

Certification of Alan Mallach w/ attorney cert.
and letter to Judge
re: Fair Share methodology

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URBAN LEAGUE OF GREATER
 NEW BRUNSWICK, et al.,

Plaintiffs

vs.

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

Defendants

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 MIDDLESEX/OCEAN COUNTY
 (Mount Laurel)

Civil Action No. C 4122-73

(Cranbury) (South Plainfield)
 (Monroe) (Piscataway)

CERTIFICATION OF ALAN
 MALLACH

ALAN MALLACH, of full age, certifies as follows:

1. I am a planning and housing consultant, and a licensed professional planner in the State of New Jersey. I have been a consultant and expert witness for plaintiffs in this matter since the first trial in 1976, as well as in other Mount Laurel litigation, and am fully familiar with the facts and circumstances of the case. I submit this certification in support of the Urban League's Motion for the Imposition of Conditions on Transfer.

2. Notwithstanding the expectations that certain parties may have, there is every reason to expect that the fair share housing allocation figures that will emerge from the process mandated by the Fair Housing Act, C.222, P.L. 1975, will be substantial. The rapid growth, with respect to both jobs and population, of Central New Jersey (particularly Middlesex County), coupled with the substantial employment base and vacant land resources of defendant municipalities in this case, strongly suggests that these municipi-

palities will continue to have substantial fair share obligations after transfer of their cases to the Council on Affordable Housing (the Council)/1.

3. It should further be noted, again contrary to the impression held by some parties, the "Consensus Methodology" is in certain respects a highly conservative one, particularly with respect to the definition of housing need for fair share allocation purposes. In particular, financial housing need (households spending over 30% of gross income for shelter), the largest single category of housing need, was not included in that methodology. Not only is this the largest category of need, it is a category which is rapidly increasing; nationally, between 1975 and 1983, the number of renters, overwhelmingly lower income households, spending over 30% of income for rent went from 6.2 million to 9.8 million households, an increase of more than 50 percent/2.

4. In meeting these fair share goals, two essential and

1/The recent action by the Council designating regions for fair share allocation purposes, and placing the defendant municipalities in this case in a region made up of Hunterdon, Middlesex, Somerset and Warren Counties is consistent with the view expressed here. Although this region will have only modest indigenous needs, compared to the northern New Jersey regions, it will have a particularly high level of prospective housing need to be allocated, as a result of the substantial growth taking place. Furthermore, the great majority of the municipalities in both Hunterdon and Warren Counties are outside the SDGP Growth Area. Thus, to the extent that that factor is used by the Council, growth will be targetted to the Middlesex and Somerset County municipalities of the region.

2/From the Annual Housing Survey, 1975 and 1983, as analyzed by the National Association of Housing and Redevelopment Officials (NAHRO). Note that during the same period, the number of renter households living in substandard or overcrowded units stayed effectively the same, declining from 5.4 million to 5.3 million households.

potentially irreplaceable elements are the availability of vacant and developable land, and the availability of adequate infrastructure, particularly sewer and water service. The availability of land suitable for multifamily development places an absolute limit, often below what would otherwise be the municipal fair share obligation, on the extent to which a community's Mount Laurel obligations can be met/3. In such communities, loss of suitable vacant land to alternative uses represents an irretrievable loss of opportunity to provide low and moderate income housing. This is clearly the case with respect to both Piscataway and South Plainfield.

5. The existence of infrastructure, particularly sewer and water service, in place is arguably as important an element as the availability of vacant and developable land. While it is generally theoretically possible to expand sewer and water capacity to accommodate additional development, a variety of obstacles may make it difficult, if not impossible, in practice. As a general rule, the provision of sewer and water capacity does not lie within the control of a developer, or the control of the municipality. Sewer-

3/There is no precise mathematical relationship, however, between the number of vacant acres and the municipality's capacity to accommodate lower income units, for a number of reasons: (a) density of development can vary widely, permitting more or fewer units to be accommodated on a given site; (b) the percentage of lower income units on a site can vary widely from the "standard" 20%, depending on economic conditions, use of nonprofit development, availability of municipally-owned land, and other incentives that may be available; (c) the "official" inventory of vacant and developable land typically fails to take into account both small parcels suitable for infill development as well as underutilized land suitable for redevelopment; and (d) lower income units can often be created within the existing stock, through rehabilitation, creation of accessory apartments, and reuse.

age treatment, for example, for many municipalities may be governed by (a) intermunicipal agreements; (b) capacity and allocation of regional sewerage treatment facilities under control of county or regional Municipal Utility Authorities (MUAs); and (c) review and approval by the Department of Environmental Protection. Water supply may be similarly constrained, as well as further governed by limitations on capacity within the aquifer from which the municipality draws its water supply.

