Letter Brief of Monroe requesting leave to appeal denial of motion to transfer, to stay all further proceedings, and to consolidate this motion with others.

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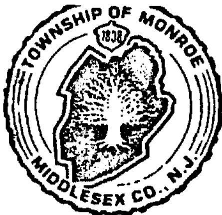

Township of Monroe
County of Middlesex

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October 28, 1985

The Honorable Judges
of the Appellate Division
Hughes Justice Complex
CN-006
Trenton, NJ 08625

RE: Urban League of Greater New Brunswick et al v. The Mayor and Council of Carteret, et al; Docket No. C-4122-73

Dear Honorable Judges:

Please accept this Letter Brief in lieu of a more formal Brief pursuant to R. 2:6-2(6). This Letter Brief is submitted in support of the Defendant/Appellant, Monroe Township.

PROCEDURAL HISTORY

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 ("Monroe") challenging zoning and other land use ordinances, policies, and practices of the Defendant municipalities on the basis of economic and racial discrimination. On December 2, 1983, the Plaintiff, Monroe Development Associates, filed a Complaint in lieu of prerogative writs for declaratory and injunctive relief pursuant to Southern Burlington County N.A.A.C.P.,

et al v. Township of Mt. Laurel, et al., 92 N.J. 158 (1983) ("Mt Laurel II") and seeking a judgment declaring Monroe's Land Use Ordinances invalid and unconstitutional. On April 16, 1984, the Plaintiffs, Lori Associates and HABD Associates, filed a Complaint in lieu of prerogative writs pursuant to Mount Laurel II demanding judgment against Monroe to declare its zoning ordinances to be void as a whole and as to Plaintiff's lands, enjoining Monroe 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. Finally, on May 4, 1984, the Plaintiffs, Great Meadows Company, Monroe Greens Associates and Guaranteed Realty Associates filed a Complaint in lieu of prerogative writs also pursuant to Mount Laurel II. For an explanation of what followed in the Courts in each of these actions, please refer to the Appendix at Da 7-12.

On July 2, 1985, the State Legislature approved P.L. 1985, c. 222, the "Fair Housing Act" ("the Act"), the Legislature's comprehensive planning and implementation response to the Mount Laurel II constitutional mandate and the Legislature's mechanism for resolving existing and future disputes involving exclusionary zoning through mediation and review provided for in the Act rather than litigation in the courts. Sections 2d. and 3 of the Act. The Act provides for a procedure allowing the trial court to transfer exclusionary zoning cases pending before it to the Affordable Housing Council ("the Council"). Section 16 of 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.

Pursuant to this provision, Monroe filed in early September, 1985, a Motion to transfer the exclusionary zoning cases mentioned above to the Council with Honorable Eugene D. Serpentelli, sitting in Superior Court at Toms River, New Jersey. A copy of this Motion with supporting Brief are attached hereto in the Appendix at Page Da 1-5. This Motion, along with similar motions of Cranbury Township, Warren Township, Borough of South Plainfield, and Piscataway, was heard on October 2, 1985. All the motions were denied for reasons stated in Judge Serpentelli's Decision appended hereto at Page Da 24a. Judge Serpentelli also denied any stay of his ruling. (Da 61& 67) Monroe now seeks leave to appeal this transfer denial and the refusal to stay further court proceedings pending this Motion for leave to appeal and also requests that these applications be consolidated with those already filed and/or to be filed by other municipalities.

LEGAL ARGUMENT

POINT I

THIS INTERLOCUTORY APPEAL IS NOT BARRED BY THE MOUNT LAUREL II LANGUAGE WHICH DENIES THE RIGHT OF APPEAL OF THE TRIAL COURT'S DETERMINATIONS OF FAIR SHARE AND NON-COMPLIANCE, DECISIONS WHICH IT CONSIDERS INTERLOCUTORY.

Court stated that:

> In most cases after a determination of invalidity, and prior to final judgment and possible appeal, the municipality will be required to rezone, preserving its contention that the trial court's adjudication was incorrect. If an appeal is taken, all facets of the litigation will be considered by the appellate court including both the correctness of the lower court's determination of invalidity, the scope of remedies imposed on the municipality, and the validity of the ordinance adopted after the judgment of the invalidity. The grant or denial of a stay will depend upon the circumstances of each case... 92 N.J. 158 at 218. The municipality may elect to revise its land use regulations and implement affirmative remedies 'under protest'. If so, it may file an appeal when the trial court enters final judgment of compliance. Until that time there shall be no right of appeal, as the trial court's determination of fair share and non-compliance is interlocutory.

The transfer motion appealed from did not raise the issues of fair share or non-compliance, and these issues were therefore not involved. Also, the above language should not be construed to mean that leave to appeal an interlocutory order should not be granted. The above language only confirms the Court Rules which state at R. 2:2-3(a)(b) and R. 2:5-6 that there is a distinction between the right to appeal and having to seek leave to appeal. What the above language is telling us is that determinations of fair share and non-compliance are interlocutory in nature and,therefore, leave to appeal would be required. The

language does not say that any interlocutory order or judgment in a Mt Laurel II type setting should not even be considered for leave to appeal. Moreover, the Mt Laurel II decision was rendered when there was no legislative remedy which is now contained in the Act, a legislative remedy for which the Supreme Court so desperately asked. Surely, the Supreme Court would not want to prevent appellate courts from deciding the meaning of that legislative remedy in this highly sensitive and controversial area. Such a result would be contrary to fulfilling the need for the higher courts to give the lower courts guidance in this very difficult area. Such a result would also be contrary to the desire of at least one State Senator, Senator John A. Lynch, who was one of the sponsors of the Fair Housing Act, to have a higher court make rules and give interpretation of the Act. (See Da 68)

POINT II

IT WILL BE IN THE INTEREST OF JUSTICE IF THIS COURT WERE TO GRANT LEAVE TO APPEAL.

