOPMENT IN THE VICINITY OF EMPLOYMENT, SHOPS AND SERVICES. THE TRACT IS LOCATED ADJACENT TO ROUTE 537 AND ROUTE 18 AND, THEREFORE, IS WELL SITUATED WITH REGARD TO VEHICULAR ACCESS TO AND FROM THE MAJOR HIGHWAY SYSTEMS OF THE AREA, INCLUDING ROUTES 50, 520 AND 34. THUS, WHILE SEA GULL'S PROPERTY IS A NATURAL EXTENSION OF EXISTING RESIDENTIAL AREAS IN FREEHOLD, THE ROUTE 18 FREEWAY SERVES AS A VISUAL AND PHYSICAL BARRIER TO ANY FURTHER EXTENSION OF DEVELOPMENT INTO COLTS NECK PROPER.

FROM A TOPOGRAPHICAL STANDPOINT, THE MAJORITY OF SEA GULL'S PROPERTY HAS SLOPES OF LESS THAN 5% AND THERE ARE NO SPECIFIC LIMITATIONS TO THE DEVELOPMENT OF THE PROPERTY.

UTILITIES ARE AVAILABLE TO THE SITE. SEA GULL'S PROPERTY CAN BE SERVED BY A CENTRAL SEWERAGE SYSTEM BY TYING INTO EXISTING LINES WHICH ARE APPROXIMATELY 200 FEET ADJACENT TO THE SITE. THIS HOOK UP WOULD REQUIRE ONLY A SLIGHT IMPROVEMENT BY INCREASING THE SIZE OF THE PUMP IN A DESIGNATED PUMP STATION AND OBTAINING THE APPROVALS OF FREEHOLD AND COLTS NECK TOWNSHIPS. ADDITIONALLY, THERE IS A PUBLIC WATER SUPPLY LINE APPROXIMATELY 200 FEET ADJACENT TO THE SEA GULL TRACT AND IT WOULD APPEAR THAT RECENT DIVERSION

RIGHTS ALLOCABLE TO FREEHOLD TOWNSHIP WOULD BE SUFFICIENT TO PROVIDE WATER TO THE SEA GULL TRACT. ELECTRIC SERVICE IS ALSO AVAILABLE TO THE SITE BY SIMPLY EXTENDING LINES PRESENTLY EXISTING ON HUNT ROAD AND STONE HILL ROAD INTO THE INTERIOR OF THE SITE.

SHOULD THE COURT AWARD SEA GULL A BUILDER'S REMEDY, SEA GULL IS READY, WILLING AND ABLE TO COMMENCE CONSTRUCTION OF THE AFORESAID DEVELOPMENT WHICH WOULD TAKE APPROXIMATELY FIVE YEARS TO COMPLETE.

WITH RESPECT TO THE MOUNT LAUREL OBLIGATION OF COLTS NECK TO PROVIDE ITS FAIR SHARE OF LOW AND MODERATE INCOME HOUSING, DISCOVERY HAS REVEALED DIVERSE OPINIONS AS TO THE PRECISE AMOUNT OF COLTS NECK'S OBLIGATION. SPECIFICALLY, KARL HINTZ, AN EXPERT RETAINED BY PLAINTIFF ORGO, HAS OPINED THAT COLTS NECK'S FAIR SHARE BY THE YEAR 1990 IS 861, AND BY THE YEAR 2000 IS 1,698. AT THE OTHER END OF THE SPECTRUM, COLTS NECK'S PLANNER, WILLIAM QUEALE, ESTIMATES COLTS NECK'S FAIR SHARE BY THE YEAR 2000 TO BE 117. SEA GULL'S EXPERT, RICHARD COPPOLA, EMPLOYING THE URBAN LEAGUE PLANNERS' CONSENSUS METHODOLOGY, ESTIMATES COLTS NECK'S FAIR SHARE BY THE YEAR 1990 TO BE 156.

LEGAL ARGUMENT

POINT I

WHERE A 262 ACRE TRACT OF LAND IS LOCATED ADJACENT TO A MAJOR POPULATION AND EMPLOYMENT CENTER, IS IN PROXIMITY TO MAJOR WATER SUPPLY AND SEWER SERVICE AREAS, IS SERVED BY MAJOR HIGHWAY FACILITIES, IS LOCATED IN THE SOUTHWEST CORNER OF A TOWNSHIP AND, THUS, IS COMPATIBLE WITH THE PRESERVATION OF AGRICULTURE IN THE REMAINDER OF THE TOWNSHIP, AND IS AWAY FROM LARGE BLOCKS OF PUBLIC OPEN SPACE AND ENVIRONMENTALLY SENSITIVE LAND, THE SDGP'S CLASSIFICATION OF SUCH A TRACT AS A "GROWTH AREA" IS VALID AND PROPER.

THE SDGP CLASSIFIES COLTS NECK TOWNSHIP, BY AND LARGE, AS A LIMITED GROWTH AREA. THE ONLY AREA OF COLTS NECK WHICH QUALIFIES AS A GROWTH AREA IS THE SOUTHWESTERN CORNER WHICH CONSISTS OF APPROXIMATELY 262 ACRES.

THE SDGP IS THE OFFICIAL DETERMINATION OF THE STATE'S PLAN FOR ITS OWN FUTURE DEVELOPMENT AND GROWTH. SO. BURLINGTON CTY. N.A.A.C.P. v. MT. LAUREL TP., 92 N.J. 158, 456 A.2D 390, 424 (1983) (HEREINAFTER REFERRED TO AS "MOUNT LAUREL II") AND HEREINAFTER CITED TO THE OPINION PUBLISHED IN 456 A.2D). SPECIFICALLY, THE COURT IN MOUNT LAUREL II, AT 418, NOTED:

THE EXISTENCE OF A MUNICIPAL OBLIGATION TO PROVIDE A REALISTIC OPPORTUNITY FOR A FAIR SHARE OF THE REGION'S PRESENT AND PROSPECTIVE LOW AND MODERATE INCOME HOUSING NEED WILL NO LONGER BE DETERMINED BY WHETHER OR NOT A MUNICIPALITY IS 'DEVELOPING'. THE OBLIGATION EXTENDS, INSTEAD, TO EVERY MUNICIPALITY, ANY PORTION OF WHICH IS DESIGNATED BY

THE STATE, THROUGH THE SDGP AS A
'GROWTH AREA'. ...

