Certification of Phillip Lewis Paley

- Submitted in opposition to the application of TT (UL), for order directing the ct-appointed master ~~appointed~~ to

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prepare a ct-ordered compliance plan affecting Twp, and in support of the cross-motion of Twp for an extension of time within which to submit a compliance package

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET AL., Plaintiffs, vs. THE MAYOR AND COUNCIL OF CARTERET, ET AL., Defendants.	DOCKET NO. C-4122-73 Civil Action CERTIFICATION

PHILLIP LEWIS PALEY, of full age, hereby certifies as follows:

1. The within Certification is respectfully submitted in opposition to the application of the plaintiff, Urban League (now "Civic League") of Greater New Brunswick, for an Order directing the master appointed by judgment of this Court dated September 17, 1985, to prepare a court-

ordered compliance plan affecting the Township of Piscataway, and in support of the Cross-Motion of the Township of Piscataway for an extension of time within which to submit a compliance package.

2. The undersigned serves as Township Attorney and Director of Law of the Township of Piscataway and has also served as trial counsel for the Township of Piscataway in all aspects of the within matter subsequent to the remand from the Supreme Court of New Jersey as part of the Mt. Laurel II decision.

3. On July 23, 1985, this Court rendered a letter opinion establishing the "fair share" for Piscataway Township; succinctly, the fair share thus determined, 2,215, reflects the numbers of dwelling units affordable by lower and moderate income households for which Piscataway must provide, according to law.

4. The Court's direction to the Township of Piscataway was as follows:

> ...the Township is hereby ordered to start work immediately upon the adoption of a compliance ordinance to satisfy the fair share number of 2,215. It shall have a period of 90 days to do so. However, given the substantial delay which has occurred in establishing this fair share and recognizing that the Township should have known that it would have a significant fair share number, the Township should not expect that this Court will permit any significant extension of this 90 day period. While such extensions have been liberally

> granted in many other municipalities, in this case it would be unfair and inappropriate to do so. The Township should expect that if it is unable to satisfy the 90 day requirement, it will have to present compelling reasons why the Court should not have the master establish a compliance ordinance in accordance with this opinion.

To the best of my recollection, I received the aforesaid letter opinion on Thursday, July 25, 1985.

5. On August 8, 1985, Barbara J. Williams, Esq., attorney for the plaintiff, forwarded a letter to the Court containing a form of Order and Judgment as to Piscataway. By letter dated August 14, 1985, I submitted formal objections to a number of provisions of that form. Among other points relevant to the within application, I objected to the designation of Carla Lerman as a master, pointing out that no master had ever been appointed by the Court, as to Piscataway. Upon subsequent review, the Court concluded that my objection had merit and directed that the ultimate form of Judgment be revised to reflect the correct status of Ms. Lerman. In addition, I also pointed out that the 90 day period for Piscataway to comply should not run from July 23, 1985; that the letter opinion did not so expressly direct; that summer vacations and the abbreviated meeting schedule of the Township Council precluded the kind of detailed attention to the Court's opinion that this Court should expect; that I had initiated discussions with the Mayor, the Township Planner, and other Township offi-

cials in order to analyze the opinion and to begin work on a compliance package. My letter of August 14, 1985, describes the Township Planner as "newly retained"; to the best of my recollection, the Planner was hired on approximately August 5, 1985. Prior to that time, the Township had had no full time municipal planner on staff for well over six months.

6. Ultimately, in part because of the objections which I raised to the form of Judgment submitted, the Court directed the attorney for the plaintiff to submit a revised form of Judgment. This was done on September 5, 1985. Immediately upon receipt thereof, I submitted a letter to the Court, indicating those objections which I continued to assert, which, in large measure, repeated a number of the objections contained in my August 14, 1985 letter. I specifically addressed in my second letter of objection those practical problems which would face the Township in preparing a compliance package by October 23, 1985.

7. As the Court well knows, on July 2, 1985, the State Legislature of New Jersey adopted the Fair Housing Act. That legislation makes provision for municipalities presently involved in Mt. Laurel litigation to apply for, and obtain, a transfer of that litigation to the Affordable Housing Council, an administrative agency. During August, I communicated with the Clerk to the Honorable Eugene D. Serpentelli, Judge of the Superior Court of New Jersey,

trial judge in Piscataway's litigation, to seek guidance as to the Court's preference for the timing of the motion seeking the transfer of the litigation to the Affordable Housing Council. A number of parties to the litigation, including developers-plaintiffs in other municipalities, also attempted to coordinate the filing of motions with the Court to meet the Court's schedule. Because of summer vacation schedules, and, in one or two instances, unforeseeable absences, the transfer motions were not scheduled by the Court for hearing until early October, 1983.

