

**PUBLIC HEARING**

before

**SUBCOMMITTEE OF THE SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS' AFFAIRS COMMITTEE**

on

**SENATE BILL 1464**

(Establishes a State Planning Committee and an Office  
of State Planning in the Department of the Treasury)

Held:  
April 5, 1984  
Room 318  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Senator Gerald R. Stockman (Vice Chairman)  
Senator H. James Saxton

**ALSO PRESENT:**

Joseph P. Capalbo, Research Associate  
Office of Legislative Services  
Aide to the Subcommittee of the Senate State Government, Federal  
and Interstate Relations and Veterans' Affairs Committee

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**SENATOR GERALD R. STOCKMAN (Vice-Chairman):** We are now going to begin this public hearing. This is a Subcommittee of the Senate State Government Committee. We are here today to take testimony on Senate Bill 1464.

This bill establishes a 21-member State Planning Commission in the Department of the Treasury. The Commission would be composed of cabinet officials, representatives of county and municipal governments, legislators, and public members. The Commission's main function is to prepare, adopt, and revise a State Development and Redevelopment Plan. The Plan is a multi-purpose document intended to establish statewide planning objectives, to coordinate planning activities, and to guide policies concerning economic development, urban renewal, natural resource preservation, land use, transportation improvements, and capital expenditure. The legislation provides for consultation with county and municipal officials in the preparation of the Plan. In addition to promulgating the Plan, the Commission shall:

Prepare and adopt a long-term Capital Improvement Needs Assessment;

Develop and promote procedures to facilitate cooperation and coordination among State agencies and local governments;

Provide technical assistance to local governments;

Review State and local government planning procedures; and

Review the legislation which appropriates funds for a capital project.

To assist the Commission in the performance of its duties, an Office of State Planning is established in the Department of the Treasury. The Office shall publish an annual report on the status of the State Development and Redevelopment Plan, coordinate planning, and provide advice and assistance to county and local planning units.

This bill repeals the statutory authorization for the Division of State and Regional Planning in the Department of Community Affairs.

I think it is evident to anyone who has any interest in government in New Jersey that at a time when we are seeing the work of 20 different departments of State government, 21 different counties, 567 municipalities, and countless authorities, functioning

independently, that some degree of intended, thought-out, clear planning for the future of this State, and its development and redevelopment, is critical.

Gene Schneider is here as our first witness, and I am happy to welcome him, and to also publicly acknowledge that he played a very significant part in my interest in this subject, and in my sponsorship of Senate Bill 1464, creating this State Planning Commission.

I think it is fitting that he be a lead witness, and that we hear from him and from others, as to their reaction to this proposed bill. Any suggestions to improve it, make it more likely to accomplish its high and noble goals and purposes, make its way through the legislative process, obtain the Governor's signature, and get signed into law, will be greatly appreciated.

With that, Gene, I welcome you, and I invite you to express yourself to the Committee.

**EUGENE J. SCHNEIDER:** Thank you, Senator. An outline of my remarks has been made available for those who might want to follow along with me.

My name is Eugene Schneider. I am here testifying as a member of the New Jersey Department of the Treasury, Office of Management and Budget. Prior to joining the Treasury, I was the Executive Director of the County and Municipal Government Study Commission, and before that, I served as the Chief of the Bureau of Regional Planning in the Department of Community Affairs.

The State of New Jersey has had a planning entity since 1934. It is perhaps a fitting point to celebrate 50 years of what can be considered successful planning. But, from time to time, in the course of the last 50 years, there have been changes in the structure, the content, and the focus of State planning, which reflect the changing conditions and needs in the State.

Generally speaking, State planning has evolved through four stages. Between 1934 and 1948, there was a State Planning Board, which more or less provided information as a background to other State agencies, dealt with recovery from the depression, and, later on, with the postwar recovery era.

As a result of the State reorganization in 1947, a planning section in the Department of Conservation and Economic Development was established, and, in 1951, it published the first State Plan, which was the Jersey Turnpike, Round Valley Reservoir, and the acquisition of the Wharton and Worthington tracts, all of which are now in existence, and are facilities that the State can be quite proud of.

In 1956, there was a Federal initiative related to the Housing Bill of 1954. It was really an amendment which created the 701 Planning Program, and provided assistance to localities to begin planning their own areas. The State administered that program, and gained substantial experience in dealing with State and local planning concerns, going, in fact, well beyond the municipal planning scope, into regional and statewide facets.

During that time, between 1956 and 1961, the State Planning Bureau of that time initiated the Meadowlands and the Pinelands Regional Studies, and laid the foundation for integrated State planning by staffing the Interdepartmental Committee on State Planning, which functioned under both Governor Meyner and Governor Hughes.

In 1961, there was another reorganization, and the Division of State and Regional Planning was established in the Department of Conservation and Economic Development, and, later on, in the Department of Community Affairs. That Division initiated today's Green Acres Program; the Capital Improvement Program, which gave way to the Capital Planning and Budgeting Commission; and, it saw the establishment of the Hackensack Meadowlands Development Commission. It also staffed the State Planning Task Force under Governor Cahill. And, in 1977, it began the development of a State Development Guide Plan, which was updated in 1980.

I think current conditions, trends, and issues that face New Jersey warrant a restructuring of the State planning function. We believe that S-1464 is designed to address these current conditions.

S-1464 establishes a State Planning Commission, and it responds to a set of identified needs, which are reflected in a Statement of Purpose in the Bill.

First and foremost, there is a need to integrate the planning that takes place in 20 State Departments, and increasingly in the

Judiciary and other entities, to provide some sort of a context for that planning. This is not to say it will preempt the functional planning that takes place in the Department; rather, it coordinates and integrates such planning.

Second, there is a need to coordinate what happens at the State level with what happens at the regional and local level -- that is, with counties and municipalities, where much of the decisions concerning growth and development, if not most of it, is occurring.

Parenthetically, the role of the State, in dealing with regional and local matters, is perhaps exemplified most through its concern over infrastructure as the basic framework for making land use and growth and development decisions that have been in the news a great deal in recent years.

Third, there is a need to begin developing some sort of an urban policy to guide activities in urban areas -- to deal with urban redevelopment and revitalization. In recognition of the fact that most of the initiative for development is in the private sector, there is a need to streamline the procedure and process for State and local relations in this vital concern of the State.

The replacement of the Development Guide Plan -- its updating or replacement, I should say -- is another important need that must be faced by the State Planning Commission, once established.

Finally, a major factor in any future restructuring of the planning and development process is the need to broaden the decision basis, and to allow for the participation of the local level, as well as the private sector, in such a process.

S-1464 places a strong emphasis on such participation, and in this way it is really a major departure from the previous format for State planning, which vested that power exclusively in an agency of State government, which was in the Executive branch.

The rationale for moving to a Commission format is to allow the participation of various interests: The Executive branch, reflected in appointments from the Cabinet and the Governor's office; the Legislative branch, where both Houses and both Parties will be represented; local governments, where appointments will be made from the municipal and county levels, with recognition given to the

importance of our urban areas in making such appointments; and private citizens, reflecting the private sector interests.

The function is already being moved to the Treasury from the Department of Community Affairs. In the course of discussing the location for a State planning function, it was felt that Treasury was the only Department that had a crosscutting function: It deals with all departments of State in terms of fiscal concerns and the reality of implementing plans. We have to make our plans for the future much more realistic, and our fiscal resources are the reality in planning

Once established, the Commission will have a number of major duties to perform. Within 18 months, and every three years thereafter, a State Development and Redevelopment Plan, which will identify growth, agriculture, conservation, and other areas, will be developed. In a moment, I will get to the other major components of such a plan.

There is a provision for assessing long-term capital improvement needs, and I will anticipate a question, Senator, as to whether that function is already vested in the Capital Needs Commission. I would like to note that although the Capital Needs Commission -- Capital Planning and Budgeting, to be more accurate -- can, in fact, deal with long-range capital needs assessment and planning, it has mostly concentrated on current issues of capital spending. Perhaps the distinction lies in the time frame. The State Planning Commission will provide a broader context of what the future needs are going to be for infrastructure construction, rehabilitation, and renewal, allowing the Capital Needs Commission to continue looking at current plans for capital expenditure.