THERE SHALL BE A HEAVY BURDEN ON ANY
PARTY SEEKING TO VARY THE FOREGOING
REMEDIAL CONSEQUENCES OF THE SDGP DESIG-
NATION. (EMPHASIS ADDED)

IN DISCUSSING THE HEAVY RELIANCE PLACED UPON THE SDGP
IN MOUNT LAUREL LITIGATION THE COURT STATED:

WE NOW HAVE A SATISFACTORY ALTERNATIVE.
THE STATE DEVELOPMENT GUIDE PLAN (MAY,
1980), PROMULGATED PURSUANT TO N.J.S.A.
13:18-15.52, PROVIDES A STATE WIDE BLUE-
PRINT FOR FUTURE DEVELOPMENT. ITS REME-
DIAL USE IN MOUNT LAUREL DISPUTES WILL
ENSURE THAT THE IMPOSITION OF FAIR
SHARE OBLIGATIONS WILL COINCIDE WITH
THE STATE'S REGIONAL PLANNING GOALS AND
OBJECTIVES.

THE SDGP REPRESENTS THE ONLY OFFICIAL
DETERMINATION OF THE STATE'S PLAN FOR
ITS OWN FUTURE DEVELOPMENT AND GROWTH.
... THE SDGP RESULTED FROM AN INTENSIVE
STUDY OF ALL ASPECTS OF NEW JERSEY'S
CURRENT GROWTH AND DEVELOPMENT CON-
SIDERED IN CONJUNCTION WITH THE 'PHYSI-
CAL ASSETS' OF THE STATE. ... MOUNT
LAUREL II AT 423-424. (EMPHASIS ADDED)

IN ESTABLISHING A PRESUMPTION OF VALIDITY WITH RESPECT
TO THE SDGP, THE COURT RULED:

~~WE~~ WE BELIEVE IMPORTANT POLICY CON-
SIDERATIONS ARE INVOLVED IN OUR DECI-
SION NOT TO MAKE THE SDGP CONCLUSIVE,
WE THINK IT EVEN MORE IMPORTANT TO
POINT OUT THAT IT WILL BE THE UNUSUAL
CASE THAT CONCLUDES THE LOCUS OF THE
MOUNT LAUREL OBLIGATION IS DIFFERENT
FROM THAT FOUND IN THE SDGP. (EMPHASIS
ADDED) MOUNT LAUREL II, AT 431.

IN ORDER TO INVALIDATE THE SDGP CLASSIFICATION OF
COLTS NECK'S 262 ACRE TRACT AS A GROWTH AREA, THE DEFENDANT

IN THE WITHIN MATTER MUST ESTABLISH EITHER OF THE FOLLOWING: (1) ACCEPTING THE PREMISES OF THE SDGP, THE CONCLUSION THAT COLTS NECK INCLUDES ANY GROWTH AREA, OR AS MUCH GROWTH AREA AS IS SHOWN ON THE CONCEPT MAP, IS ARBITRARY AND CAPRICIOUS; OR (2) SINCE THE PREPARATION OF THE CONCEPT MAP COLTS NECK HAS UNDERGONE A SIGNIFICANT TRANSFORMATION THAT RENDERS THE SDGP'S CHARACTERIZATION OF IT INAPPROPRIATE, ADMITTING THAT AT THE TIME OF THE PREPARATION OF THE SDGP AND THE CONCEPT MAP THE CLASSIFICATION WAS CORRECT. MOUNT LAUREL II, AT 431-432. WITH RESPECT TO THE FIRST EXCEPTION, THE COURT EMPHASIZED THAT A TRIAL COURT SHOULD NOT SIMPLY SUBSTITUTE ITS JUDGMENT FOR THE STATE PLANNER'S; THE PARTY CHALLENGING THE SDGP MUST SHOW THAT IT WAS ARBITRARY AND CAPRICIOUS NOT TO PLACE THE LINE SOMEWHERE ELSE. MOUNT LAUREL II, AT 432.

IN THE MATTER SUB JUDICE THERE IS NO PROOF OF EITHER OF THE ABOVE TWO EXCEPTIONS. THE MONMOUTH COUNTY DIRECTOR OF PLANNING CONCEDES THAT THE SDGP LINE WAS NOT ARBITRARILY DRAWN BY STATE PLANNERS SITTING IN THEIR "IVORY TOWERS" IN TRENTON; IT WAS DRAWN ONLY AFTER INTENSIVE STUDY, MEETINGS, DISCUSSIONS, AND AS THE RESULT OF A COMPROMISE FROM AN INITIALLY PROPOSED LARGER GROWTH AREA. ADDITIONALLY, THERE IS NO PROOF THAT, SINCE THE PREPARATION OF THE SDGP CONCEPT MAP COLTS NECK HAS UNDERGONE ANY TRANSFORMATION WHICH RENDERS THE CHARACTERIZATION INAPPROPRIATE.

THE SDGP (AT P. 47) SETS FORTH FIVE CRITERIA FOR DELINEATING AN AREA A GROWTH AREA, ALL OF WHICH ARE MET BY THE 262 ACRE TRACT SO DESIGNATED IN THE SOUTHWESTERN CORNER OF COLTS NECK:

1. LOCATION WITHIN OR ADJACENT TO MAJOR POPULATION AND/OR EMPLOYMENT CENTERS. THE SEA GULL TRACT, WHICH IS APPROXIMATELY 30% OF THE 262 ACRES DESIGNATED BY THE SDGP AS A GROWTH AREA, IS ADJACENT TO A MAJOR POPULATION AND EMPLOYMENT CENTER OF FREEHOLD BOROUGH AND FREEHOLD TOWNSHIP, WHICH IN 1982, HAD ALMOST 12,000 PRIVATE SECTOR JOBS, APPROXIMATELY ONE HALF OF THE PRIVATE SECTOR EMPLOYMENT IN CENTRAL MONMOUTH COUNTY;

2. LOCATION WITHIN OR IN PROXIMITY TO EXISTING MAJOR WATER SUPPLY AND SEWER SERVICE AREAS. THE 262 ACRE TRACT FALLING WITHIN COLTS NECK'S GROWTH AREA IS APPROXIMATELY 200 FEET FROM PUBLIC WATER AND SEWER SERVICE AREAS IN FREEHOLD TOWNSHIP;

