

Municipalities fight COATT Transfer

9/18/85

UL v. Cateret, Cranbury, Monroe, Piscataway

- - 3 court letters re Affidavit of Alan Mallaeh and UL's memos in opposition
- Proposed Order to Transfer to COATT
- Notice of motion to transfer (9/4/85)
- Letter Brief in support of motion to transfer (9/5/85)

Pg. 32

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CH000003P

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

September 18, 1985

The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

Re: Urban League v. Carteret, No. C 4122-73
(Cranbury) (Monroe) (Piscataway)

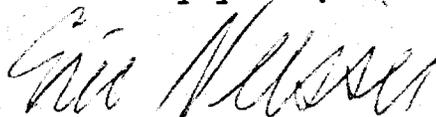
Dear Judge Serpentelli:

Enclosed please find three copies of the Affidavit of Alan Mallach Re Transfer Motions of Cranbury, Monroe and Piscataway Townships and of the Urban League Plaintiffs' Memorandum of Law in Opposition to the Motions of Cranbury, Monroe and Piscataway to Transfer This Case to the Council on Affordable Housing and in Opposition to the Motion of Cranbury to Impose a Moratorium on Builder's Remedies. These documents are filed in opposition to each motion; one copy is therefore enclosed for each of the three affected files.

Because Section IV(C) of our brief argues that Section 28 of the Fair Housing Act would be unconstitutional if the court were to construe it, contrary to our arguments, to apply to the Cranbury portion of the litigation after denial of the transfer motion, we are sending the enclosed letter-notice and a copy of the brief to the Attorney General. The Court need not reach this argument, however, both because of the statutory interpretations presented and because we believe that manifest injustice is clear even if a moratorium were applicable to Cranbury.

It is our understanding through your law clerk that these three motions to transfer as well as South Plainfield's motion to transfer will be heard by your Honor on Friday, September 27 at 10 A.M. We understand that the Cranbury motion on the moratorium will not be heard at that time.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Eric Neisser".

Eric Neisser

cc: Carla Lerman, Master
Philip Caton, Master
Cranbury, Monroe and Piscataway Service Lists
Nancy Stiles, Deputy Attorney General

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15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

September 18, 1985

John Mayson
Clerk
Superior Court
Hughes Justice Complex
CN 971
Trenton, New Jersey 08625

Re: Urban League v. Carteret, No. C 4122-73

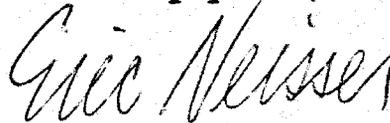
Dear Mr. Mayson

Enclosed please find for filing the original and one copy of Alan Mallach's Affidavit Re Transfer Motions of Cranbury, Monroe and Piscataway Townships and Urban League Plaintiffs' Memorandum of Law in Opposition to the Motions of Cranbury, Monroe and Piscataway to Transfer This Case to the Council on Affordable Housing and in Opposition to the Motion of Cranbury to Impose a Moratorium on Builder's Remedies.

These papers are filed in opposition to the previously filed motions of Cranbury, Monroe and Piscataway to transfer this case, pursuant to Section 16 of the Fair Housing Act, to the Council on Affordable Housing.

Please file-stamp the copy and return it in the enclosed stamped return envelope.

Sincerely yours,



Eric Neisser

encls

cc: Judge Serpentelli
Carla Lerman, Master
Phillip Caton, Master
Cranbury, Monroe, Piscataway
Service Lists

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
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15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

September 18, 1985

Nancy Stiles, Esq.
Deputy Attorney General
Department of Law and Public Safety
Hughes Justice Complex
Division of Law
CN 112
Trenton, New Jersey 08625

Re: Urban League v. Carteret, No. C 4122-73

Dear Ms. Stiles,

Enclosed please find a copy of Urban League Plaintiffs' Memorandum of Law in Opposition to the Motions of Cranbury, Monroe and Piscataway to Transfer This Case to the Council on Affordable Housing and in Opposition to the Motion of Cranbury to Impose a Moratorium on Builder's Remedies.

Please note that Section IV(C) of the brief argues that if the Court, contrary to the arguments presented in Sections IV(A) and (B), construes Section 28 of the Fair Housing Act to be applicable to the Cranbury litigation after a motion to transfer is denied, that it would be unconstitutional as construed and applied. Judge Serpentelli will be hearing Cranbury's transfer motion on September 27, but has already informed the parties that he will not be deciding the alternative moratorium branch of the motion on that date. We have briefed it at this time both for efficiency's sake and because we believe that the potential application of the Section 28 moratorium may have some bearing on the Court's determination of "manifest injustice" with relation to the requested transfer of the Cranbury portion of the litigation.