The Commission will have to develop procedures for planning coordination between the State and the local level, beyond those specified in the bill itself. And, very significantly, it has to provide technical assistance to local governments. There is a need for a place where thousands of planners, working at the State and regional level, can come to for advice, data, and information on the growth trends, problems, and issues confronting planning in the State.

The Commission will foster a formal link between State agencies and the State and its local governments.

The State Plan has been a controversial document. I would like to note that there are some misconceptions attached to what this Plan is and what it is not. It is a general guide document, recommending land use and infrastructure development. It is not a housing allocation plan. We will have to confront that issue through another format. It is an integration of State and local plans. It is not a State-imposed policy. It is designed to help municipalities determine the distribution of their growth and conservation areas. But, it does not mandate State capital improvement or local land-use actions.

Finally, it does build on the previous planning experience at the State, municipal, and local levels. It is not an attempt to re-invent the wheel. It works towards an evolving State and local planning relationship, which has yet to be determined.

As a closing note, some three and one-half pages of this bill deal with local participation in the planning process. It is the cornerstone of the bill. This value is reflected in three ways: In the composition of the Commission itself, where local officials are members of the Commission; in the opportunities afforded to local governments and to other interests to contribute to the planning work; and in the required, mandatory review and comment process which follows the development of the Plan.

The need for reviving a State planning capacity has been attached, perhaps somewhat erroneously, to the Mount Laurel decision. I do not think that the concern of the court in the Mount Laurel decision was exclusively an affordable housing-related matter. In the Mount Laurel II opinion, the court stated -- and I am quoting: "The Constitution of the State of New Jersey does not require bad planning. It does not require suburban spread. It does not require rural municipalities to encourage large-scale housing developments. It does not require wasteful extension of roads and needless construction of sewer and water facilities for the out-migration of people from the cities and suburbs. There is nothing in our Constitution that says we cannot satisfy our constitutional obligation to provide lower income housing, and at the same time plan the future of the State intelligently."

There is another quote which, in the interest of time, I won't cite in totality, but it concludes by saying that, "Statewide comprehensive planning is no longer simply desirable; it is a necessity recognized by both the Federal and State governments." Thank you.

SENATOR STOCKMAN: Thank you, Gene, for those remarks.

Senator Saxton, do you have any questions you would like to ask?

SENATOR SAXTON: One of the points in your presentation was that statewide planning ought to be an evolutionary process, where we look at situations from time to time and say where our situation needs to be changed. Do you relate this to the Mount Laurel decision and the mandate that our municipalities now seem to be under in one form or another? Should this current situation be addressed in some way by the bill?

MR. SCHNEIDER: I think the situation is addressed. The bill does provide the required input into the Mount Laurel decision by updating a development plan which would give context to decisions made by the municipalities, and presumably by the courts, in land use matters.

But, I would like to stress again that the need for State planning goes well beyond the affordable housing issues addressed in Mount Laurel.

SENATOR SAXTON: I agree with you on that point, fully. I know that we need to do something long-term. Unfortunately, our communities are presently under the gun to do things in a context that is very foreign to them. Specifically, I wonder if we ought to have a hiatus here, between what has been mandated and the provisions of this bill, which will come into effect and provide for a planning process. We are between those two happenings at the moment, and I wonder if there ought to be a hiatus set up within this bill -- or a moratorium, if you wish to call it that. We could then put a planning process into place in order to work through this current situation with Mount Laurel, within the context of what this bill tries to do.

MR. SCHNEIDER: In view of the statement in the Mount Laurel opinion, that the courts have a constitutional obligation to meet, I do not really know whether that hiatus can stand up -- or that moratorium. I can't speak about the legal parameters of that action.

I also feel that since the development of a State Plan affects the entire State, and the Mount Laurel issue emerges only in selected municipalities where it is being litigated, stopping the process in order to deal with those immediate concerns may create problems for the rest of the State, as well as for those municipalities. I do not know if a court can be bound by a moratorium decision.

In effect, I think we ought to begin doing the work -- we, the State, ought to begin doing the work quickly in order to deal with the needs of those municipalities that are facing immediate challenges.

SENATOR SAXTON: Thank you.

SENATOR STOCKMAN: Gene, am I correct in saying you are not here today speaking for the Governor's office?

MR. SCHNEIDER: That's correct.

SENATOR STOCKMAN: And, there still is, of course, some real debate going on as to what position the Governor will take on this bill? I gather you cannot speak to that question?

MR. SCHNEIDER: I can, partially. In principle, the bill was endorsed in the Governor's State of the State Message, by looking for a broader context -- which the Governor cited specifically -- in future planning decisions.

In terms of specific provisions in the bill, you are right, Senator. I do not know what the Governor's office feels about any of the elements, or the components, of the bill.

SENATOR STOCKMAN: All right. I have the Governor's comment in his State of the State Message, and I was going to get into that. You referred to it.

One of the very real difficulties I am having as the prime sponsor of this bill is-- I would like to point out for the record that there are 13 other Senators who have endorsed this bill and who are co-sponsors of it. One of the serious problems I am having deals with the question of what Governor Kean's attitude toward this effort is. I suppose you could argue, "Well, that will be found out the day the bill reaches his desk and he has to decide whether to sign it or not. He may sign it, or he may not. He may conditionally veto it and quarrel with one or another portion of it."

The difficulty I have I will share with you publicly today. I think I may have, to some degree, shared this with you privately. This is going to be an ongoing question over the coming months. I realize that the Chief Executive Officer of the State will be the one who will make a great majority of the appointments to this Commission, and, as Chief Executive Officer of the State, he will have tremendous sway over the appropriations and the operations of what will be an executive office -- an office within the Executive branch of government. How is he going to deal with those responsibilities? Some people have said to me, "Look, this bill will afford Governor Kean an opportunity to get off the hook." He will be able to get away from the question that you know I have criticized him for, and that is his coming to grips with the State Guide Plan. In fact, the court, a year plus ago, urged that the Plan be updated.

I don't want to get bogged down in this bill with the Mount Laurel perspective and focus. And, you made that clear in your opening statement. I absolutely agree with you. This bill goes beyond the mandate of Mount Laurel, and it deals in the long haul with a lot more questions than just housing questions.

But, I am concerned with whether or not what is attempted and intended here can become a reality, and become an effective part of the process of State government if the Governor is not truly, genuinely, and sincerely supportive of its intent and purpose.

I don't criticize you for not being able to more clearly articulate what his position is, beyond what you said. I understand what you said, and I think the public does also. But, I think it is going to be important, at some point, for us to get a pretty clear and definitive expression from the Administration on this.

I think you would agree that if it is not adequately funded and staffed, it would be quite crippling to any results that the Commission could accomplish.

MR. SCHNEIDER: Yes, I agree with you. To do the job, and to do it well, it will require resources.

I do believe -- again, dealing in generalities -- that the commitment to do the job well has been stated in the Governor's message.

SENATOR STOCKMAN: What about the question of compliance by State Departments with this Plan? What is your thinking about how that would occur, and whether there ought to be a provision making this Plan more mandatory?

MR. SCHNEIDER: I personally oppose the idea of mandating compliance or putting a binding provision on State agencies and local governments in the bill. It seems to me that the composition of the Commission, with five cabinet officers and two other members of the Administration serving, and the fact that the Commission adopts its own plan which requires an affirmative vote by these State officials, is a sufficient commitment to the Plan and to selling it to their colleagues who are not on the Commission, but who are going to be informed throughout the process of planning about what the Commission is considering and deliberating on.

I think that to make the work of an appointed Commission superior to that of the decision-making power of the Chief Executive and his departmental heads would not serve a useful purpose. I think there is enough power of persuasion in there to make the Plan an important and significant document.