3. LOCATION WITHIN OR IN PROXIMITY TO AREAS SERVED BY MAJOR HIGHWAY AND COMMUTER RAIL FACILITIES. COLTS NECK'S GROWTH AREA IS ADJACENT TO THE INTERCHANGE OF ROUTE 537 AND THE ROUTE 18 FREEWAY, WHICH PROVIDES REGIONAL TRANSPORTATION ACCESS TO THE MONMOUTH COUNTY SHORE AREAS AND THE GARDEN STATE PARKWAY TO THE EAST, AS WELL AS TO MIDDLESEX COUNTY TO THE NORTH;

4. ABSENCE OF LARGE CONCENTRATIONS OF AGRICULTURAL LAND. ALTHOUGH COLTS NECK DOES HAVE A LARGE CONCENTRATION OF PRIME CULTURAL SOILS AND A WELL-ESTABLISHED AGRICULTURAL BASE IN ITS HORSE FARMS, THE DEVELOPMENT OF THE SMALL DESIGNATED GROWTH AREA IS NOT INCOMPATIBLE WITH THE PRESERVATION OF AGRICULTURE IN THE REMAINDER OF THE TOWNSHIP. THE GROWTH AREA IS A NATURAL EXTENSION OF EXISTING RESIDENTIAL AREAS IN FREEHOLD AND THE ROUTE 18 FREEWAY SERVES AS A VISUAL AND PHYSICAL BARRIER TO AN EXTENSION OF THIS DEVELOPMENT FURTHER INTO COLTS NECK;

5. ABSENCE OF LARGE BLOCKS OF PUBLIC OPEN SPACE OR ENVIRONMENTALLY SENSITIVE LAND. ALTHOUGH THE MONMOUTH COUNTY GROWTH MANAGEMENT GUIDE DESIGNATES SEVERAL ENVIRONMENTALLY SENSITIVE AREAS IN THE COUNTY, NONE ARE NEAR THE COLTS NECK "GROWTH AREA".

IN VIEW OF THE ABOVE, IT IS CLEAR THAT THE SDGP'S PRESUMPTION OF VALIDITY CANNOT BE OVERCOME BY THE DEFENDANT AND, THEREFORE, THE SDGP'S GROWTH AREA CLASSIFICATION OF THE 262 ACRE TRACT OF LAND IN THE SOUTHWEST CORNER OF COLTS NECK IS VALID AND PROPER.

POINT II

WHERE A TOWNSHIP HAS APPROXIMATELY 262 ACRES OF LAND WHICH HAS BEEN VALIDLY DESIGNATED BY THE SDGP AS A "GROWTH AREA", THE TOWNSHIP HAS A REGIONAL FAIR SHARE OBLIGATION TO PROVIDE LOW AND MODERATE INCOME HOUSING.

SINCE, FOR THE REASONS SET FORTH IN POINT I, SUPRA, THE SDGP'S DESIGNATION OF THE 262 ACRE TRACT OF LAND IN THE SOUTHWESTERN CORNER OF COLTS NECK IS VALID, COLTS NECK HAS A FAIR SHARE OBLIGATION. AS THE COURT MADE CLEAR IN MOUNT LAUREL II, AT 418, THE QUESTION OF WHETHER OR NOT A MUNICIPALITY HAS A FAIR SHARE OBLIGATION IS NOT DETERMINED BY WHETHER OR NOT THE TOWNSHIP IS "DEVELOPING"; "THE OBLIGATION EXTENDS, INSTEAD, TO EVERY MUNICIPALITY, ANY PORTION OF WHICH IS DESIGNATED BY THE STATE THROUGH THE SDGP AS A 'GROWTH AREA'". (EMPHASIS ADDED)

IT IS CONCEDED BY DEFENDANT'S PLANNER THAT THERE PRESENTLY DOES NOT EXIST A VARIETY OF HOUSING IN COLTS NECK AND, THEREFORE, A LOW INCOME FAMILY CANNOT AFFORD A TYPICAL COLTS NECK DWELLING. COLTS NECK'S PRESENT ZONING ORDINANCE PERMITS ONLY SINGLE FAMILY HOUSES CONSISTING OF 2,000 SQUARE FEET MINIMUM LIVING SPACE CONSTRUCTED ON TWO ACRE LOTS. THERE IS NO PROVISION FOR MULTIPLE DWELLING UNITS, NOR FOR ANY DENSITY GREATER THAN ONE DWELLING UNIT PER 2 ACRES.

THUS, COLTS NECK HAS AN OBLIGATION TO PROVIDE ITS FAIR SHARE OF LOW AND MODERATE INCOME HOUSING.

POINT III

THE APPROPRIATE REGION FOR PROSPECTIVE HOUSING NEED, IN DETERMINING COLTS NECK'S FAIR SHARE OBLIGATION, CONSISTS OF 71 MUNICIPALITIES LOCATED IN MONMOUTH, MIDDLESEX AND OCEAN COUNTIES THAT ARE WITHIN THE 30 MINUTE COMMUTER-SHED, WHEREAS THE APPROPRIATE REGION FOR DETERMINING COLTS NECK'S SURPLUS PRESENT HOUSING NEED CONSISTS OF 86 MUNICIPALITIES LOCATED IN MONMOUTH AND OCEAN COUNTIES.

A MUNICIPALITY'S FAIR SHARE OF LOW AND MODERATE INCOME HOUSING INCLUDES THREE ELEMENTS:

1. THE MUNICIPALITY'S INDIGENOUS NEED;
2. THE MUNICIPALITY'S FAIR SHARE OF THE REGION'S PROSPECTIVE HOUSING NEED; AND
3. THE MUNICIPALITY'S FAIR SHARE OF THE REGION'S SURPLUS PRESENT HOUSING NEED.

RICHARD T. COPPOLA, A PROFESSIONAL PLANNER RETAINED BY SEA GULL, IN CALCULATING COLTS NECK'S FAIR SHARE, EMPLOYED THE URBAN LEAGUE PLANNERS' CONSENSUS METHODOLOGY. FOR THE REASONS SPECIFICALLY SET FORTH IN MR. COPPOLA'S FEBRUARY, 1984, FAIR SHARE HOUSING ANALYSIS OF COLTS NECK TOWNSHIP, WHICH HAS PREVIOUSLY BEEN SUBMITTED TO THE COURT, IT WAS NECESSARY TO USE TWO SEPARATE AND DISTINCT DEFINITIONS OF "REGION":

1. WITH RESPECT TO COLTS NECK'S REGIONAL PROSPECTIVE HOUSING NEED, A 30 MINUTE COMMUTERSHED WAS EMPLOYED; THAT IS, ALL MUNICIPALITIES WITHIN 30 MINUTES TRAVEL OF COLTS