We do not believe that the Act should be construed to apply to a case in which transfer has been denied, and in any case not to a consolidated case such as this in which the first complaint was filed before January 1983 and the Court does not intend to rule on the moratorium motion of Cranbury on the 27th. Therefore, we do not anticipate the Court reaching the constitutional argument presented. For this reason, we do not believe that the Attorney General need address the matter before the 27th. In any case, we note that the Attorney General has already presented a 27-page argument in its brief to Judge Skillman in the consolidated Denville cases on the constitutionality of Section 28. We would, therefore, oppose any Attorney General request for adjournment of the return date to brief this point in this case.

Sincerely yours,



Eric Neisser

cc: Judge Serpentelli
Carla Lerman, Master
Philip Caton, Master
Cranbury, Monroe and Piscataway Service Lists

Mario Apuzzo, Esq.
Director of Law
Township of Monroe
County of Middlesex
Department of Law
Municipal Complex
Perrineville Road
Jamesburg, NJ 08831
(201) 521-4400
Attorney for Township of Monroe

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Civil Action

URBAN LEAGUE OF GREATER NEW BRUNSWICK
et al,

Plaintiff,

vs.

THE MAYOR and COUNCIL OF THE
BOROUGH OF CARTERET, et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. C-4122-73

JOSEPH MORRIS and ROBERT MORRIS,
Plaintiffs,

vs.

TOWNSHIP OF CRANBURY IN THE COUNTY
OF MIDDLESEX, A Municipal
Corporation of the State of New
Jersey,

Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L054117-83

GARFIELD & COMPANY

Plaintiff,

vs.

MAYOR and THE TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF CRANBURY, a
Municipal Corporation, and the
members thereof; PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY, and
the members thereof,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L055956-83 P.W.

BROWNING-FERRIS INDUSTRIES OF
SOUTH JERSEY, INC., A Corporation
of the State of New Jersey,
RICHCRETE CONCRETE COMPANY, a
Corporation of the State of New
Jersey, and MID-STATE FILIGREE
SYSTEMS, INC., a Corporation of

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-058046-83 P.W.

the State of New Jersey,
Plaintiff,

vs.

CRANBURY TOWNSHIP PLANNING BOARD
and TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,
Defendants.

CRANBURY DEVELOPMENT CORPORATION,
A Corporation of the State of New
Jersey,

Plaintiff,

vs.

CRANBURY TOWNSHIP PLANNING BOARD
AND THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,
Defendant.

CRANBURY LAND COMPANY, A New
Jersey Limited Partnership,
Plaintiff,

vs.

CRANBURY TOWNSHIP, A Municipal
Corporation of the State of New
Jersey located in Middlesex
County, New Jersey,
Defendant.

MONROE DEVELOPMENT ASSOCIATES,
Plaintiff,

vs.

MONROE TOWNSHIP,
Defendant.

ZIRINSKY,
Plaintiff,

vs.

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, a
Municipal Corporation, and THE
PLANNING BOARD OF THE TOWNSHIP
OF CRANBURY,
Defendants.

TOLL BROTHERS, INC., A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-59643-83

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-070841-83

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-076030-83 PW

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L079309-83 PW

SUPERIOR COURT OF NEW JERSEY

Pennsylvania Corporation,
Plaintiff,
vs.

LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L005652-84

THE TOWNSHIP OF CRANBURY IN
THE COUNTY OF MIDDLESEX, A
Municipal Corporation of the
State of New Jersey, THE
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY and the
PLANNING BOARD OF THE TOWN-
SHIP OF CRANBURY,
Defendants.

LORI ASSOCIATES, A New Jersey
Partnership; and HADB.
ASSOCIATES, a New Jersey
Partnership,
Plaintiffs,
vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-28288-84

MONROE TOWNSHIP, A municipal
corporation of the State of
New Jersey, located in
Middlesex County, New Jersey,
Defendant.

GREAT MEADOWS COMPANY, A New
Jersey Partnership; MONROE
GREENS ASSOCIATES, as tenants
in common; and GUARANTEED
REALTY ASSOCIATES, INC., a
New Jersey Corporation,
Plaintiffs.
vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-32638-84 P.W.

MONROE TOWNSHIP, a municipal
corporation of the State of
New Jersey, located in the
State of New Jersey, located
in Middlesex County, New
Jersey,
Defendant.