SENATOR STOCKMAN: You seem to suggest that you think the departments would comply with it. If that is so, then, at most, we are dealing with -- if it were mandatory -- a technical requirement. The end result would be the same: That is, a clear degree of uniformity, both in what the Commission promulgates and what the 20 separate departments of State government do.

MR. SCHNEIDER: Yes.

SENATOR STOCKMAN: And, incidentally, one of those department heads would not have to vote for it, and the Plan could still go into place. You could have a Commissioner of Transportation that did not vote for it. So, you don't have the assurance that they are going to vote for it.

I am concerned about that, and I hope and expect to hear more testimony on that, to have a give and take on it.

Are there any changes in the bill that you think ought to be taken up at this time?

MR. SCHNEIDER: I don't believe so. I think we are initially discussing the thrust and spirit of this proposed legislation, and as we begin to play out some of its technical provisions, there may indeed be some suggestions, for what I would call technical amendments. Some of them have been suggested to us informally, and they will be conveyed to you.

Again, I would like to stress that at this point we are looking at the bill in terms of the direction it proposes. There is a flexibility on the part of the members of the Administration I have discussed it with concerning the specific provisions of the act.

SENATOR STOCKMAN: Do you know whether the Treasurer himself has had a chance -- the new Treasurer -- to look at this bill or reach any preliminary, or final judgment as to whether he is comfortable with it in his Department? Does he see it as a step in the right direction, governmentally?

MR. SCHNEIDER: Time did not permit this kind of in-depth discussion, but I hope to do that in the next week or ten days.

SENATOR STOCKMAN: How about the State Planning Commission? Do you know whether they have expressed themselves on this? Have you had any discussion with any of them about how this will coordinate with, or fit in with, their work? You touched on that very briefly.

MR. SCHNEIDER: State planning?

SENATOR STOCKMAN: The Capital Budget and Planning Commission.

MR. SCHNEIDER: We discussed it with some people who were instrumental in bringing that Commission into being. The staff of that Commission is quartered within the Treasury. We have discussed the principles of this act with them, and it seems to be compatible. There is no ground swell from our position to the idea of two separate commissions. Hopefully, their work can be closely coordinated by their very presence in the same department.

SENATOR STOCKMAN: How do you think the results of this Commission could be tied into-- Do you think the results of this Commission can easily be tied into the capital funding proposals by the Port Authority, for instance, which has such a major presence in North Jersey, particularly -- and also, I guess, the proposed South Jersey Development Corporation?

MR. SCHNEIDER: I don't know to what extent it would be legally binding, but certainly the very nature of the planning process dictates a coordinated approach with any entity that is likely to impose a significant demand on State resources. I think that the agencies you cited would be brought into the process.

I might say that the process of cooperating with the Port Authority -- the Port of New York and New Jersey -- has already begun in the Office of Management and Budget. They are, in fact, anxious to be brought into closer discussion with the State on these mutual concerns. I am optimistic on that score.

SENATOR STOCKMAN: Jim, do you have any further questions?

SENATOR SAXTON: No.

SENATOR STOCKMAN: Unless you have anything else, Gene?

MR. SCHNEIDER: No, thank you.

SENATOR STOCKMAN: We appreciate your appearance and your remarks. They will be made part of the record.

MR. SCHNEIDER: Senator, Sid Willis is going to join me in making some comments.

SENATOR STOCKMAN: Fine. We would be happy to hear from him.

**SIDNEY WILLIS:** Good morning. I am Sidney Willis, Assistant Commissioner of the Department of Community Affairs, and the comments I am making have the endorsement of the Commissioner of the Department of Community Affairs.

I am not going to make a formal statement, because much of the history and the logic behind your bill was detailed by Gene Schneider.

I was, as you know, Director of Planning in the Division of State and Regional Planning, in 1968 through 1972, and Assistant Commissioner for Planning in the years subsequent -- from 1972 through 1976 or 1977. I have also been Executive Director of the Governor's Open Space Policy Commission, as well as the Governor's Task Force on Housing. So, I think I speak with some experience in these matters, having worked in these areas with the Legislature and with the Executive branch of government, both Parties.

Many of the problems we confronted during the history Gene outlined for you, I believe, are corrected by the bill that you are

entertaining today. I would like to compliment you, Senator, and the co-sponsors of the bill, for your leadership in coming forward at this point in time with what I believe is a very significant and important step in New Jersey's planning history.

I would only mention that among the steps that were missing in the past history of planning was the very important step of a formal adoption procedure. The early legislation -- 1961, and even earlier -- provided for the Division of Planning, or the earlier Bureau of Planning, to simply prepare and promulgate a plan which had no status in terms of the necessary support from the Legislature, or from the other members of the Executive branch, and, most importantly, it did not have something which I think warrants a separate point here: It did not have a stipulated public process in the legislation, as you now have it, for the input of the local governments. I think that is very important, and specific legislative participation is now in this bill.

I would like to touch on a point that I think came up in your discussion earlier. Mr. Schneider emphasized the Executive Branch's reluctance to make the Plan a binding document on actions that might be necessary for any administration. I think the Legislature itself should share that reluctance. There will be representation, and very important representation -- bipartisan, from both Houses of the Legislature -- on the Commission. Nonetheless, I think that the Legislature itself would not want to be bound to a State Plan when taking any action that may be necessary to take, during any period of time, in response to the needs of New Jersey. I do not think they would want to be bound to a Plan, no matter how carefully prepared this Plan will be. I personally believe that with the existence of this Plan, prepared in the manner that is outlined here, and with the support of its own Commission, representing all of us, it will behoove proposers of important actions in New Jersey to ask: "How does this relate to the State's official Plan?" The public will ask that, without a legislated, statutory requirement for compliance.

So, I believe the Plan will operate in a manner that will provide a guide, but will also allow for flexibility on the part of both the Legislature and the Executive, should the need arise.

I'd like to touch as well on a point that is in your bill, and that is the specific mandate for maintenance of the Plan. We all know that times change. I weathered a period, as Planning Director, when, at one time, the State was growing by 100,000 people per year. In 1979, or somewhere in that time frame, we suddenly -- perhaps not quite so suddenly, but nonetheless without knowing the full extent of it -- realized a considerable reduction in the growth rate, which we are now weathering. It is important to acknowledge that trends change. The forces which develop our State change. New public needs and demands arise, and the Plan must never be viewed as a static document that can be pinned to the wall and provide guidance for ever and ever thereafter.

Your mandate for specific maintenance is very important, and I welcome that in the bill.

Finally, I would like to touch on a point that Mr. Schneider also touched on. The Treasury is, in our view, and in the view of the Department of Community Affairs, which previously housed the planning function-- We recognize that the Treasury Department has the ability, because of its constant work across the grain with all departments, to be the proper location for the State planning function. I believe that is a very sound move at this time, and I just want to lend our support, as a line department, to that concept.

Once again, I congratulate the members of the Legislature, and you particularly, Senator Stockman, for coming forward with this legislation. We know the times we are living in, the problems that swirl around the notion of State planning, and the corollary and lesser issues of housing. However, this is a needed action, and one that I believe many municipalities, counties, and citizens of New Jersey are looking forward to, and I am glad you are moving in this direction. I would be glad to try to answer any questions you may have.

SENATOR STOCKMAN: Senator Saxton, do you have any questions?

SENATOR SAXTON: No.

SENATOR STOCKMAN: I can't resist taking a few moments to have an exchange with you, Sidney Willis, if for no other reason than as I sat here it struck me that you speak on behalf of the Commissioner of the Department of Community Affairs, who testified at earlier

hearings, held by the committee that really got me into this subject. As you know, I was rather distressed with him and with his position regarding the State Guide Plan.

I think it is anomalous that you are here. You were really the architect of the State Guide Plan, weren't you? Or, you played a major role in it, is that correct?

MR. WILLIS: I certainly played a role in it, yes. I played a significant role in the preparation of that plan. I am proud of that part of my professional career.