NECK WERE DETERMINED TO MAKE UP THE REGION, WHICH MUNICIPALITIES WERE FOUND TO LIE IN MONMOUTH, MIDDLESEX AND OCEAN COUNTIES;

2. IN DETERMINING COLTS NECK'S SURPLUS PRESENT HOUSING NEED, A DIFFERENT REGION WAS USED IN ORDER TO ENSURE THAT THE PRESENT NEED REGIONS USED FOR CALCULATION PURPOSES ARE BALANCED, WITH EXTENSIVE SUBSTANDARD HOUSING CONDITIONS ON THE ONE HAND AND AREAS WITH SUFFICIENT AVAILABLE LAND ON THE OTHER. THUS FOUR FIXED REGIONS IN THE STATE WERE CHOSEN FOR PURPOSES OF CALCULATING AND DISTRIBUTING THE SURPLUS PRESENT HOUSING NEEDS. THESE FOUR REGIONS ARE SET FORTH ON PAGE 7 OF MR. COPPOLA'S AFORESAID REPORT. AS A RESULT, COLTS NECK'S SURPLUS PRESENT HOUSING NEED REGION IS COMPRISED OF 86 MUNICIPALITIES LOCATED IN MONMOUTH AND OCEAN COUNTIES.

POINT IV

COLTS NECK'S FAIR SHARE OBLIGATION, AS CALCULATED BY USE OF THE URBAN LEAGUE PLANNERS' CONSENSUS METHODOLOGY, AMOUNTS TO 156 DWELLING UNITS TO THE YEAR 1990, WHICH FAIR SHARE HAS NOT BEEN SATISFIED AND CANNOT BE SATISFIED BY COLTS NECK'S PRESENT ZONING ORDINANCE.

FOR THE REASONS SPECIFICALLY SET FORTH IN THE FEBRUARY, 1984, "FAIR SHARE" REPORT OF RICHARD T. COPPOLA, WHO EMPLOYED THE URBAN LEAGUE PLANNERS' CONSENSUS METHODOLOGY, IT IS RESPECTFULLY SUBMITTED THAT COLTS NECK'S FAIR SHARE OF LOW AND MODERATE INCOME HOUSING OBLIGATION AMOUNTS TO 156 DWELLING UNITS TO THE YEAR 1990.

EXCEPT FOR A FEW COMMERCIALLY ZONED PARCELS ALONG ROUTE 34, COLTS NECK IS EXCLUSIVELY ZONED A-1, WHICH PERMITS SINGLE FAMILY RESIDENTIAL USES AT A DENSITY OF APPROXIMATELY ONE UNIT PER 2 ACRES. THUS, DEFENDANT CONCEDES THAT SINCE NO VARIETY OF HOUSING IS PERMITTED, LOW INCOME FAMILIES CANNOT AFFORD A TYPICAL COLTS NECK RESIDENCE. IT, THEREFORE, CANNOT BE DISPUTED THAT COLTS NECK'S PRESENT ZONING ORDINANCE DOES NOT MAKE REASONABLE PROVISION FOR THE SATISFACTION OF ITS FAIR SHARE OBLIGATION.

DEFENDANT'S PLANNER CONCEDES THAT, IN ORDER TO FULFILL ITS FAIR SHARE OBLIGATION, COLTS NECK HAS PROPOSED A REVISION OF ITS ZONING ORDINANCE AND MASTER PLAN SO AS TO PROVIDE FOR MULTIPLE FAMILY DEVELOPMENT AT A DENSITY OF 6.5 DWELLING UNITS PER ACRE IN AN AREA WHICH INCLUDES THE SEA

GULL TRACT. INDEED, DEFENDANT'S PLANNER CONCLUDES THAT SEA GULL'S 77 ACRE TRACT IS THE TRACT MOST LIKELY TO BE DEVELOPED FOR HIGH DENSITY RESIDENCES TO INCLUDE LOW AND MODERATE INCOME HOUSING BECAUSE (1) IT FALLS IN A HEADWATER AREA, I.E., IT IS FURTHER AWAY FROM THE SWIMMING RIVER RESERVOIR AND, THEREFORE, WOULD HAVE LESS OF AN EFFECT UPON THE RESERVOIR; (2) IT IS ADJACENT TO MASS TRANSPORTATION; AND (3) DEVELOPMENT OF THE SEA GULL TRACT WOULD AVOID "LEAP FROGGING" THAT IS FROWNED UPON BY MOUNT LAUREL II, IN THAT IT IS IMMEDIATELY ADJACENT TO THE FREEHOLD SUBURBAN SETTLEMENT AREA.

Clear

POINT V

WHERE THE TOWNSHIP OF COLTS NECK, HAVING 262 ACRES OF GROWTH AREA, FAILS TO PROVIDE A REALISTIC OPPORTUNITY FOR A FAIR SHARE OF LOW AND MODERATE INCOME HOUSING DUE TO ITS EXCLUSIONARY ZONING, WHERE PLAINTIFF SEA GULL PROPOSES TO DEVELOP 77 ACRES WITHIN THE GROWTH AREA AT A DENSITY OF 7.0 TO 7.5 UNITS PER ACRE WHICH WILL RESULT IN 545 TO 575 DWELLING UNITS, 20% OF WHICH WOULD BE MADE AFFORDABLE TO LOW AND MODERATE INCOME FAMILIES, WHERE SEA GULL'S PROPOSED DEVELOPMENT IS CONSISTENT ENVIRONMENTALLY WITH SOUND LAND USE PLANNING, AND WHERE PLAINTIFF SEA GULL HAS IN GOOD FAITH ATTEMPTED TO OBTAIN RELIEF WITHOUT LITIGATION, PLAINTIFF SEA GULL SHOULD BE GRANTED A BUILDER'S REMEDY WITHOUT THE NECESSITY OF ESTABLISHING THAT CONSIDERABLE FUNDS HAVE BEEN INVESTED OR THAT THE LITIGATION HAS BEEN INTENSIVE.