ORDER TO TRANSFER CASES FROM
THE JURISDICTION OF THE COURT
TO THE COUNCIL ON AFFORDABLE
HOUSING.

Defendant Township of Monroe having moved to the Court for an Order to transfer the pending exclusionary zoning cases arising under Mount Laurel, II and in which the Township of Monroe is named as one of the defendants from the jurisdiction of the Superior Court of the State of New Jersey to the newly created Council on Affordable Housing under P.L. 1985, c.222, §16, and having filed a Letter Brief and a proposed Order in support thereof, and the Court having heard all the parties,

IT IS HEREBY ORDERED this _____ day of _____, 1985 that all pending exclusionary zoning cases arising under Mount Laurel, II and in which the Township of Monroe is named a defendant and which are presently under the jurisdiction of the Superior Court of the State of New Jersey are hereby transferred to the Council on Affordable Housing pursuant to P.L. 1985, c.222, §16.

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

PAPERS CONSIDERED:

_____ Notice of Motion
_____ Movant's Affidavits
_____ Movant's Brief
_____ Answering Affidavits
_____ Answering Briefs
_____ Cross-Motion
_____ Other _____

MAILING LIST - URBAN LEAGUE V. CARTERET (MONROE)

Arnold Mytelka, Esq.
Clapp & Eisenberg
80 Park Plaza
Newark, N.J. 07102

Stewart M. Hutt, Esq.
Hutt, Berkow, Hollander & Jankowski
459 Amboy Avenue
Woodbridge, N.J. 07095

Carl S. Bisgaier, Esq.
510 Park Boulevard
Cherry Hill, N.J. 08034

Carla Lerman,
413 West Englewood Avenue
Teaneck, N.J. 07666

Frederick Kessler, Esq.
Clapp & Eisenberg
80 Park Plaza
Newark, N.J. 07102

Eric Neisser, Esq.
Barbara Willaims, Esq.
John Payne, Esq.
Rutgers School of Law
Constitutional Litigation Clinic
S.I. Newhouse Center for Law and Justice
15 Washington Street
Newark, N.J. 07102

Carl D. Silverman, Esq.
Wilf & Silverman
1640 Vauxhall Road
Union, N.J. 07083



Township of Monroe

County of Middlesex

PETER P. GARIBALDI
Mayor

MARIO APUZZO
Director of Law

DEPARTMENT OF LAW: Municipal Complex
Perrineville Road
Jamesburg, N.J. 08831
(201) 521-4400

September 9, 1985

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Law Division
Ocean County Courthouse
Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick et al v.
Borough of Carteret, et al, Docket #C-4122-73;
Monroe Development Associates v. Monroe Township,
Docket #L-076036-83; Lori Associates and HADB
Associates v. Monroe Township, Docket #L-28288-84;
Great Meadows, Monroe Greens Associates & Guaranteed
Realty Associates v. Monroe Township, Docket
#L-32638-84

Dear Judge Serpentelli:

Enclosed please find a copy of the following to support our
Motion to Transfer:

- 1 - Notice of Motion to Transfer
- 2 - Mailing List
- 3 - Letter Brief
- 4 - Order

We are under the impression that there are several Motions to
Transfer scheduled to be heard on September 27, 1985. We have
also chosen this date and we are assuming that Your Honor
will hear the Motions together.

Thank you for your attention.

Respectfully,

MARIO APUZZO
Director of Law

MA:sw
Encls.

cc: Peter P. Garibaldi, Mayor
As per attached Mailing List



Township of Monroe

County of Middlesex

PETER P. GARIBALDI
Mayor

MARIO APUZZO
Director of Law

DEPARTMENT OF LAW: Municipal Complex
Perrineville Road
Jamesburg, N.J. 08831
(201) 521-4400

September 9, 1985

John M. Mayson, Esq.
Superior Court Clerk
Hughes Justice Complex
CN 971
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick et al v.
Borough of Carteret, et al, Docket #C4122-73; Monroe
Development Associates v. Monroe Township Docket
#L-076036-83; Lori Associates and HABD Associates v.
Monroe Township, Docket #L-28288-84 Great Meadows,
Monroe Greens Associates & Guaranteed Associates v.
Monroe Township Docket #L-32638-84

Dear Mr. Mayson:

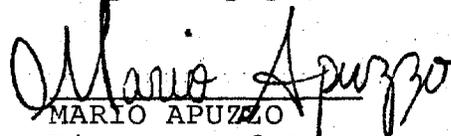
Enclosed for filing please find an original and two (2) copies
of the following:

- 1 - Notice of Motion to Transfer
- 2 - Mailing List
- 3 - Letter Brief
- 4 - Order

Please mark one (1) copy as filed and return to our office.