SENATOR STOCKMAN: Okay. And, I guess you didn't quite anticipate the role that it, in turn, would play in the subject we are talking about today. I don't want to get you into the uncomfortable position of expressing yourself at a time when you have to have--

MR. WILLIS: (interrupting) It demonstrates that no plan is omniscient.

SENATOR STOCKMAN: I will take this question up with you. You concurred with Gene Schneider about your reluctance to see this Plan being made mandatory or compulsive on the operations of the the 20 State Departments. I would be less concerned about that issue -- and I still have an open mind on it, but I am quite concerned about it -- if I were satisfied that the Governor, as the tremendously strong, moral, practical, political force in this State, as any Governor is, shares the aims and purposes of this legislation. And, I don't say that he doesn't, but I don't think you can speak for him either. Can you speak for the Governor's office on this bill?

MR. WILLIS: I can't add any more than Mr. Schneider has already said, except--

SENATOR STOCKMAN: (interrupting) I think Gene's phrase was something to the effect that--

MR. WILLIS: (continuing) --it is consistent with the language of the Governor's address to the Legislature.

SENATOR STOCKMAN: Right. When we get right down to it, I certainly get plenty of evidence-- Well, I don't want to describe it as a kicking, screaming, drag session into this legislation, but certainly the Governor's initial comments about the Mount Laurel decision itself, and some recent comments that reached the front page

of no less than the New York Times talking about some sort of Communist conspiracy, does raise a little concern about the commitment by the Administration to this legislation. That is one of my problems.

Wouldn't you agree with me that if the Governor wanted to undercut this Commission because he was not enthused about it, it would be very easy for him to do so? What I am troubled about is, should we require that it have some teeth, or, should it have teeth at all?.

MR. WILLIS: Senator, all of my experience teaches that the Governor's support of the planning process is essential to its effectiveness in State government. And, I speak from having served, I believe, five Governors. So, that holds true through the history of planning in New Jersey, and it will be essential.

I would just like to add to what Gene said: I believe -- and I am not speaking with any authority here, other than my own interested observation -- that it is very important to know the position of the League of Municipalities, the municipal representatives who are here this morning, the conservation community in New Jersey, and other important voices you are now bringing forward. They will all have an opportunity to publicly advise us as to what their position on this legislation will be.

I think one aspect of the Governor's Message to the Legislature was his emphasis on supporting the municipalities of New Jersey in this planning initiative. I believe when that is clear there will then be an opportunity for the Executive branch to join in and to come forward. That is my personal view. This is entirely unauthorized, but I think it is important to observe that this hearing itself will present that opportunity.

SENATOR STOCKMAN: I have no further questions. I thank you for sharing those remarks with us.

Did I see the Public Advocate arrive?

MEMBER OF AUDIENCE: I don't think he is here yet.

SENATOR STOCKMAN: All right. Well then, we will move on. Our next witness will be Fred Stickel, New Jersey League of Municipalities.

**FRED G. STICKEL, III:** Good morning, gentlemen.

SENATOR STOCKMAN: Good morning.

MR. STICKEL: I am Fred G. Stickel, III, General Counsel to the New Jersey State League of Municipalities and Co-Chairman of the League's Legislative Committee. I appreciate the opportunity to testify today in support of Senate Bill 1464.

Since the virtual elimination, two years ago, of the Division of State and Regional Planning in the Department of Community Affairs, the State of New Jersey has been functioning without any institutional planning capacity at the State level. This has placed New Jersey in the inconceivable position of having no central coordination of the policies of its respective departments and agencies and no capacity to plan for the future of the State.

Recognizing this, a broad-based coalition of representatives of public and private organizations, concerned over the future of planning on the State level, convened over a year ago and began informal deliberations.

Jack Trafford, Executive Director of the League, was an active participant in the deliberations and was in frequent contact with me during the progress of these discussions.

The deliberations over a bill to reinstate a State planning capability began before the Mount Laurel II decision was even handed down. That decision, however, relied heavily on the now outdated, and generally discredited, State Development Guide Plan, and called for its updating by 1985. The decision provided an additional and very dramatic example of the need for a planning capacity in the State.

These deliberations led to a legislative proposal which was submitted to you, Senator Stockman, early this year. That draft served as the framework for a modified version of what is now embodied in Senate Bill 1464. I might also just say that I think I have seen three different versions of this bill. But, I understand you all finally all got together and agreed upon this form, for which I am thankful.

Senate 1464 accomplishes several objectives:

1. It essentially reconstitutes the traditional planning authority and capabilities which the State has exercised over several decades through the now defunct Division of State and Regional Planning.

I might also say at this point that I can remember sitting in the Essex House in Newark, which no longer exists, in 1951, when the first State Master Plan was adopted, and we had great hope that we were going to go from there. I also served, for many years, on the Advisory Planning Commission -- which is no more -- which served as an Advisory Commission to the Legislature and to the Governor's office on planning functions at the State and local level. All of that has now gone by the boards, and I am certainly happy to see that we are coming back to what we should have done long ago.

2. It creates an Office of State Planning which, among other things, will continue to provide the advice and assistance to county and municipal planning units, which had been a valuable service of the old Division of State and Regional Planning.

This is one thing that we, at the municipal level, have really missed. In the last six or seven years it has been gradually taken away from us, and, as you probably know, at the local level we do need substantial help from the State in the administration of our planning functions.

3. The legislation creates a new State Planning Commission, an 18-member body, which will include four local government representatives. This represents the first time that municipal and county representatives would have guaranteed seats on a State planning body.

4. The major responsibility of the State Planning Commission will be to adopt a State Development and Redevelopment Plan. The Plan would be the substitute for the now outdated and generally discredited State Development Guide Plan. In contrast to the preparation of the previous Guide Plan which, for whatever reason, had little input from localities during its preparation, the Development and Redevelopment Plan has a built-in procedure guaranteeing participation by municipalities and their planning units in the formulation of the Plan. And, again, the State Planning Commission which will ultimately adopt the Plan, has four local representatives as part of its membership.

5. In my opinion, as a municipal attorney and planning and zoning attorney with over 45 years' experience in the practice of the

Land Use Law, the proposed State Development and Redevelopment Plan will in no way intrude on, or minimize, local home rule authority to plan and regulate land use on an individual or municipal level. To the contrary, it will provide individual communities with some guide as to the direction of development in the State, which will assist them in performing their own planning functions at the local level.

In summary, the bill is a major step in the right direction, and the New Jersey State League of Municipalities wishes to express its wholehearted support. Thank you very much.

SENATOR STOCKMAN: Thank you.

MR. STICKEL: I might say, regarding the discussion about the Legislature mandating the results of this Plan, that I think we are all overlooking the fact that this is a Plan and it should be left as a Plan. Once you start to mandate a plan, it is no longer a plan. A plan has to have flexibility. Even our Master Plans at the local level, to a large extent -- almost to a full extent -- are advisory. They are an indication by the Planning Board, and the people make up the Planning Board, as to the direction a particular municipality is going in.

As Sid Willis pointed out, circumstances change, and the plan has to be flexible. I don't see how you could continue to call it a Master Plan, or a Development Plan, or even a Plan if you are going to make it mandatory. At what time is it mandatory?

SENATOR STOCKMAN: I appreciate those comments, and I want to start by saying that your organization has been particularly supportive, and you deserve a lot of credit for the level this legislation has reached at this point in time. Where it will wind up, is yet to be written. My concern, Mr. Stickel, regarding the question we are talking about is, how do we make reasonably sure that if this entity is created, and it gets together and produces "x" number of volumes -- two, three, four, five, etc. -- that those volumes will not collect dust? Basically, people at the department level of State government, county government, and municipal government may go about doing something that is clearly inconsistent with the Plan.

MR. STICKEL: How do we do it at the local level? Public opinion and public support is the only way you can do it. If you make

it mandatory, as I pointed out, it is no longer a plan. You are legislating what you may have to change six months from now, because circumstances change.