R. 2:2-4 provides in pertinent part that the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order of a court if the final judgment, decision or action thereof is appealable as of right pursuant to R. 2:2-3(a) (which defines the situations when there is a right to appeal as opposed to having to ask for leave to appeal). We submit that justice will be served by allowing this appeal. The Mount Laurel II litigation presently before the courts involves issues of great public importance. These issues are

very complex and difficult to decide. There is a need for uniformity of interpretation and treatment to do justice to all the New Jersey municipalities involved. There is a need for upper court interpretation, especially in light of the Legislature having recently given us a long-awaited statutory mechanism which is very complex and in need of immediate judicial interpretation (the Act). As mentioned already, there is also at least one State Senator asking for upper court analysis and guidance. The trial court has been faced with having to for the first time give meaning to the concept "manifest injustice" found in Section 16 of the Act. How the trial court interprets and applies the "manifest injustice" concept in determining before what body does a case involving local governments' implementation of affordable housing projects will have an irrevocable impact on local governments and communities. Whether the resolution of the affordable housing issue is a product of a protracted courtroom war with its concomitant paper battles and in which judges, lawyers, and a court-appointed master are the only battlefield participants or a product of municipal planning and deliberations before an administrative body specially established to aid local government officials and professionals devise a sound and realistic solution to the affordable housing shortage will have an effect on the municipalities of this State for ages to come. Every facet of local government will be impacted upon, for accelerated construction of housing will require the speedy litigation of local government resources such as water, sewer facilities, police and fire protection, first aid and other health

protection, municipal court services, local government services, mass transportation, roads and bridges, recreation, education, garbage disposal, to name a few. Local taxpayers will have to bear the expense of providing these government services and the financing of such a complex scheme will require careful and well-conceived economic planning.

POINT III

THE TRIAL COURT INCORRECTLY INTERPRETED AND APPLIED THE CONCEPT "MANIFEST INJUSTICE" FOUND IN SECTION 16 OF THE FAIR HOUSING ACT.

The trial court concluded that it would be a manifest injustice to the plaintiffs to transfer the cases to the Council because to do so would cause a delay in providing for affordable housing (Da 57). We submit that to dispose of the question of whether or not to transfer on this ground alone is contrary to the intent of the Act. The Urban League case has been in the courts for over 11 years. To now argue that to keep the exclusionary zoning cases in the courts would expedite the resolution of the case without giving any consideration for allowing local government to be the centerpiece in devising a well-planned resolution of the affordable housing issue and not the courts, is contrary to the Legislature's purpose in creating the Act and to our democratic form of government. Speed is not the only factor to be considered in the manifest injustice analysis. The court must also consider whether keeping the cases in the courts will give us well-planned affordable housing. If affordable housing is not appropriately planned for, everyone will suffer, including the lower income groups for whose benefit the housing

is supposed to be built. Indeed, social chaos would produce a deleterious and irrevocable impact on municipalities and that is where the manifest injustice to the municipal defendants would be. We again submit that the administrative expertise which will be provided by the Council will better serve all the municipalities in resolving the affordable housing issue than will the court's appointed master who has been forced to resolve the planning aspects alone. In Mount Laurel II, the Supreme Court stated that the affordable housing issue is better left to the Legislature. 92 N.J. at 212, 213. We submit that the issue is too encompassing for the courts to adequately handle. Local government input must be had for an adequate resolution. The courts just simply do not have the resources or personnel to adequately handle such a complex issue. Monroe is ready, willing and able to go to the Council to resolve its affordable housing issue because it believes that that is the proper body to address and resolve the issue. It is manifestly injust to the people of Monroe and to the lower income groups to deny Monroe this opportunity.

CONCLUSION

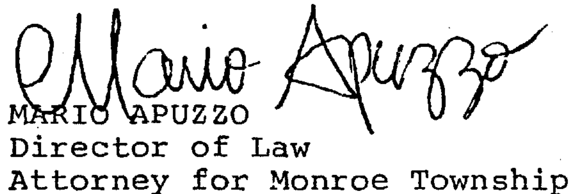
For the foregoing reasons, Defendant, Township of Monroe, respectfully requests this Court:

1. To grant it leave to appeal the trial court's interlocutory Order dated October 11, 1985 in which it denied Monroe's Motion to transfer its exclusionary zoning cases to the Council;

2. To stay all further trial court proceedings pending resolution of this Motion for leave to appeal; and

3. Consolidating this Motion with all other Motions of the similar nature already filed or to be filed by other Defendant municipalities involved in Mt Laurel II litigation.

Respectfully submitted,



MARIO APUZZO
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Attorney for Monroe Township

Dated: October 28, 1985