Thank you for your assistance.

Very truly yours,


MARIO APUZZO
Director of Law

MA:sw
Encls.

cc: Peter P. Garibaldi, Mayor
As per attached Mailing List

Mario Apuzzo, Esq.
Director of Law
Township of Monroe
County of Middlesex
Department of Law
Municipal Complex
Perrineville Road
Jamesburg, NJ 08831
(201) 521-4400
Attorney for Township of Monroe

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Civil Action

URBAN LEAGUE OF GREATER NEW BRUNSWICK
et al,

Plaintiff,

vs.

THE MAYOR and COUNCIL OF THE
BOROUGH OF CARTERET, et al,
Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. C-4122-73

JOSEPH MORRIS and ROBERT MORRIS,
Plaintiffs,

vs.

TOWNSHIP OF CRANBURY IN THE COUNTY
OF MIDDLESEX, A Municipal
Corporation of the State of New
Jersey,

Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L054117-83

GARFIELD & COMPANY

Plaintiff,

vs.

MAYOR and THE TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF CRANBURY, a
Municipal Corporation, and the
members thereof; PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY, and
the members thereof,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L055956-83 P.W.

BROWNING-FERRIS INDUSTRIES OF
SOUTH JERSEY, INC., A Corporation
of the State of New Jersey,
RICHCRETE CONCRETE COMPANY, a
Corporation of the State of New
Jersey, and MID-STATE FILIGREE
SYSTEMS, INC., a Corporation of

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-058046-83 P.W.

the State of New Jersey,
Plaintiff,

vs.

CRANBURY TOWNSHIP PLANNING BOARD
and TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,
Defendants.

CRANBURY DEVELOPMENT CORPORATION,
A Corporation of the State of New
Jersey,

Plaintiff,

vs.

CRANBURY TOWNSHIP PLANNING BOARD
AND THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,
Defendant.

CRANBURY LAND COMPANY, A New
Jersey Limited Partnership,
Plaintiff,

vs.

CRANBURY TOWNSHIP, A Municipal
Corporation of the State of New
Jersey located in Middlesex
County, New Jersey,
Defendant.

MONROE DEVELOPMENT ASSOCIATES,
Plaintiff,

vs.

MONROE TOWNSHIP,
Defendant.

ZIRINSKY,

vs.

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, a
Municipal Corporation, and THE
PLANNING BOARD OF THE TOWNSHIP
OF CRANBURY,

Defendants.

TOLL BROTHERS, INC., A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-59643-83

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-070841-83

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DOCKET NO. L-076030-83 PW

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L079309-83 PW

SUPERIOR COURT OF NEW JERSEY

Pennsylvania Corporation,
Plaintiff,
vs.

LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L005652-84

THE TOWNSHIP OF CRANBURY IN
THE COUNTY OF MIDDLESEX, A
Municipal Corporation of the
State of New Jersey, THE
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY and the
PLANNING BOARD OF THE TOWN-
SHIP OF CRANBURY,
Defendants.

LORI ASSOCIATES, A New Jersey
Partnership; and HABD
ASSOCIATES, a New Jersey
Partnership,
Plaintiffs,
vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-28288-84

MONROE TOWNSHIP, A municipal
corporation of the State of
New Jersey, located in
Middlesex County, New Jersey,
Defendant.

GREAT MEADOWS COMPANY, A New
Jersey Partnership; MONROE
GREENS ASSOCIATES, as tenants
in common; and GUARANTEED
REALTY ASSOCIATES, INC., a
New Jersey Corporation,
Plaintiffs.
vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-32638-94 P.W.

MONROE TOWNSHIP, a municipal
corporation of the State of
New Jersey, located in the
State of New Jersey, located
in Middlesex County, New
Jersey,
Defendant.

NOTICE OF MOTION TO TRANSFER THE
CASES FROM THE JURISDICTION OF
THE COURT TO THE COUNCIL ON
AFFORDABLE HOUSING UNDER L. 1985
c. 222, § 16.