WITH RESPECT TO A BUILDER'S REMEDY, MOUNT LAUREL II, AT 452, HELD:

WE HOLD THAT WHERE A DEVELOPER SUCCEEDS IN MOUNT LAUREL LITIGATION AND PROPOSES A PROJECT PROVIDING A SUBSTANTIAL AMOUNT OF LOWER INCOME HOUSING, A BUILDER'S REMEDY SHOULD BE GRANTED UNLESS THE MUNICIPALITY ESTABLISHES THAT BECAUSE OF ENVIRONMENTAL OR OTHER SUBSTANTIAL PLANNING CONCERNS, THE PLAINTIFF'S PROPOSED PROJECT IS CLEARLY CONTRARY TO SOUND LAND USE PLANNING... NOR IS IT ESSENTIAL THAT CONSIDERABLE FUNDS BE INVESTED OR THAT LITIGATION BE INTENSIVE. (EMPHASIS ADDED)

IN DETERMINING WHAT IS "SUBSTANTIAL" IN A PARTICULAR CASE, THE COURT INDICATED THAT 20% APPEARED TO BE A REASONABLE MINIMUM OF THE AMOUNT OF THE PROJECT TO BE DEVOTED TO

LOW AND MODERATE INCOME HOUSING. MOUNT LAUREL II, AT 452 (F.N. #37).

PRIOR TO BRINGING THE WITHIN LITIGATION, PLAINTIFF APPROACHED DEFENDANT COLTS NECK IN AN ATTEMPT TO AMICABLY RESOLVE THE MATTER. SPECIFICALLY, PRIOR TO AUGUST 26, 1983, REPRESENTATIVES OF SEA GULL MET INFORMALLY WITH THE REPRESENTATIVES OF THE DEFENDANT AND PROPOSED A VARIETY OF HOUSING, INCLUDING LOW AND MODERATE INCOME HOUSING. IN SPITE OF SEA GULL'S GOOD FAITH ATTEMPTS TO OBTAIN ITS BUILDER'S REMEDY WITHOUT LITIGATION, ON AUGUST 26, 1983, DEFENDANT REJECTED SEA GULL'S AFORESAID PROPOSALS.

IN DISCUSSING THE RIGHT TO A BUILDER'S REMEDY, THE COURT IN MOUNT LAUREL II, AT 420, STATED:

WHERE THE PLAINTIFF HAS ACTED IN GOOD FAITH, ATTEMPTED TO OBTAIN RELIEF WITHOUT LITIGATION, AND THEREAFTER VINDICATES THE CONSTITUTIONAL OBLIGATION IN MOUNT LAUREL TYPE LITIGATION, ORDINARILY A BUILDER'S REMEDY WILL BE GRANTED, PROVIDED THAT THE PROPOSED PROJECT INCLUDES AN APPROPRIATE PORTION OF LOW AND MODERATE INCOME HOUSING, AND PROVIDED FURTHER THAT IT IS LOCATED AND DESIGNED IN ACCORDANCE WITH SOUND ZONING AND PLANNING CONCEPTS, INCLUDING ITS ENVIRONMENTAL IMPACT.

SINCE THE SDGP IS "A BLUEPRINT FOR THE IMPLEMENTATION OF THE MOUNT LAUREL DOCTRINE", MOUNT LAUREL II AT 424, THE SDGP'S DELINEATION OF GROWTH AREAS "...WILL, IN MOST CASES, CONCLUSIVELY DETERMINE THE EXISTENCE AND LOCATION FOR THE IMPOSITION OF THE MOUNT LAUREL OBLIGATION". (EMPHASIS

ADDED) MOUNT LAUREL II, AT 435. THE SDGP IS RELIED UPON TO DETERMINE WHERE FUTURE HOUSING SHOULD BE LOCATED, I.E., IN ITS GROWTH AREAS, AND TO DISCOURAGE EXPANSION INTO LIMITED GROWTH AREAS. MOUNT LAUREL II, AT 427-428.

SINCE SEA GULL'S TRACT LIES WITHIN THE SDGP "GROWTH AREA", AND SINCE SEA GULL WILL PROVIDE A SUBSTANTIAL AMOUNT OF LOWER INCOME HOUSING, SEA GULL SHOULD BE GRANTED A BUILDER'S REMEDY UNLESS THE DEFENDANT ESTABLISHES THAT BECAUSE OF ENVIRONMENTAL OR OTHER SUBSTANTIAL PLANNING CONCERNS SEA GULL'S PROPOSED PROJECT IS CLEARLY CONTRARY TO SOUND LAND USE PLANNING.

BECAUSE OF THE COURT'S LEGITIMATE CONCERN FOR HAVING LOW AND MODERATE INCOME HOUSING PROVIDED BY A BUILDER IN AN APPROPRIATELY DESIGNATED GROWTH AREA, THE COURT SPECIFICALLY DETERMINED THAT IT IS NOT ESSENTIAL THAT THE BUILDER FIRST EXPEND CONSIDERABLE SUMS OR THAT LITIGATION BE INTENSIVE BEFORE THE BUILDER IS ENTITLED TO HIS REMEDY. MOUNT LAUREL II, AT 452.

ROUND VALLEY V. TOWNSHIP OF CLINTON, ONE OF THE COMPANION CASES IN THE MOUNT LAUREL II DECISION, WHICH IS FACTUALLY SIMILAR TO THE INSTANT MATTER, IMPLIED THAT A MUNICIPALITY'S FAIR SHARE SHOULD BE ACCOMODATED COMPLETELY IN A GROWTH AREA IF POSSIBLE AND IF CONSISTENT WITH SENSIBLE PLANNING. MOUNT LAUREL II, AT 478. IN REMANDING ROUND VALLEY, THE COURT INDICATED THAT THE TRIAL COURT NEED NOT

BE CONCERNED WITH ANY GENERAL GROWTH PRESSURE THAT A DEVELOPMENT IN A GROWTH AREA MAY EXERT ON THE NEIGHBORING LIMITED GROWTH AREA OR AGRICULTURAL AREA, SINCE SUCH PRESSURES ARE PRESUMABLY ACCEPTABLE TO THE SDGP AND ARE INEVITABLE, MOUNT LAUREL II, AT 479. THIS COURT SHOULD SIMILARLY NOT BE CONCERNED ABOUT EXTENSION OF HIGH DENSITY FROM SEA GULL'S TRACT INTO COLTS NECK PROPER, ESPECIALLY SINCE SEA GULL'S TRACT IS A NATURAL EXTENSION OF EXISTING RESIDENTIAL AREAS IN FREEHOLD TOWNSHIP AND THE ROUTE 18 FREEWAY SERVES AS A VISUAL AND PHYSICAL BARRIER TO AN EXTENSION OF THIS DEVELOPMENT FURTHER INTO COLTS NECK'S INTERIOR.

FOR THE AFORESAID REASONS, IT IS RESPECTFULLY SUBMITTED THAT SEA GULL SHOULD BE ISSUED A BUILDER'S REMEDY.