6. As a result of these constraints, the feasibility of large-scale expansion of sewer and water capacity often becomes highly speculative and uncertain. Expansion programs, when carried out, often take far longer than expected; a delay of a decade or more between initial planning and the availability of added capacity is not unheard of in this area. Furthermore, because of the changes in circumstances during the extended period from need to delivery of capacity, it may well be that when the capacity is finally provided, it will turn out to be inadequate for the needs that have come into being by that time. These concerns are particularly important with respect to the potential for future development of low and moderate income housing in both Cranbury and Monroe Townships.

CRANBURY TOWNSHIP

7. After an extended legal process, which began with Judge Furman's determination that Cranbury Township's land use regulations were unconstitutional in May 1976, this Court found, based on the methodology previously applied by the court in AMG v. Warren Township, that Cranbury Township's fair share allocation

for Mount Laurel purposes was 816 low and moderate income housing units.

8. Vacant land availability does not appear to be a constraint on accomodating Cranbury Township's probable fair share allocation. The area designated for High Density Planned Development in the Cranbury Township Master Plan, which the Township, the Court-appointed Master, and the Urban League have all found to be suitable for Mount Laurel development, east of U.S. Route 130, contains 530 acres (Cranbury Township Land Use Plan, at III-20). Assuming this area were to be developed at 7 units per acre, with a 20% Mount Laurel setaside, it would accomodate 3710 housing units, of which 742 would be lower income units. Substantial amounts of additional vacant land, some of which may be suitable for higher density development, exist elsewhere within the Township. Furthermore, the Township has indicated its intent to support an infill housing program within the Cranbury village area, capable of potentially accomodating up to an additional 100 lower income units.

9. Sewer and water capacity, however, appear to be severely limited in Cranbury, a fact which has been acknowledged by the Township. In its December 1984 Mount Laurel compliance report to this Court, the Township state that its present sewer system could accomodate at most "675 [new] residential units, or equivalent flow from new non-residential users" (at 49). The report stated, with respect to water supply, that "at 200 gallons per day per residential unit, approximately 620 new dwelling units could be absorbed within current diversion rights authorized..." (at 54).

The report further noted that the Department of Environmental Protection has raised the possibility that diversion rights may be reduced because of overutilization of the Raritan Aquifer, from which Cranbury's water supply is drawn. It is clear that, under any plausible set of circumstances, the existing capacity will be utterly inadequate to accomodate the number of units, both lower income and market units, needed to meet Cranbury's fair share obligations under Mount Laurel.

10. Although the compliance report suggests that additional water and sewerage capacity could be obtained in a variety of ways, the Township has made no specific provision for doing so. Furthermore, it has expressly assumed that the cost of all such additions to sewer and water systems will be borne by developers, without having investigated the financial feasibility of their doing so (at 56).

11. Cranbury has recently granted development approval for the first phase of a large non-residential development by the Sudler Company on land east of Route 130 and immediately to the north of the High Density Planned Development zone. While the first stage of this development will not utilize existing infrastructure capacity, later stages will require that water and sewer service be provided in some fashion.

12. A single family residential development, called Country Crossing at Cranbury Village, is under construction at present, adjacent to Site Five (as characterized in the Cranbury compliance report). I am unaware of the manner in which sewer and water service are being provided for this development.