TO : The Honorable Judge Eugene D. Serpentelli A.J.S.C.
Superior Court of New Jersey
Law Division
Ocean County Courthouse
Toms River, New Jersey 08754

Arnold Mytelka, Esq.
Clapp & Eisenberg
80 Park Plaza
Newark, New Jersey 07102

Stewart M. Hutt, Esq.
Hutt, Berkow, Hollander & Jankowski
459 Amboy Avenue
Woodbridge, New Jersey 07095

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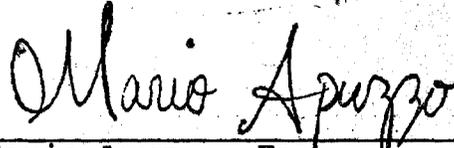
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Newark, New Jersey 07102

Eric Neisser, Esq.
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S.I. Newhouse Center for Law and Justice
15 Washington Street
Newark, New Jersey 07102

Carl D. Silverman, Esq.
Wilf & Silverman
1640 Vauxhall Rd.
Union, New Jersey 07083

PLEASE TAKE NOTICE that on Friday, September 27, 1985 at 9:00 a.m. in the forenoon, or as soon thereafter as counsel may be heard, the undersigned shall apply to the Superior Court of New Jersey, Law Division at Toms River, New Jersey for an Order granting Motion To Transfer The Cases from the Jurisdiction of the Court to the Council on Affordable Housing Under L. 1985 c. 222, § 16.

On this Motion, we will rely on the Letter Brief attached hereto.

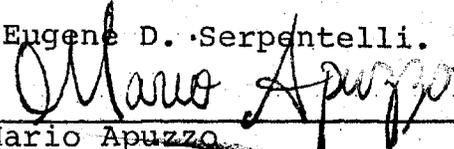


Mario Apuzzo, Esq.
Attorney for Township of Monroe

Dated: September 4, 1985

CERTIFICATE OF SERVICE

I hereby certify that an original and copy of the foregoing Notice of Motion to Transfer the Cases From the Jurisdiction of The Court To The Council On Affordable Housing Under L. 1985 c. 222, § 16 and original and one copy of Letter Brief and Order have been filed with the Clerk of the Superior Court, in Trenton, New Jersey; that copies of these papers have been mailed to the Clerk, _____ Ocean County and that copies of these same papers have been mailed by regular mail to the attorneys on the attached Mailing List, and also to the Honorable Eugene D. Serpentelli.



Mario Apuzzo
Attorney for Township of Monroe

MAILING LIST - URBAN LEAGUE V. CARTERET (MONROE)

Arnold Mytelka, Esq.
Clapp & Eisenberg
80 Park Plaza
Newark, N.J. 07102

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413 West Englewood Avenue
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Carl D. Silverman, Esq.
Wilf & Silverman
1640 Vauxhall Road
Union, N.J. 07083



Township of Monroe

County of Middlesex

PETER P. GARIBALDI
Mayor

MARIO APUZZO
Director of Law

DEPARTMENT OF LAW: Municipal Complex
Perrineville Road
Jamesburg, N.J. 08831
(201) 521-4400

September 5, 1985

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Law Division
Ocean County Courthouse
Toms River, New Jersey

Re: Urban League of Greater New Brunswick et al v.
Borough of Carteret, et al, Docket #C-4122-73;
Monroe Development Associates v. Monroe Township,
Docket #L-076036-83; Lori Associates and HABD
Associates v. Monroe Township, Docket #L-28288-84;
Great Meadows, Monroe Greens Associates &
Guaranteed Realty Associates v. Monroe Township,
Docket #L-32638-84

Dear Judge Serpentelli:

Please accept this Letter Brief in support of Defendant, Monroe Township's Motion To Transfer The Cases From The Jurisdiction Of The Court To The Council On Affordable Housing Under L. 1985 c. 222 § 16.

PROCEDURAL HISTORY

Urban League of Greater New Brunswick
et al v. Borough of Carteret, et al

On July 23, 1974, the Plaintiff, Urban League of Greater New Brunswick and other individuals on their own behalf and on behalf of others similarly situated (a class) filed a Complaint

against 23 New Jersey municipalities, one of which is the Township of Monroe, (hereinafter referred to as "the Township") challenging zoning and other land use ordinances, policies, and practices of the defendant municipalities on basis of economic and racial discrimination. Claims for relief are based upon N.J.S.A. 40:55-32; Article 1, Paragraphs 1, 5 and 8 of the New Jersey Constitution, 42 U.S.C. A. 1981, 1982 and 3601; and the Thirteenth and Fourteenth Amendments to the United States Constitution. Judgment was rendered in Plaintiffs' favor. There followed an appeal to the Supreme Court which remanded the case back to the Superior Court as part of the resolution of Southern Burlington County, NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (hereinafter referred to as ("Mount Laurel II"). After an eighteen day trial in April and May, 1984, this court on July 27, 1984. found the Township to be in violation of Mount Laurel II and ordered it to submit a compliance plan within ninety days. Ms. Carla Lerman was appointed by the court as Master to assist the Township in its compliance effort. The Township Council, after some delays, on March 29, 1985, submitted a compliance plan with the assistance of a professional planner, Hintz-Nelessen Associates, P.C. That plan has been reviewed by Ms. Lerman in her report dated July 1, 1985.