61223
POINT VI

WHERE A MUNICIPALITY'S ZONING ORDINANCE HAS BEEN PREVIOUSLY DECLARED UNCONSTITUTIONAL BY A COURT OF COMPETENT JURISDICTION BECAUSE THE ORDINANCE FAILS TO PROVIDE FOR AN APPROPRIATE VARIETY AND CHOICE OF HOUSING, INCLUDING LEAST COST HOUSING, AND WHERE THE MUNICIPALITY FAILS TO ADOPT A ZONING ORDINANCE SO AS TO PROVIDE FOR A FAIR SHARE OF LOW AND MODERATE INCOME HOUSING, THE ORDINANCE IS NOT ENTITLED TO A PRESUMPTION OF VALIDITY.

ON JULY 3, 1979, THE HONORABLE MERRITT LANE, JR., DECLARED COLTS NECK'S ZONING ORDINANCE VOID FOR FAILURE TO PROVIDE AN APPROPRIATE VARIETY IN CHOICE OF HOUSING TYPES, INCLUDING LEAST COST HOUSING.

IN SPITE OF THE SDGP GROWTH AREA CLASSIFICATION OF 262 ACRES IN THE SOUTHWESTERN CORNER OF COLTS NECK, DEFENDANT HAS FAILED TO AMEND ITS ZONING ORDINANCE SO AS TO PROVIDE ITS FAIR SHARE OF LOW AND MODERATE INCOME HOUSING.

N.J.S.A. 40:55(D)-62 IS THE ENABLING STATUTE WHICH GIVES MUNICIPALITIES THE POWER TO ZONE. THIS DELEGATED POWER IS PART OF THE GENERAL POLICE POWER OF THE STATE AND MUST BE EXERCISED FOR THE GENERAL WELFARE. IF A MUNICIPAL LAND USE REGULATION CONFLICTS WITH THE GENERAL WELFARE, IT ABUSES THE POLICE POWER AND, AS SUCH, IS UNCONSTITUTIONAL. REGULATIONS WHICH DO NOT PROVIDE THE REQUISITE OPPORTUNITY FOR A FAIR SHARE OF THE REGION'S NEED FOR LOW AND MODERATE INCOME HOUSING CONFLICT WITH THE GENERAL WELFARE AND VIOLATE THE STATE CONSTITUTIONAL REQUIREMENTS OF SUBSTANTIVE

DUE PROCESS AND EQUAL PROTECTION. MOUNT LAUREL I, 67 N.J. 151, 174, 336 A.2d 713 (1975).

IN DISCUSSING THE VALIDITY OF GOVERNMENTAL ACTIONS, THE COURT IN MOUNT LAUREL II, AT 466, STATED:

GIVEN THE IMPORTANCE OF SOCIETAL INTEREST IN THE MOUNT LAUREL OBLIGATION AND THE POTENTIAL FOR INORDINATE DELAY IN SATISFYING IT, PRESUMPTIVE VALIDITY OF AN ORDINANCE ATTACHES BUT ONCE IN THE FACE OF A MOUNT LAUREL CHALLENGE. EQUAL TREATMENT REQUIRES AT THE VERY LEAST THAT GOVERNMENT BE AS FAIR TO THE POOR AS IT IS TO THE RICH IN THE PROVISION OF HOUSING OPPORTUNITIES. THAT IS THE BASIC JUSTIFICATION FOR MOUNT LAUREL. WHEN THAT CLEAR OBLIGATION IS BREACHED AND INSTRUCTIONS GIVEN FOR ITS SATISFACTION, IT IS THE MUNICIPALITY AND NOT THE PLAINTIFFS THAT MUST PROVE EVERY ELEMENT OF COMPLIANCE. IT IS NOT FAIR TO REQUIRE A POOR MAN TO PROVE YOU WERE WRONG THE SECOND TIME YOU SLAMMED THE DOOR IN HIS FACE. (EMPHASIS ADDED)

IN THE CASE SUB JUDICE, JUDGE LANE, ON JULY 3, 1979, DECLARED COLTS NECK'S ZONING ORDINANCE UNCONSTITUTIONAL FOR FAILURE TO PROVIDE AN APPROPRIATE VARIETY AND CHOICE OF HOUSING, INCLUDING LEAST COST HOUSING. JUDGE LANE GAVE COLTS NECK 90 DAYS WITHIN WHICH TO ADOPT A REASONABLE ORDINANCE THAT WOULD PROVIDE FOR LEAST COST HOUSING AND A VARIETY OF HOUSING TYPES, INCLUDING TOWNHOUSES, GARDEN APARTMENTS, PATIO HOUSES AND ZERO LOT LINE HOUSING, AS WELL AS SMALL HOUSES AND MULTI-FAMILY HOUSING.

SINCE COLTS NECK HAS ALREADY HAD ONE "BITE AT THE APPLE", SINCE ITS ORDINANCE HAS ALREADY BEEN DECLARED UNCON-

STITUTIONAL, AND SINCE IT IS CONTRARY TO THE SDGP "GROWTH
AREA" CLASSIFICATION, IT IS NOT NOW ENTITLED TO A PRESUMP-
TION OF VALIDITY.

POINT VII

WHERE THE SDGP "GROWTH AREA" CLASSIFICATION RESULTS NOT FROM STATE PLANNERS SITTING IN THEIR "IVORY TOWER" BUT FROM INTENSIVE MEETINGS, DISCUSSIONS AND A COMPROMISE WITH COUNTY PLANNERS, THE SDGP CLASSIFICATION IS PRESUMED VALID AND SUPERCEDES THE COUNTY GROWTH MANAGEMENT GUIDE.

DEFENDANT COLTS NECK CONTENDS THAT THE SDGP INAPPROPRIATELY DESIGNATES A 262 ACRE TRACT OF LAND IN THE SOUTHWEST CORNER OF COLTS NECK TOWNSHIP AS A GROWTH AREA. DEFENDANT RELIES HEAVILY UPON THE MONMOUTH COUNTY GROWTH MANAGEMENT GUIDE WHICH DOES NOT DELINEATE ANY GROWTH AREA IN COLTS NECK.