13. Cranbury Township must be considered a particularly strong market for both residential and non-residential development, in view of its transportation access, its proximity to large scale development in nearby communities, and its attractive physical characteristics. It is likely in the extreme that, before the Council can act on Cranbury Township's application, and the Township can receive substantive certification for a Mount Laurel compliance program, other non-Mount Laurel projects will be submitted for approval to the Township. If such projects use up the limited remaining water and sewer capacity available in Cranbury Township, or if the Township undertakes to increase capacity only to the extent needed by those developments, without reserving a substantial portion of the added capacity to service its ultimate Mount Laurel obligation, the result will be to prevent construction of the developments needed to accomodate Cranbury's fair share obligation.

MONROE TOWNSHIP

14. After proceedings similar to those summarized above, this Court found, based on the Consensus Methodology, that Monroe Township's fair share housing allocation was to be 776 low and moderate income units. A major factor reducing the allocation was the extent to which a substantial part of the land area of the Township was outside the SDGP Growth Area. At the hearing on this matter I testified that the Township had approved large-scale development which had taken place extensively in parts of the Township designated either Limited Growth or Agriculture on the State Development Guide Plan, on the basis of which its fair share

allocation should be adjusted upward. Without directly addressing this question, the Court implicitly rejected the proposed modification in its findings on fair share. This is mentioned here to suggest the extent to which the fair share number established by this Court should be considered a conservative figure.

15. Subsequent to the determination of Monroe Township's fair share allocation, the Township has approved two large scale developments, Wittingham (2400 units) and Forsgate (700 units). Neither development contains any lower income units, nor do the recently approved smaller residential and nonresidential developments. Many of these developments are within the SDGP Limited Growth and Agricultural areas. At this point, although there is little doubt that there is enough vacant land in the Township as a whole to accommodate Monroe's fair share, there is at least some question whether there is adequate land in the Growth Area for that purpose.

16. Furthermore, the amount of sewerage treatment capacity available at present in Monroe Township is limited. While efforts are under way to expand capacity, such expansion is unlikely to benefit prospective Mount Laurel developers in the absence of explicit requirements to that end. Unless the Municipal Utilities Authority is required to reserve capacity for future Mount Laurel developments, it is unlikely that there will be adequate sewerage capacity available to accommodate any reasonably predictable fair share obligation.

PISCATAWAY

17. Piscataway Township has experienced explosive growth of nonresidential development during the past ten years or more,

principally as a result of the location of Interstate 287 in the Township. While the Township has actively encouraged this growth, principally in office and light industrial uses, it has not sought to provide the additional housing opportunities needed to parallel and support this employment growth. Of the modest amount of residential development taking place in Piscataway during the past decade, none prior to the trial date in this matter represented housing affordable to Mount Laurel households. Based on large part on the large number of jobs, and the rapid rate of employment growth, in the Township, the Consensus Methodology yielded a fair share allocation for Piscataway Township in excess of 3700 low and moderate income units.

18. As a result of the volume of new nonresidential development in the Township, the amount of vacant land available for future development has been substantially reduced; indeed, the Township has argued that only a handful of sites suitable for multifamily residential development remained in the municipality. In order to address this issue, I carried out an analysis of vacant sites in Piscataway during 1984, in the course of which I identified some 50 different sites appropriate and suitable for multifamily development; my conclusions were subsequently corroborated, with minor exceptions, by the independent study conducted by the court-appointed master.

19. Even with the use of the sites identified by myself and the master, vacant land remains a constraint on achievement of Piscataway's fair share obligation. In my affidavit of May 25, 1984, I estimated that these sites could accomodate, based on a 20% setaside, between 2,000 and 2,500 lower income units. Subse-

quent to submission of the master's report, this Court issued an opinion in which it established an adjusted fair share allocation for Piscataway, in light of vacant land constraints and other factors, of 2,215 units.

20. In view of the many fair share allocation factors involved, as suggested earlier, and in view of the original fair share allocation for Piscataway, it is very likely that the fair share number that will result from the Council process will be in excess of 2,215 units. Even this number, however, could be rendered impossible of achievement should there be any erosion in the availability for Mount Laurel development of the sites already found suitable for that purpose.

SOUTH PLAINFIELD

21. South Plainfield, which shares the Interstate 287 corridor with Piscataway, has grown similarly during the past decade. While accomodating large amounts of nonresidential, principally industrial, growth, South Plainfield has provided no housing affordable to Mount Laurel households, and indeed no multifamily housing of any kind. This development activity has substantially reduced the availability of vacant land in the municipality.