Monroe Development Associates
v. Monroe Township

On December 2, 1983, the Plaintiff, Monroe Development Associates filed a Complaint in lieu of prerogative writs for declaratory and injunctive relief. The action is brought pursuant to

Mount Laurel II. The Plaintiff is seeking a judgment declaring the Township's land use ordinances invalid and unconstitutional in their entirety and/or in relevant part. The Plaintiff is also seeking the appointment of a special master to recommend the revision of said ordinances and effectuation of municipal action in compliance with the Constitution and laws of the State of New Jersey and to supervise the implementation of a builder's remedy to insure the prompt production of needed housing units. The Defendant Township filed its Answer on January 5, 1984, asking that the Complaint be dismissed and for an award of attorney's fees and costs of suit. Thomas R. Farino, Jr., Esq. was the defendant's Township Attorney at this time. This case was consolidated by an Order of Honorable Eugene D. Serpentelli with the Urban League case. Mario Apuzzo, Esq., subsequently took over the representation of this case for the Township on April 1, 1985.

Lori Associates and HABD
Associates v. Monroe Township

On April 16, 1984, the Plaintiffs, Lori Associates and HABD Associates, filed a Complaint in lieu of prerogative writs pursuant to Mount Laurel II. The plaintiffs are demanding judgment against the Defendant Township declaring the Township's zoning ordinances to be void as a whole and as to Plaintiffs' lands, enjoining the Township to cease and desist in enforcing its entire zoning ordinance, appointing a special master to assist in the rezoning for affordable housing, formulating a builder's remedy, and for attorney's fees and costs of suit. The Defendant Township through its then Township Attorney, Thomas R. Farino, Jr., filed its Answer on May 7, 1984 demanding that the Complaint be dismissed

and asking for counsel fees and costs of suit. This suit was consolidated with the Urban League case by Order of Judge Serpentelli dated and filed on May 3, 1984 but only in the following ways: (1) in the event the Court determines that Monroe Township's land use regulations do not comply with Mount Laurel II, Lori Associates and HABD Associates shall have the right to participate in the ordinance revision process before the Master and before the Court, including the right to assert a builder's remedy with respect to their property and shall have the right to prosecute and/or defend any appeal arising in this case; (2) such consolidation is conditioned upon there being no discovery between Lori Associates and HABD Associates, Plaintiffs, and Monroe Township, Defendant, prior to the completion of the trial segments on region, fair share and Monroe Township's compliance or lack of compliance with Mount Laurel II, except that all documents, deposition transcripts, expert reports or other discovery respecting Monroe Township in the consolidated Urban League cases shall be made available to Lori Associates and HABD Associates for inspection; and (3) such consolidation is further conditioned upon the agreement by Lori Associates and HABD Associates to be bound by the court's determination of fair share, region and compliance in the other actions pending before the court which have been consolidated with Urban League.

Mario Apuzzo, Esq., subsequently took over the representation of this case for the Township on April 1, 1985.

Great Meadows, Monroe Greens Associates &
Guaranteed Realty Associates v. Monroe Township

On May 4, 1984, the plaintiffs, Great Meadows Company, Monroe Greens Associates and Guaranteed Realty Associates, filed a Complaint in lieu of prerogative writs pursuant to Mount Laurel II. The Plaintiffs are demanding a judgment:

(1) Declaring the MONROE TOWNSHIP LAND DEVELOPMENT ORDINANCE invalid in its entirety;

(2) Enjoining Monroe Township to cease and desist in enforcing its entire zoning ordinance;

(3) Appointing a special master to revise the MONROE TOWNSHIP LAND DEVELOPMENT ORDINANCE and to supervise the TOWNSHIP with respect to the implementation of any builder's remedy in order to insure prompt and bona-fide review by defendants of all applications by Plaintiffs for development approvals;

(4) Ordering the revision of the MONROE TOWNSHIP LAND DEVELOPMENT ORDINANCE in order to bring it into compliance with the MOUNT LAUREL II mandate;

(5) Ordering a builder's remedy for Plaintiffs in the form of a Court approval of a Concept Plan application to be submitted by Plaintiffs conditioned upon the provisions of a substantial amount of dwelling units as housing affordable to lower income people;