8. The Township of Piscataway authorized me to seek the aforesaid transfer as vigorously as possible, and my efforts, for several weeks, were directed towards the preparation of pleadings which I felt persuasive on the issue. These pleadings were subsequently submitted to the Court and formed the basis for Piscataway's application for transfer, ultimately decided by the Court in early October, 1985. Piscataway had every reasonable expectation, based upon a fair evaluation of the language of the Fair Housing Act (and specifically Section 16 thereof) that the Court would grant Piscataway's application; indeed, following the trial court's denial of Piscataway's application, the municipal officials of Piscataway authorized me to seek leave to appeal Judge Serpentelli's Order (executed by

the Court on October 11, 1985) which had denied Piscataway's application to transfer. Pleadings on appeal were filed with the Appellate Division on October 23, 1985, and presently pend the decision of the Appellate Division to grant leave to appeal and to adjudicate the merits of Piscataway's application. A number of other defendant-municipalities have joined, or will join, Piscataway in its efforts to transfer this matter to the Affordable Housing Council.

9. The above is respectfully submitted in partial justification of Piscataway's failure to have requested of this Court a brief extension of time prior to October 23, 1985. Simply put, the litigation was moving fast, and Piscataway's view of the clear language of the Fair Housing Act justified its urgent attention to that application.

10. The Court should be aware that our planner, Dennis Hudacsko, former municipal planner for the City of Elizabeth, has only been functioning as an employee of the Township since early August, 1985. Since that time, Mr. Hudacsko has spent at least two full days at my office, conferring with me about the procedural and substantive history of Mt. Laurel, reviewing the Mt. Laurel decision, and reviewing the voluminous pleadings, reports, and trial notes which comprise the better part of two file drawers. Elizabeth, of course, was not a community with a Mt. Laurel

obligation, so it was no surprise to learn that Mr. Hudacsko's previous exposure to Mt. Laurel was somewhat limited, and his knowledge of the details of the various decisions sketchy. It was not until mid-September, 1985, that Mr. Hudacsko was at all prepared to deal with the technicalities of the opinion and this Court's judgment in an attempt to prepare a credible and well-reasoned compliance package. As I have previously represented to this Court and to my adversaries in this matter, Mr. Hudacsko, together with the Assistant Township Planner and the undersigned, have met with executive officials of the Township of Piscataway in order to commence work on a compliance package. What is needed now is some additional time.

11. The Court's letter opinion of July 23, 1985, fairly read, provides to the Township a number of options over and above the four-for-one zoning which has been frequently employed in Mt. Laurel litigation. Obviously, as the Court itself pointed out in its opinion, wholesale rezoning of the limited vacant land available in Piscataway is inappropriate and absurd. Part of the problem which has existed has been my personal view that the Urban League attorneys were interested in nothing but wholesale rezoning; without going into details, and without any intention of making settlement discussions and negotiations available in detail for the Court's review, it was my clear

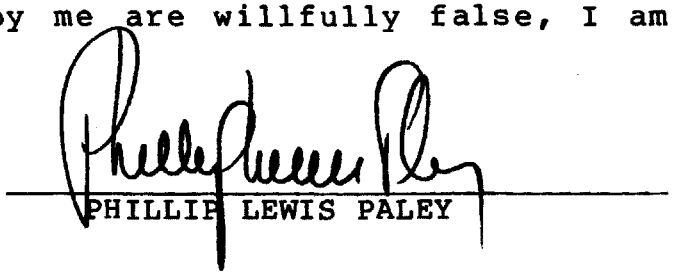
understanding, from the few settlement discussions held with the Urban League which took place prior to May, 1984, that their only solution to the problem was full rezoning. I may have personally misguaged the intent of the plaintiffs in this regard. My view, however, was that settlement discussions with the Urban League would prove no purpose, for so long as the Urban League insisted upon the extensive rezoning which would be required to meet Piscataway's fair share obligation.

12. In light of these circumstances, and in light of the complexity attended upon Piscataway which compelled this Court to take considerable time in adjudicating a number which it believes appropriate for Piscataway, I respectfully request a 60 day extension of the "deadline" within which Piscataway may submit a compliance package. I do not believe that this extension constitutes a "significant" extension, as envisioned by the Court in its letter opinion. I believe that that period of time would be sufficient for Piscataway to present material for the Court's review which would fairly reflect existing land uses in the Township and existing patterns of development, which are best known and understood by the Town's governing body and administrative officers. I would ask that the 60 day period commence on October 23, 1985, so as not to prejudice the Urban League, such that Piscataway would have until

December 23, 1985, within which to submit a compliance package. We have made considerable progress on assembling materials to develop such a package, and, given some additional time, I believe that we can present a submission which will be acceptable to the Court. To the extent that the Court may feel that this request is not justified based solely upon my failure to have requested an extension earlier, I believe that my request for a 60 day extension from October 23, 1985, effectively resolves that problem.

13. The requested extension would effectively provide Piscataway with slightly more than 90 days from the date of this Court's judgment and would permit a fair period of time for our principal planner, now familiar with the background of Mt. Laurel, to address those issues required to be addressed in a realistic and professional manner. The complexity of Piscataway's land patterns mandates intensive attention to the project; accordingly, this Court's cooperation in permitting the brief additional time requested is respectfully and urgently solicited.

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



PHILLIP LEWIS PALEY

Dated: October 29, 1985