SENATOR STOCKMAN: If we mandate it, we are only talking about mandating it at the State level. I realize and appreciate, for a lot of reasons -- some of which are political -- why we wouldn't be talking beyond that level. But, I am concerned, on the State level, with the various departments, because it strikes me that if it is somehow felt there is no necessity to develop the performance of these departments -- whether it be Transportation, Environmental Protection, or Economic Development -- with this Plan, then the Plan is really going to be useless.

I appreciate your notion about not mandating a plan. All that would be mandated, if we did something in that direction -- and that is a very open question that is being debated -- would be the obligation for the departments to comply with the Plan in whatever they do. They do not have to do anything, theoretically. But, to the extent that they spend State money, or move or take action on behalf of State government within their departments, they cannot be in conflict with this Master Plan.

The Plan is going to change; it is going to evolve. There will be room, it seems to me, for appeal to the Commission to take into account errors and omissions in what it has promulgated. So, it seems to me that what we may at least have is a requirement that if there is going to be some deviation from this Plan, it has to be announced and there is a right for review of a threatened action -- if action is taken by the Administration. There has to be something so that it is not possible to find in time that this work-product is being totally ignored by the very State government that gave birth to it.

MR. STICKEL: I only have two comments on that. You suggested one thing just a minute ago. We have a similar situation with the local Master Plan. The zoning ordinance must be consistent with the land use element of the Master Plan, not the entire Master Plan. But, recognizing that the municipality and the governing body is the legislative and governing body of the municipality through its elected officials, and the Planning Board isn't, the governing body can

adopt an amendment to the zoning ordinance which is inconsistent with the Master Plan, but it must set forth, in public, its reasons for doing so. Now, maybe you can take off from that.

SENATOR STOCKMAN: Perhaps we could require that any department of State government should--

MR. STICKEL: (interrupting) Notify the Legislature or something.

SENATOR STOCKMAN: (continuing) --should notify the Commission and, somehow, to--

MR. STICKEL: (interrupting) Set forth why they are not following it.

One other thing is, I recognize the doctrine of separation of powers, and it seems to me that in the administration of this Plan -- in the carrying out and implementation of this Plan -- the Legislature is going to play a very important role, because they are going to put up the money. You have that means of seeing that the Plan is being carried out, or if it is not being carried out, that there is a good reason for not doing so.

SENATOR STOCKMAN: There has been a question raised -- I am sure you are aware of it -- about adding in, or including, a so-called moratorium on present action. Do you care to comment on that?

MR. STICKEL: Well, I can comment on it as a lawyer to a lawyer.

SENATOR STOCKMAN: It is hard to understand.

MR. STICKEL: With the doctrine of separation of powers, I don't see how the Legislature can tell the courts--

SENATOR STOCKMAN: (interrupting) To stop dealing with fundamental constitutional obligations?

MR. STICKEL: Obligations where there are cases pending. If, in the interest of working something out, the courts would do it voluntarily, fine. But, I don't see how the Legislature, by putting that in the bill-- I think it would weaken the bill. I don't see any sense of putting in something that you can't carry out.

SENATOR STOCKMAN: Senator Saxton, do you have any questions?

SENATOR SAXTON: No.

SENATOR STOCKMAN: Okay. Thank you very much.

MR. STICKEL: Thank you, Senator.

SENATOR STOCKMAN: Is Bob Holmes here? (affirmative reply)

Bob, do you want to come forward? Robert Holmes is with the New Jersey Public Policy Research Institute.

**ROBERT C. HOLMES:** I have prepared a brief statement, which I will read into the record. I may editorialize from time to time.

My name is Robert Holmes. I have been a resident of the State of New Jersey all of my life. I currently reside in the City of Perth Amboy in Middlesex County.

I have been a member of the Bar in New Jersey since 1971. My current employment is as Executive Director of the Newark Watershed Conservation and Development Corporation, and I was formerly Assistant Commissioner of the New Jersey State Department of Community Affairs. I am also a member of the Board of Directors of the New Jersey Public Policy Research Institute.

In order to put my comments regarding Senate Bill 1464 in illustrative context, I would offer myself as a representative of both the New Jersey Public Policy Research Institute and the Newark Watershed Conservation and Development Corporation, which suggests that perhaps I ought to first advise you as to what those two organizations are.

The New Jersey Public Policy Research Institute was established in 1978. It is a volunteer, nonprofit organization that is concerned primarily with identifying, analyzing, and promulgating public policy issues significantly affecting the black residents of the State of New Jersey. Further, the organization seeks to present these issues for appropriate public discussion which will, hopefully, contribute to the development of strategies that address these issues in ways which will be beneficial to the State's black community.

The Institute is statewide in focus, and attempts to work cooperatively with public-policy oriented individuals and organizations throughout the State. Activities of the Institute are managed by a 30-member Board of Directors. In October of 1983, Board member, Regina Joseph, offered testimony before the Senate Legislative Oversight Committee on the State Response to the Mount Laurel II Supreme Court decision. She advanced, at that time, the Institute's particular interest in both the availability of, and access to, affordable housing

by eligible families within the black community, recognizing that housing is proceeded only by employment as an essential element to the consideration of the quality of life in this country. She further advanced the Institute's concern that the elevation to prominence of the State Development Guide Plan might shift the Institute's regard for an appropriate focus away from housing production and toward the refining of a planning process.

The Newark Watershed Conservation and Development Corporation is a nonprofit corporation organized by the Mayor and Municipal Council of the City of Newark to explore expanded uses for the vast 35,000 acres constituting the Newark-owned portion of the Pequannock Watershed area. Initial studies on alternative uses for these lands were prompted, for the most part, by the existence of an antiquated law in New Jersey that continues to allow for the taxation of municipally-held watershed lands as a single exception to the general exemption from taxation of publicly-held lands.

As the leading edge of development pressure has reached watershed boundaries, land values have increased, followed by a commensurate increase in taxes. In sharp contrast to the treatment of similarly situated privately-held lands, official local and State actions have prohibited the development of Newark watershed lands with no corresponding adjustment in a tax exposure that reflects developability. The public at large, and watershed communities in particular, have enjoyed a longstanding windfall at the expense of a very small segment of New Jersey's taxpayers -- that is, the residents of the City of Newark. Ironically, a number of municipal watershed owners have opted, for economic reasons, to identify alternative water supply sources, than to articulate the prerequisite finding that the original watershed lands are no longer needed for public purpose, and, finally, to sell those lands to private developers. Once in the hands of private developers, these same lands seem to magically transform back into developable lands once again.

This brief description of the origins and purposes of two public interest organizations in New Jersey serves as a foundation for my brief comments on Senate Bill 1464, establishing a State Planning Commission and an Office of State Planning in the Department of the

Treasury. In general, the Board of Directors of the New Jersey Public Policy Research Institute and I support the concepts set forth in the bill, as well as its general structure.

In view of the extraordinary use made of the current State Development Guide Plan by the New Jersey Supreme Court in the Mount Laurel II decision, a use, I might add, as a recent past Assistant Commissioner of the Department of Community Affairs -- although I wasn't quite as close to it as Sid Willis was -- that was never intended. The creation and maintenance of a State Development and Redevelopment Plan is destined to have monumental social, economic and political impact in New Jersey. The drawing of lines and labeling of resulting boxes must be guided by a carefully-selected cross section of New Jersey society.

I would suggest to you that all planning processes have a purpose. Too often that purpose is nothing more than the mere completion of the plan. It concerns me, for example, that the development of a statewide planning process not emerge as the chief accomplishment of the Mount Laurel II decision. Worse, of course, is the prospect that the very purpose would be to thwart the aims of the Mount Laurel II decision, or of housing advocates generally.

It is, to a large extent, a question of focus. A melding of planning and housing advocacy should be contemplated in this bill. I see several ways to attempt to accomplish this:

1. I would emphasize, to extraordinary lengths, the timetables set forth in Section 4. This will help to protect against the planning process preempting the traditionally weaker efforts of housing interests.