(6) Formulating a "builder's remedy", directing the Township to re-zone Plaintiffs' property to permit 16 to 22 units per acre or such other average gross density, consistent with principles of sound planning, sufficient to provide a reasonable return to the plaintiffs and to assure feasibility of construction of a sub-

stantial amount of low and moderate income housing;

(7) In the alternative, if it is determined that the Mount Laurel obligation cannot otherwise be satisfied, then directing the court appointed master to assist in developing zoning and land use regulations which provide a realistic opportunity for the construction of least cost housing in the Township generally, and on Plaintiffs' property, specifically;

(8) Ordering that all development applications for development which includes a substantial amount of lower income housing be "fast tracked", that is, approved within shorter time periods than provided for in the Municipal Land Use Law and that Environmental Impact Assessments or Statements and Community Impact Statements or Fiscal Impact Reports not be required for such developments;

(9) Ordering that all fees, including but not limited to application fees, inspection fees, engineering fees, building permit and certificate of occupancy fees be waived for a sufficient and appropriate amount of housing within developments which include a substantial amount of lower housing;

(10) Ordering that only performance and maintenance guarantees essential to protect public health and safety be required for on-tract or off-tract improvements associated with developments which include a substantial amount of lower income housing;

(11) Ordering MONROE to plan and provide for, out of municipal tax revenues, reimbursement to developers for the construction of sewer, water, roads, other utilities and open space facilities required for developments which include a substantial amount of lower income housing;

(12) Ordering MONROE to accept all open space, recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

(13) Ordering MONROE to establish and fund an agency to:

- a. Subsidize land, site improvement, construction and financing costs for lower income housing, particularly Mt. Laurel II housing.
- b. apply for all available governmental subsidies for lower income housing; and
- c. screen applications for and sponsor and maintain lower income housing, particularly Mt. Laurel II housing in MONROE TOWNSHIP.

(14) Ordering MONROE to adopt a resolution of need or grant tax abatement where necessary;

(15) Ordering Defendant MONROE TOWNSHIP to pay Plaintiff's counsel fees and costs of suit; and

(16) Granting Plaintiffs such further relief as the Court deems just and proper.

The Defendant Township, through its then attorney, Thomas R. Farino, filed its Answer on May 25, 1984 demanding that the Complaint be dismissed and asking for counsel fees and costs of suit. This suit was eventually consolidated with the Urban League case but only solely as follows: (1) in the event the Court determines that Monroe Township's land use regulations do not comply with Mount Laurel II, Great Meadows Company, Monroe Greens Associates and Guaranteed Realty Associates, Inc. shall have the

right to participate in the ordinance revision process before the Master and before the court, including the right to assert a builder's remedy with respect to the Plaintiffs' properties, and shall have the right to prosecute and/or defend any appeal arising in this case; and (2) such consolidation is conditioned upon there being no discovery between Great Meadows Company, Monroe Greens Associates and Guaranteed Realty Associates, Inc., Plaintiffs, and Monroe Township, Defendant, prior to the completion of the trial segments on region, fair share and Monroe Township's compliance or lack of compliance with Mount Laurel II, except that all documents, deposition transcripts, expert reports or other discovery respecting Monroe Township in the consolidated Urban League cases shall be made available to Great Meadows Company, Monroe Greens Associates and Guaranteed Realty Associates for inspection and copying.

Mario Apuzzo, Esq., subsequently assumed the responsibilities of representing the Township in this case on April 1, 1985.

ARGUMENT

UNDER P.L. 1985, c. 222, § 16, AN ACT CONCERNING HOUSING, THE COURT SHOULD TRANSFER THE EXCLUSIONARY ZONING CASES IN WHICH THE TOWNSHIP OF MONROE IS NAMED A DEFENDANT AND WHICH ARE PRESENTLY UNDER ITS JURISDICTION TO THE NEWLY CREATED COUNCIL ON AFFORDABLE HOUSING.

A. The court's transferring these cases to the Council on Affordable Housing will not be a manifest injustice to any party to the litigations.

P.L 1985, c. 222, § 16 (hereinafter referred to as "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 injustice to any party to the litigation.

The pending cases are all exclusionary zoning cases, for they challenge the Township's zoning and land use regulations on the basis that the regulations do not make realistically possible the opportunity for an appropriate variety and choice of housing for people of low and moderate income. All four of these cases have been instituted more than 60 days before the effective date of the Act July 2, 1985. Urban League was filed on July 23, 1974, Monroe Development Associates on December 2, 1983, Lori Associates on April 16, 1984 and Great Meadows on May 4, 1984. The "council" referred to in the Act is the newly established Council on Affordable Housing (hereinafter referred to as "the council"), which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State of New Jersey. The Act at § 4. a.