HOWEVER, THE MONMOUTH COUNTY DIRECTOR OF PLANNING CONCEDES THAT PRIOR TO THE SDGP'S DELINEATION OF COLTS NECK'S GROWTH AREA, STATE PLANNERS MET WITH THE MONMOUTH COUNTY PLANNERS; THEY DID NOT ARBITRARILY DRAW THE SDGP LINE WHILE SITTING IN THEIR "IVORY TOWER" IN TRENTON. INDEED, THE LINE EVENTUALLY AGREED UPON WAS A COMPROMISE SINCE INITIALLY THE STATE PLANNERS WANTED A LARGER "GROWTH AREA" IN COLTS NECK.

SINCE THE SDGP IS CONSIDERED THE BLUEPRINT FOR DEVELOPMENT IN THE STATE OF NEW JERSEY, MOUNT LAUREL II, AT 424, IT IS PRESUMED TO VALIDLY DELINEATE GROWTH AREAS:

WHILE WE BELIEVE IMPORTANT POLICY CONSIDERATIONS ARE INVOLVED IN OUR DECISION NOT TO MAKE THE SDGP CONCLUSIVE, WE THINK IT EVEN MORE IMPORTANT TO POINT OUT THAT IT WILL BE THE UNUSUAL CASE THAT CONCLUDES THE LOCUS OF THE

MOUNT LAUREL OBLIGATION IS DIFFERENT FROM THAT FOUND IN THE SDGP. SUBJECT TO THOSE CASES, WE HOLD THAT HENCEFORTH ONLY THOSE MUNICIPALITIES CONTAINING 'GROWTH AREAS' AS SHOWN ON THE CONCEPT MAP OF THE SDGP (OR ANY OFFICIAL REVISION THEREOF) SHALL BE SUBJECT TO THE MOUNT LAUREL PROSPECTIVE NEED OBLIGATION.

ANY PARTY IN MOUNT LAUREL LITIGATION SEEKING A RULING THAT VARIES THE LOCUS OF THE MOUNT LAUREL OBLIGATION FROM THE SDGP GROWTH AREAS WILL HAVE TO PROVE ONE OF THE FOLLOWING: (1) ACCEPTING THE PREMISE OF THE SDGP, THE CONCLUSION THAT THE MUNICIPALITY INCLUDES ANY GROWTH AREA, OR AS MUCH GROWTH AREA AS IS SHOWN ON THE CONCEPT MAP, IS ARBITRARY AND CAPRICIOUS...; (2) SINCE THE PREPARATION OF THE CONCEPT MAP, OR ANY REVISION THEREOF, THE MUNICIPALITY HAS UNDERGONE A SIGNIFICANT TRANSFORMATION THAT RENDERS THE SDGP'S CHARACTERIZATION OF IT INAPPROPRIATE, ADMITTING THAT AT THE TIME OF THE PREPARATION OF THE SDGP AND THE CONCEPT MAP (OR ANY REVISION THEREOF) THE CLASSIFICATION OF THE MUNICIPALITY WAS CORRECT. ... (EMPHASIS ADDED) MOUNT LAUREL II, AT 431.

ASSUMING ARGUENDO THAT THE MONMOUTH COUNTY GROWTH MANAGEMENT GUIDE IS GIVEN SOME CONSIDERATION IN THE WITHIN MATTER, IT SHOULD BE NOTED THAT THE GROWTH MANAGEMENT GUIDE PROVIDES: "THE STATE PLAN AND THE COUNTY GROWTH MANAGEMENT GUIDE ARE MUTUALLY CONSISTENT. DESIGNATED GROWTH AREAS IN THE STATE PLAN COINCIDE WITH THOSE OF THE COUNTY GROWTH MANAGEMENT GUIDE" (P. 81).

THE COUNTY GUIDE MAP DESIGNATES A GROWTH CORRIDOR ALONG ROUTE 9 WITH THE FREEHOLD AREAS SHOWN AS AN URBAN CENTER WITHIN THE GROWTH CORRIDOR. THE REMAINDER OF THE

CORRIDOR, OUTSIDE THE URBAN CENTER, IS DESIGNATED FOR "SUBURBAN SETTLEMENT" WHICH IS DESCRIBED AS INCLUDING PRIMARILY SINGLE FAMILY RESIDENTIAL HOUSING WITH SOME MULTI-FAMILY UNITS WITH A DENSITY OF 4 UNITS PER ACRE.

IT IS SUBMITTED THAT COLTS NECK'S GROWTH AREA CAN LOGICALLY BE CONSIDERED A PART OF THE SUBURBAN SETTLEMENT AREA ADJOINING THE FREEHOLD URBAN CENTER SINCE IT CAN EASILY BE SERVED BY PUBLIC WATER AND SEWERAGE FACILITIES AND IS ACCESSIBLE BY PUBLIC TRANSPORTATION TO FREEHOLD. THEREFORE, IT IS SUBMITTED THAT THE SDGP (AS IT PERTAINS TO THE SEA GULL TRACT) IS NOT INCONSISTENT WITH THE COUNTY GROWTH MANAGEMENT GUIDE SINCE THEY BOTH ENCOURAGE A VARIETY OF RESIDENTIAL TYPES IN THE SUBURBAN SETTLEMENT AREAS.

POINT VIII

ONCE IT HAS BEEN DETERMINED THAT A MUNICIPALITY HAS A MOUNT LAUREL OBLIGATION AND THAT THE PLAINTIFF PROPOSES A PROJECT WHICH WOULD PROVIDE A SUBSTANTIAL AMOUNT OF LOWER INCOME HOUSING, A BUILDER'S REMEDY WILL ISSUE UNLESS THE DEFENDANT MUNICIPALITY PROVES THAT BECAUSE OF ENVIRONMENTAL OR OTHER SUBSTANTIAL PLANNING CONCERNS THE PLAINTIFF'S PROPOSED PROJECT IS CLEARLY CONTRARY TO SOUND LAND USE PLANNING.

ASSUMING THE COURT FINDS THAT THE DEFENDANT HAS A MOUNT LAUREL OBLIGATION AND IS SATISFIED THAT 20% OF THE DWELLING UNITS PROVIDED BY SEA GULL'S PROPOSED DEVELOPMENT WOULD BE AFFORDABLE TO LOW AND MODERATE INCOME FAMILIES, THE BURDEN OF PROOF IS UPON DEFENDANT COLTS NECK TO ESTABLISH THAT PLAINTIFF'S PROPOSED DEVELOPMENT IS CLEARLY CONTRARY TO SOUND LAND USE PLANNING. SHOULD THE DEFENDANT FAIL TO MEET THIS HEAVY BURDEN OF PROOF, THEN A BUILDER'S REMEDY SHOULD ISSUE TO SEA GULL. MOUNT LAUREL II AT 452.