2. I would make provision for alternatives if deadlines are not met, as did the Mount Laurel court.

3. I would reconsider including on the Commission individuals or organizational representatives from an interest group generally aligned with the principles of producing affordable housing in the State. Rely, if necessary, on the Mount Laurel decision to justify including this perspective and excluding the scores of other competing interests. There is a constitutional requirement that we pursue expanded housing opportunity for low and moderate income New Jersey families.

4. Consider, as minimum protection and representation for this protected group, the inclusion of the Public Advocate as one of the voting members on the Commission. It is critically important that some element of the Commission continue to focus on housing as a product rather than planning as a process.

In cases where the purpose of a planning process has broad-based political support, the rights of relatively weaker minority interests are often lost, even in cases where those interests could be protected without compromising the agreed-upon general good. Such, I think, is the case of the application of the State Development Guide Plan to large single-owner tracts of land, like the Newark Pequannock Watershed lands.

The Mount Laurel II decision firmly reminds all that local planning processes may not pursue a locally-desired community image as their explicit or even subtle purpose. In this regard, I would again urge you not to allow a Statewide Planning Process to merely substitute a locally-derived political consensus as to local image, for a statewide political consensus as to a desired statewide image without regard for other protected interests. To assign, for example, a conservation label to lands that most regard as better left untouched, scientific investigation, borders on unconstitutional taking without compensation. A better process would provide for scientific analyses as well as social, economic, and political analyses. I would direct the Committee's attention to a recent study conducted by the Department of Environmental Resources of Cook College at the joint request of the City of Newark and the Township of West Milford. The Newark Watershed community contains one-half the total of Newark Pequannock Watershed lands. Using a scientifically-based methodology, generally characterized by the assigning of Current Planning Capacities -- CPC's, as they call it -- to subdivisions of the lands in question, the Rutgers group analyzed West Milford's development potential without regard to watershed boundaries as a matter of ownership, but instead on the basis of geological and hydrological facts and conditions.

I assure you, the results of this planning process and those resulting from an application of the State Development Guide Plan were very different in terms of appropriate uses for certain Pequannock Watershed lands.

The Rutgers' study goes further, however, to suggest that in cases where the political consensus is still at odds with scientific basis, legal models can and should be devised to properly acknowledge development potential taken from an otherwise perfectly developable area. The popular description of this concept is Transfer of Development Rights.

Senate Bill 1464, if it is to comport with the spirit of Mount Laurel II, and the general constitutional principles of "fundamental fairness," must better reflect an appreciation for a scientifically defensible basis for restructuring the values of New Jersey real estate than did its predecessor State Development Guide Plan process, and further contemplate legal models to apportion the costs associated with institutionalizing broad-based political consensus. Thank you.

SENATOR STOCKMAN: Thank you very much, Mr. Holmes. Senator Saxton, do you have any questions?

SENATOR SAXTON: No.

SENATOR STOCKMAN: Mr. Holmes, much of what you said goes to more technical questions, I think. I would like a copy of your statement so that we can review it.

I am concerned about the question of how the State Planning Commission will evolve, in terms of low and moderate income housing as one part of a bigger statewide issue, and you have touched on that.

I am concerned also about how it will impact on what is occurring now under the Mount Laurel decision. Interestingly enough, your body, the New Jersey Public Policy Research Institute, recently commented, in an article I read, that you were concerned about what would happen in the struggle for affordable housing, that the planning ideas would supersede the need for housing. I take it you do not feel that S-1164, as it is drafted with the proposed changes, threatens to go in that direction?

MR. HOLMES: Our only concern is with the representation, the 21-member board. My suggestion was that you reconsider this, and perhaps include a particular interest group that has a housing advocacy posture, or the Public Advocate.

SENATOR STOCKMAN: One of the problems with that is-- Well, there are two separate problems, and I am going to get that. The Public Advocate is going to speak next, and I will ask him how he would feel about being a member of this Commission.

But, the question about a special interest representative is difficult, because you know that produces a very difficult problem, in terms of where does one draw the line on that?

What is more, in a way, a single representative on a body of this size would have limited leverage anyway. So, I am not rejecting your idea, personally; I will give it more thought, and it may become a subject for further discussion.

The Public Advocate is an interesting idea. It was talked about. It was not designed into the Plan. We will hear from the Public Advocate next on that matter.

One other thing is the question of Transfer of Development Rights you touched on. I have heard people talking about that notion. In fact, the Governor may have talked about that notion: What about the ability to purchase development rights in one municipality, and do a project in another? In other words, what is your feeling or reaction to building other than low and moderate income housing in one community, but as a condition of completing that project, sponsor, support, or pay for the completion of a low or moderate income housing component in another municipality?

MR. HOLMES: I think it is ultimately going to be essential that we construct legal models of that type, in order to begin to balance the ability to continue some local prerogatives against the kinds of constitutional protection the Supreme Court has begun to address in Mount Laurel II. Obviously, we don't care to have the Supreme Court dictate entirely how the local planning process will take place.

I think creating models like Transfer of Development Rights will allow the two to coexist -- local prerogatives on the one hand, to create community images, and the protection of certain limited interest groups on the other hand.

SENATOR STOCKMAN: My concern about this notion is that if you expand the idea of Transfer of Development Rights beyond municipal

boundaries, you run the risk of aggravating a problem that I see occurring -- it has certainly been commented on, and it has been quoted by the Kerner Commission and the Mount Laurel decision -- and that is two societies, separate but unequal: poor and mostly black, being concentrated, more and more, in certain urban areas, and others elsewhere. If you have the ability to build a more profitable, and more substantial, development in one municipality and satisfy your obligations by completing a low and moderate income housing project in another, most of the latter are going to wind up in the Newark, the Trentons, and the Camdens, and the former are going to wind up elsewhere, and you could really be aggravating what I consider a major social problem facing New Jersey.

MR. HOLMES: I understand your concern. I think that is certainly one of the specific challenges of the Planning Commission you are attempting to create. In designating areas of growth, non-growth, and limited-growth, they can certainly direct and control those kinds of problems.

The other point I would make to you is, I think there is a misassumption among most people that poor and urban in this State equals minority. I have done some extensive research on that point, and neither is the case. There are more poor, white, urban dwellers, than there are black, poor, urban dwellers. They are not synonymous. That is a misassumption, and when we talk about upgrading housing in cities, we immediately think of the Kerner report and the creation of separate societies. The fact is, the market in cities, and in poor communities generally, is still at least two or two and one-half to one white to black -- or white to black and Hispanic.

SENATOR STOCKMAN: Thank you. That is an interesting observation. I wasn't aware of that statistic. I am glad you mentioned that.

Senator Saxton?

SENATOR SAXTON: First let me comment on the Transfer of Development Rights question, Gerry. I don't think you can make the assumption that transfer of development rights provides for the problem you suggest it might, because transfer of development rights gives a community, a developer, or a builder the opportunity to create

high-density projects -- developments. That, coupled with what Mount Laurel has said, provides for a situation where, yes, you transfer development rights from one town to another, perhaps. But, once those rights are transferred, then does not the Mount Laurel decision take place, and a developer can go ahead and create the density that will permit low-cost housing? So, I don't think you can look at the transfer of development rights--

SENATOR STOCKMAN: (interrupting) Perhaps. We may be talking about two different concepts. I think that since we have so many other witnesses, we better not get into that now. But, we will be talking more about that subject in the future.

Thank you very much, Mr. Holmes. We appreciate your appearance.

I see the Public Advocate is present, and I think it is appropriate at this point to ask him to come forward and express himself. Joe, do you want to come up, please? Someone just suggested you should be on this proposed Commission.

**JOSEPH RODRIGUEZ:** On October 3, 1983, I appeared before the Senate Oversight Committee and testified on the urgent need to update the State Development Guide Plan. I am pleased that I am now able to appear before this Committee to discuss a bill which will do just that.