We submit that the court's transferring these cases to the council will cause no manifest injustice to any party to these litigations. There has been no change of position by the plaintiffs based on any reliance that they might have placed on the court's rulings to date which they will have to forego if the court were to allow the transfer. If the court grants the transfer, the plaintiffs will still have an opportunity to plead their cases to the council when the Township petitions the council for a substantive certification of its housing element and ordinances by filing with the council their objections, if any, to the Township's petition for substantive certification. See the Act at §§ 13-15. There is no reason to believe that the council would not treat the plaintiffs as fairly as would the court.

B. The court's denial of the Township's request for the court to transfer these cases to the council would cause a manifest injustice to the people in need of low and moderate income housing in the Township.

We submit that a transfer of these cases to the council would facilitate and expedite the Township's providing a realistic opportunity for low and moderate income housing in the Township. Given the contentious political environment surrounding these cases, we contend that the court would significantly slow down the Township's efforts to provide for its fair share of low and moderate income housing if it were to retain jurisdiction of these cases. It is no secret that the Mount Laurel litigation cases, as they have in virtually every other affected municipality in the State of New Jersey, have caused protracted political debate in the Township. For example, the Urban League case, filed in 1974 has yet to be concluded. The people in need of low and moderate

income housing have gone and continue to go without needed housing during this debate. The Township's Mayor and Council have not been opposed to the idea of providing for a realistic opportunity for low and moderate income housing in the Township. Instead, the Mayor and Council have maintained that the State Legislature and Executive rather than the courts are the more appropriate branches of government for dealing with the issue of providing housing for people of low and moderate income.

This Honorable Court should focus on what will allow for the quickest and best planned construction of low and moderate income housing in the Township. It is the interests of the people in need of such housing which should be served and not the needs of the personalities involved in representing these cases before the court. The court should not be moved by the desire for courtroom victory. The Mayor and Council are very anxious to start working with the newly created council in their effort to provide for the Township's fair share of low and moderate income housing. They are looking at the council with great enthusiasm and desire to participate in its housing programs. They are expecting the Township to benefit from the comprehensive planning and implementation which will be provided by the council in its effort to assist municipalities meet citizens' needs for affordable housing. See the Act at § 1. c 7 d. The Township Council has even already adopted a resolution of participation as called for by Section 9. a. of the Act (attached as Exhibit A) and will notify the council of its intent to submit to the council its fair share housing plan. See the Act at § 9. a. For the Court not to trans-

these cases to the council would also deprive the Township of available grants and loans to be used for low and moderate housing programs under Sections 20 & 21 in the Act and other new legislative protections afforded by the Act.

- C. The Legislative branch with its administrative agencies is better equipped than the Judicial branch in dealing with the issue of affordable housing.

In the Mount Laurel II decision, this State's Supreme Court stated that the Legislature is better equipped than the courts in determining the methods a municipality is to use to satisfy its constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families. South Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983). The Court added that it has always preferred legislative action rather than judicial action in the area of low and moderate income housing. The Court also said that with legislative and executive action in this area, the judicial role in upholding the Mount Laurel doctrine could decrease. This State's Legislature has also declared that

the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this Act [the Act] and not litigation and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing.

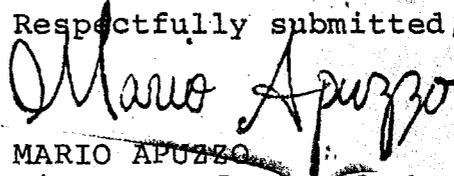
The Act at § 3. The Legislature and Executive have indeed acted. We now have the Act which provides a mechanism for aiding municipalities in developing affordable housing. The Act has established the Council on Affordable Housing. The Township is now

requesting the court that it be allowed to transfer its exclusionary zoning cases to this council for resolution in keeping with the newly established delineated guidelines in the Act.

CONCLUSION

For the foregoing reasons, it is respectfully requested of this Honorable Court that it transfer the pending four exclusionary zoning cases before it - Urban League, Monroe Development Associates, Lori Associates, and Great Meadows - to the Council on Affordable Housing.

Respectfully submitted,



MARIO APUZZO
Director of Law of the
Township of Monroe

MA:ap
Encls.

cc: As per Monroe Mailing List
Peter P. Garibaldi, Mayor
Mary Carroll for Members of Monroe
Township Council
Joseph Scranton, Business Administrator