22. South Plainfield's fair share allocation, according to the Consensus Methodology, is 1725 units. In view of the limited vacant land, and in the interest of bringing about expeditious Mount Laurel compliance in South Plainfield, plaintiffs agreed to a compromise fair share allocation of 900 units, while further accepting that only certain sites would be rezoned for multifamily

housing, which were capable of producing at most 603 units, or 2/3 of the 900 unit adjusted allocation. These sites did not, however, represent all of the potentially suitable sites in the Borough; during my investigation of the land availability in South Plainfield I identified a number of suitable sites, which, for various reasons, were not included in the final settlement package with the municipality.

23. Even with the inclusion of additional sites, however, it is extremely unlikely that the full fair share allocation from the Consensus Methodology could be accommodated; even the adjusted figure of 900 units would be a difficult one to achieve. [Since the eventual fair share allocation for the municipality, as determined on the basis of forthcoming Council guidelines, is likely to be in excess of that latter figure, any loss of vacant developable land would irrevocably preclude the construction of needed lower income units, and the meeting of South Plainfield's Mount Laurel obligations.]

CERTIFICATION

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

A handwritten signature in dark ink, appearing to read 'Alan Mallach', is written over a horizontal line.

Alan Mallach

Dated: March 18, 1986

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URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

THE MAYOR AND COUNCIL
OF THE BOROUGH OF
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Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

Civil Action

No. C 4122-73

(Cranbury)
(Monroe)
(Piscataway)
(South Plainfield)

CERTIFICATION

Jeffrey Fogel, Esq., of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and the Executive Director of the New Jersey American Civil Liberties Union ("ACLU"), co-counsel for the Urban League plaintiffs in the above-captioned matter. I am fully familiar with the facts and circumstances of this case. I submit this certification in support of plaintiffs' application for an Order permitting the Rutgers Constitutional Litigation Clinic ("the Clinic") to continue representing the Urban League before the Affordable Housing Council ("the Council").

2. The ACLU agreed to act as a sponsor for the Urban League, a non-profit organization representing low income households, because the Urban League was unable to afford private counsel and we believed that this matter involved significant

public interest issues. We agreed to act as a sponsor with the express understanding that the Clinic would provide the actual legal services. Although I am an attorney, my other responsibilities do not leave me any time for litigation and our only staff attorney works part-time, primarily on administrative tasks.

3. In view of the possibility that the Clinic could be precluded from representing the Urban League before the Council because of the New Jersey Conflicts of Interest Law, I have endeavored to obtain substitute counsel for the Urban League. I have telephoned several volunteer ACLU attorneys, but as of this date none of them has been willing to make a firm commitment to represent the Urban League before the Council. In view of the complexity of this matter, the massive files which must be mastered in order to competently represent the Urban League, and the open-ended commitment sought, I am not hopeful that we will be able to find any attorney willing to undertake this case as an unpaid volunteer. The ACLU has no funds to pay an attorney for this or any other litigation.

4. Accordingly, it is respectfully requested that this Court grant plaintiffs' application permitting the Clinic to continue as counsel for the Urban League before the Council.

I hereby certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I may be subject to punishment.

Dated: March 18, 1986



Jeffrey Fogel

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
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March 26, 1986

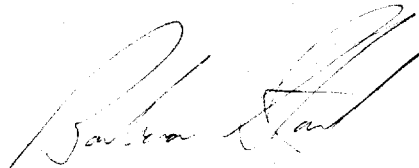
The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, NJ 08754

Re: Urban League, et al. vs. Carteret, et al.
(Piscataway) (Cranbury) (Monroe) (South Plainfield)
No. C 4122-73

Dear Judge Serpentelli:

This shall confirm that the Court has rescheduled the Civic League's Motion for the Imposition of Conditions on Transfer, which shall now be heard at the Court House, Toms River, New Jersey at 1:00 p.m. on Friday, April 25, 1986.

Respectfully,



cc/Piscataway Service List
Cranbury Service List
Monroe Service List
South Plainfield Service List

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