IN DETERMINING WHETHER OR NOT PLAINTIFF'S PROPOSAL WILL PROVIDE A "SUBSTANTIAL" AMOUNT OF LOWER INCOME HOUSING, A COURT SHOULD CONSIDER:

SUCH FACTORS AS THE SIZE OF THE PLAINTIFF'S PROPOSED PROJECT, THE PERCENTAGE OF THE PROJECT TO BE DEVOTED TO LOWER INCOME HOUSING (20% APPEARS TO US TO BE A REASONABLE MINIMUM), WHAT PROPORTION OF THE DEFENDANT MUNICIPALITY'S FAIR SHARE ALLOCATION WOULD BE PROVIDED BY THE PROJECT, AND THE EXTENT TO WHICH THE REMAINING HOUSING IN THE PROJECT CAN BE CATEGORIZED AS 'LEAST COST'. THE BALANCE OF THE PROJECT WILL PRESUMABLY INCLUDE MIDDLE AND UPPER INCOME HOUSING. ECONOMICALLY INTEGRATED HOUS-

ING MAY BE BETTER FOR ALL CONCERNED IN VARIOUS WAYS. FURTHERMORE, THE MIDDLE AND UPPER INCOME UNITS MAY BE NECESSARY TO RENDER THE PROJECT PROFITABLE. IF BUILDER'S REMEDIES CANNOT BE PROFITABLE, THE INCENTIVE FOR BUILDERS TO ENFORCE MOUNT LAUREL IS LOST. MOUNT LAUREL II, AT 452 (F.N. 37).

FOR THE REASONS SET FORTH IN POINT V, SUPRA, IT IS RESPECTFULLY SUBMITTED THAT SEA GULL'S PROPOSED DEVELOPMENT IS CONSISTENT WITH SOUND LAND USE PLANNING, WILL PROVIDE A SUBSTANTIAL AMOUNT OF LOW AND MODERATE INCOME HOUSING AND, THEREFORE, A BUILDER'S REMEDY SHOULD BE GIVEN.

POINT IX

WHERE AN OWNER IN POSSESSION OF 77 ACRES OF LAND LOCATED IN AN SDGP "GROWTH AREA", INFORMALLY AND IN GOOD FAITH MEETS WITH THE TOWNSHIP FOR THE PURPOSE OF ATTEMPTING TO BUILD MULTI-FAMILY UNITS WHICH WOULD SATISFY THE TOWNSHIP'S FAIR SHARE OBLIGATION, BUT SUCH ATTEMPT IS REJECTED BY THE TOWNSHIP, THE OWNER IN POSSESSION HAS STANDING TO BRING MOUNT LAUREL LITIGATION.

PRIOR TO AUGUST 26, 1983, SEA GULL'S REPRESENTATIVES MET INFORMALLY WITH DEFENDANT'S REPRESENTATIVES IN AN EFFORT TO HAVE PLAINTIFF'S 77 ACRE TRACT REZONED SO AS TO PROVIDE A VARIETY OF HOUSING, INCLUDING LOW AND MODERATE INCOME HOUSING WHICH WOULD SATISFY COLTS NECK'S MOUNT LAUREL FAIR SHARE OBLIGATIONS. AFTER THESE EFFORTS WERE REJECTED BY COLTS NECK, THE WITHIN LAWSUIT WAS BROUGHT.

BECAUSE MOUNT LAUREL II, AT 459, PROVIDES FOR A SIX YEAR PERIOD OF REPOSE, IT IS NOT NECESSARY THAT A PARTY EXPEND CONSIDERABLE FUNDS NOR THAT LITIGATION BE INTENSIVE TO HAVE THE NECESSARY STANDING TO OBTAIN A BUILDER'S REMEDY. MOUNT LAUREL II, AT 452.

PLAINTIFF IS THE OWNER OF PROPERTY IN A GROWTH AREA WHICH DEFENDANT'S PLANNER HAS CHARACTERIZED AS "THE BEST CHOICE" FOR HIGH DENSITY DEVELOPMENT, AND THE LAND MOST LIKELY TO BE DEVELOPED FOR LOW AND MODERATE INCOME HOUSING. SINCE SEA GULL IS READY, WILLING AND ABLE TO BUILD MULTI-FAMILY UNITS WHICH WILL SATISFY A SUBSTANTIAL AMOUNT

OF LOW INCOME HOUSING, PLAINTIFF HAS STANDING TO BRING THIS ACTION. SINCE ANY MOUNT LAUREL FAIR SHARE OBLIGATION OF COLTS NECK WILL OBVIOUSLY BE BUILT BEFORE THE RUNNING OF THE SIX YEAR PERIOD OF REPOSE, TO DENY PLAINTIFF STANDING WOULD RESULT IN A DENIAL OF SEA GULL'S PROPERTY WITHOUT DUE PROCESS OF LAW AND WOULD MEAN A GREAT LOSS OF PROFIT. "IF BUILDER'S REMEDIES CANNOT BE PROFITABLE THE INCENTIVE FOR BUILDERS TO ENFORCE MOUNT LAUREL IS LOST". MOUNT LAUREL II, AT 452 (F.N. 37).

CONCLUSION

FOR THE REASONS SET FORTH SUPRA, IT IS RESPECTFULLY
SUBMITTED THAT:

1. THE SDGP DELINEATION OF COLTS NECK'S GROWTH AREA
IS VALID;
2. COLTS NECK'S FAIR SHARE OF LOW AND MODERATE IN-
COME HOUSING AMOUNTS TO 156 DWELLING UNITS TO THE
YEAR 1990;
3. PLAINTIFF SEA GULL OFFERS A VIABLE OPPORTUNITY
FOR THE ACTUAL CONSTRUCTION OF HOMES AFFORDABLE
TO LOW AND MODERATE INCOME FAMILIES AT AN APPRO-
PRIATE LOCATION;
4. A BUILDER'S REMEDY SHOULD BE ISSUED TO SEA GULL
TO PERMIT THE CONSTRUCTION OF 545 - 575 DWELLING
UNITS, OF WHICH 20% WOULD BE MADE AFFORDABLE TO
LOW AND MODERATE INCOME FAMILIES.

RESPECTFULLY SUBMITTED,

DRAZIN AND WARSHAW, P.C.
ATTORNEYS FOR PLAINTIFF,
SEA GULL

BY:


LOUIS F. LOCASCIO

DATED: MARCH 1, 1984.