S-1464 creates a State Planning Commission within the Department of the Treasury that would develop a State Development and Redevelopment Plan to serve as a coordinated, comprehensive planning guide for New Jersey. I endorse the concept of S-1464, and urge that it be quickly enacted into law so that we can immediately undertake the planning task that is in the public interest of all New Jersey citizens.

We have learned through experience that the problems of New Jersey, the most densely populated State in the nation, are interrelated. If we build a major highway, we immediately create an incentive for industry to relocate to the areas served by that highway. The relocation of industry to a previously rural community creates an immediate need for housing for those persons who are employed at the new site. The introduction of new industry and new housing can threaten agriculture in the area, and may lead to

irresistable growth pressures in sensitive environmental areas. The construction of a highway, however, is not the only means of creating the growth pressure which I have described. Numerous other decisions, such as the placement of public water and public sewers in an area which did not previously have these public services, create the same pressures for growth and development.

In the past, too many of these critical and long-term decisions have been made on an ad hoc and piecemeal basis. For example, the transportation planners did not necessarily concern themselves with the employment and housing needs that a new highway would generate. Companies making decisions to relocate their businesses were not particularly concerned about the impact of their relocation on agricultural preservation in the area to which they moved. Developers and industry did not always demonstrate sufficient sensitivity to the conservation of important environmental resources. This piecemeal process often did not result in good decision-making, and frequently generated unnecessary conflicts among "interest groups," rather than coordinated planning for the good of the State.

It is evident from this past unsatisfactory experience that New Jersey needs a comprehensive planning system which can recognize that the issues of transportation, employment, housing, agriculture, preservation, and environmental protection are interrelated and must be addressed simultaneously. The State Planning Commission would undertake this crucial task. If the Commission successfully carries out this planning effort, New Jersey will be a more attractive place for our children and grandchildren.

The importance of statewide planning is widely recognized. The New Jersey Supreme Court, in the now famous decision of Mount Laurel, eloquently called for the type of planning envisioned by this bill. In the Mount Laurel II decision, the Supreme Court stated -- and I quote:

"The lessons of history are clear, even if rarely learned. One of those lessons is that unplanned growth has a price: Natural resources are destroyed, open spaces are despoiled, agricultural land is rendered forever unproductive, and people settle without regard to the enormous cost of the public facilities needed to support them.

"Cities decay; established infrastructures deteriorate for lack of funds; and taxpayers shudder under a financial burden of public expenditures resulting in part from uncontrolled migration to anywhere anyone wants to settle, roads leading to places they should never be -- a pattern of total neglect of sensible conservation of resources, funds, prior public investment, and just plain common sense.

"These costs in New Jersey, the most highly urbanized State in the nation, are staggering, and our knowledge of our limited ability to support them has become acute. More than money is involved, for natural and man-made physical resources are irreversibly damaged. Statewide comprehensive planning is no longer simply desirable, it is a necessity, recognized by both the Federal and State governments."

S-1464 seeks to ensure that the planning functions which everyone acknowledges are essential for rational development in New Jersey are carried out. Although virtually everyone is in favor of comprehensive planning, S-1464 has been criticized because it directs the State Planning Commission to update the growth designations in the State Development Guide Plan. These designations are relevant in determining how much of a fair share obligation for low income housing a particular municipality has. I would like to give you some background information to show why this is an essential task for the State Planning Commission, and one that the Commission can perform much more effectively than the courts.

In the Southern Burlington County N.A.A.C.P. V. Mount Laurel Township in 1975, the Supreme Court held that any developing municipality had an obligation to provide its fair share of lower or in the path of inevitable development. The court's recognition in Mount Laurel II of the severe consequences of unplanned growth, subsequently caused it to modify the developing-municipality standard. Under Mount Laurel II, the obligation to respond to regional need is imposed upon those municipalities in a growth area. Those municipalities which are entirely in agricultural, conservation, or limited growth areas have no regional fair share obligation even though they may be in the path of development; their only responsibility is to the indigenous low-income people presently living in their community. The courts will determine which municipalities have regional fair share

obligations, on the basis of the municipality's designation in the State Development Guide Plan.

The three Mount Laurel judges have been faithful to the Supreme Court's concern in Mount Laurel II for statewide planning. To date, there have been four cases that have been litigated by developers claiming that the drafters of the State Development Guide were in error in classifying particular municipalities outside growth areas. The cases involve Ringwood in Passaic County, Hampton Township in Hunterdon County, and Chester and Washington Townships in Morris County. In all, four cases, the Mount Laurel judges held that they will not substitute their judgment for the State Development Guide Plan. In one of the cases, the judge indicated that even though he personally believed that the township belonged in the State Development Guide Plan growth area, he was not willing to second-guess the framers of the State Development Guide Plan.

While deferring to the Plan's designations, the Supreme Court also recognized that the State Development Guide Plan must be periodically updated for the Plan to remain suitable for this purpose. The court stated that if the Plan is not updated by January, 1985, then the court, on a piecemeal basis, will determine what adjustments should be made to the State Development Guide Plan in order to keep it current.

There are a number of reasons why it is in the public interest to have the State Development Guide Plan updated by the State Planning Commission rather than leaving it to the courts.

First, this task is more of an administrative function than a judicial one, one which planners are more competent to handle than judges. The State Planning Commission will have greater access to maps, statistics and computers, which can help produce a more accurate update. In Mount Laurel II, the Supreme Court recognized that the courts are not equipped to make these decisions, but will do so only as a last resort.

Second, the State Planning Commission can have input from State agencies, county and municipal officials, developers, environmentalists, farmers, and the general public before making its decision.

In contrast, the courts must make decisions on a case-by-case basis, considering only the evidence presented by the parties in the particular case.

Third, it will be more cumbersome and expensive for all parties involved if changes to the State Development Guide Plan have to be hammered out on a case-by-case, piecemeal basis before the courts. If town "one" is sued, the court must determine, without the benefit of an update, whether there has been sufficient change to warrant a modification of the town's status as a growth or limited growth area. Once that challenge is resolved, the court will inevitably be faced with challenges involving the status of "town two," "town three," and "town four." The process is endless, and would be the antithesis of comprehensive planning.

Finally, it would be impossible to predict the court's decisions. Neither the developers nor the municipalities will know a municipality's status as a growth community, nor will they know the municipality's fair share obligation, if any. Such uncertainty invites litigation that may benefit the attorneys in the case, but is not the answer for the developers, the towns, or the people seeking housing. Also, such uncertainty and conflict even produces distrust in government which does not benefit anyone. For all of these reasons, it would be clearly preferable to have the State Planning Commission update the State Development Guide Plan than to leave this task to the courts.

In summary, I strongly endorse S-1464. It is obvious that a great deal of thought has gone into the bill. The State Planning Commission will be a representative body and the bill is structured in a manner which allows this body to receive maximum information from about the important goals of New Jersey, while allowing the Planning Commission maximum flexibility to achieve these goals. The bill recognizes the urgent need for lower-income housing. It also acknowledges that it is equally important that the housing be constructed in appropriate locations. Passage of this bill is as much in the interest of low-income households who are in need of housing as it is in the interest of all New Jersey citizens who want New Jersey to remain a State they can be proud of in the next century.

Having told the Committee why I support S-1464, I would now like to comment on S-1505. This bill is closely modeled on S-1464, but has one provision which is either unconstitutional, or which can only be construed in a way that is counter-productive to the public good. Section 14 of S-1505 states:

"The State Development and Redevelopment Plan shall be the sole and conclusive determinant of the locus of any judicial mandate respecting housing for low and moderate-income persons. Until the final adoption of the Plan, the imposition of any obligation pursuant to the State Development Guide Plan, or any other plan, guideline, or standard, shall be of no effect, and no municipality shall be required to take any action under any such imposition."

The purpose of this bill apparently is to declare an 18-month moratorium on the constitutional rights established in Mount Laurel II. Mount Laurel II involves fundamental constitutional rights, rather than rights established by statute. Legislation can no more declare a moratorium on the constitutional rights established by the Mount Laurel decision, than it could declare a moratorium on the right to vote or the right to exercise freedom of speech or religion.

It is possible, although not desirable, to rescind the State Development Guide Plan. The Mount Laurel II decision recognizes such a possibility. The Supreme Court states: "In the event that the State takes action rendering the use of the State Development Guide Plan inappropriate for Mount Laurel purposes, the trial court shall revert to the prior developing test to determine whether the Mount Laurel obligation applies."

Under such a circumstance, the court indicated that if a municipality is either "in the process of significant commercial, industrial, or residential growth, or is encouraging such growth, or is in the path of inevitable future commercial, industrial, or residential growth," then the municipality will have a full Mount Laurel regional fair-share obligation.

Frankly, I feel there is no possibility that the Supreme Court will find a moratorium on enforcement of Mount Laurel rights constitutional. It would not be in keeping with the strength of its opinion. The court will, however, accept the repeal of the State

Development Guide Plan. The judges will then revert to the developing municipality standard in the Mount Laurel litigation.

Therefore, it is crucial for the Legislature and the public to understand that if this happens, many municipalities now exempt from Mount Laurel regional obligations will be immediately subjected to them. For example, one of the six consolidated cases decided as part of Mount Laurel II involved Chester Township in Morris County. The Supreme Court held that Chester was entirely in a limited growth area in the State Development Guide Plan and, accordingly, had no regional fair share obligation.

At the same time, however, the court noted that if the State Development Guide Plan were rescinded, Chester would be a developing municipality, with a full fair-share obligation

The ironic result of S-1505's passage would be that municipalities, such as Chester, which the drafters of the original State Development Guide Plan determined were not appropriate locations for lower income housing, would then be immediately required to zone to accommodate this housing. I cannot believe that the Legislature wants to produce such an anomalous result, one that is completely inconsistent with the goals of comprehensive planning and the sound implementation of the Constitutional decree in Mount Laurel II.

For these reasons, I urge that S-1456 be quickly enacted so that the State Planning Commission can be immediately constituted and begin the crucial task of updating the State Development and Redevelopment Plan. On the other hand, I submit that S-1505 should not be released, since it will not further, and indeed could impair, sound planning in New Jersey. Thank you.

SENATOR STOCKMAN: Thank you. Senator Saxton, do you have any questions?

SENATOR SAXTON: No.

SENATOR STOCKMAN: I share your view about S-1505, and I think you have put it well in your statement. I appreciate your expression of support for this bill.

Commissioner, what about the question of the Public Advocate being a designated a member of this Commission? Have you given that any thought, or would you care to comment on it, one way or the other, at this time?

MR. RODRIGUEZ: Yes, I have. I don't think it crucial that the Public Advocate, as a specific entity, should have a specific place on the Commission itself. I think a sufficient presence of the Public Advocate is permitted and is acceptable, as far as I am concerned. Because, in the final analysis, the interest that we represent and the importance of the fulfilment of the Mount Laurel opinion remains as our responsibility, and that can certainly be done within the framework of this bill. I would not want to see any impediment to the bill because of the lack of our specific presence in the bill.

SENATOR STOCKMAN: I thought you were going to say because of your unpopularity from time to time with certain people in the Legislature.

MR. RODRIGUEZ: If it means that the bill wouldn't pass, I would rather have the presence we now have within the bill.

SENATOR STOCKMAN: Incidentally, one of the questions in my mind concerning your service is whether you might get into a conflict kind of position. For instance, you played a major role in the Mount Laurel decision, as a litigator. If you were a member of a Planning Commission that developed a plan which, it could be argued, was inconsistent with the Constitution, and you became involved in litigation on the other side of the question, that could present some problems. It may be a little far fetched; but, at any rate, I think you have expressed your view on that, and I appreciate your sharing that information with us.

Unless Senator Saxton has any further question, I thank you for appearing today.

MR. RODRIGUEZ: Thank you very much.

SENATOR STOCKMAN: John Huntoon. John, you can introduce yourself.

**JOHN HUNTOON:** Mr. Chairman, my name is John Huntoon. I reside at 65 Jefferson Road, in Princeton, New Jersey. I am appearing as a citizen of Princeton Borough, although I am a member of the Borough Council. I bring you greetings from our Mayor, Barbara Sigmond, who is sympathetic to the passage of S-1464.

To begin with, I want to indicate that I am personally in favor of S-1464 -- and not just the concept. However, I would like to

suggest one or two modifications, which I will go into in just a minute.

We hoped to introduce a Resolution in Council, and secure its passage in support of S-1464. I am personally disappointed to see that other municipalities have passed Resolutions, and people have suggested, that the bill include a moratorium on the Mount Laurel II obligations. I don't think that is proper, in terms of the spirit of the bill, nor do I think it is legal, in terms of the Legislature superseding the court's definition of constitutional rights and obligations.

I would also like to indicate, Senator, that we in Princeton Borough very much appreciate the work you have been doing, not only in holding this hearing but at previous hearings, on the Mount Laurel decision, and in taking the lead in establishing the need for legislative action in order to meet the obvious needs of low and moderate-income individuals and families for affordable housing. You are our Senator, and we are very proud of you.

I also want to indicate that my comments are directed mostly towards housing, but recognizing that the housing issue is a very difficult one to solve in and of itself. One of the great virtues of this bill is that it establishes housing needs in the context of other general kinds of needs, vis-a-vis transportation, general land use considerations, and so forth.

Given the present absence of State guidelines in planning, it is essential that we now establish a State Office of Planning. As Gene Schneider pointed out earlier today, such an office would be a logical culmination of previous State planning efforts. The problem of planning affordable housing is statewide in nature. Its solution requires a statewide response.

I want to comment briefly, for your own edification, with exerted in Princeton, both in the Township and the Borough, in order to meet the needs of low and moderate-income housing. The need can be established statistically, by indicating that 40 percent of the families in Princeton Borough are low and moderate-income by HUD definition. The notion of Princeton being the golden ghetto is quickly dissipated when one looks at the statistical and demographic background of Princeton Borough.

Currently, there are 217 people on our waiting list for public housing. And, last but not least -- and these are just a few indicators -- 40 percent of our volunteer firemen have to live out of town because there is no affordable housing in town for them. One of them is our Fire Chief who was born in Princeton Borough, and who is now forced to live out of town because of the lack of affordable housing.

We have taken two significant steps in trying to provide for affordable housing: One, the Regional Planning Board established the Housing Subcommittee and hired a consultant who recently produced a report which was paid for by the township, for affordable housing.

Second, the Borough, Mayor, and Council established an Affordable Housing Committee, which is cochaired by me and my colleague, Peter Berkes. That Committee, on May 3, will be presenting a series of public policy objectives, with regard to affordable housing, to the Mayor and Council, for their consideration.

In the context of those two efforts, law suits have been brought against the Township by developers, and current appeals are before the Princeton Borough Council due to the Planning Board's decision regarding the Commons development in our central business district.

In all of this, there were no clear guidelines or solutions from the State as to how one should proceed, on the local level, to establish affordable housing.

Mount Laurel II and related cases are still in litigation. For us, as local citizens attempting to establish a planning effort, there was no place to start, in terms of real planning needs which are statewide and regional in nature. We had nowhere to hang our hats. We had no guidance, in terms of regional, established planning goals.

Given the absence of a definition of general need, local entities -- that is, municipalities -- are left to fend for themselves. Developers are pitted against taxpayers; renters are pitted against landlords; conservationists are pitted against builders; and neighbors are pitted against neighbors, which is the worst possible environment for rational, constructive debate. The lack of opportunity to develop a community consensus is maximized when debate on the real issue, which is regional in nature, can't take place.

We are doing our best to produce a result that will benefit the entire Princeton community, and will also serve the real needs of those who are in need of affordable housing. It is rough going, but we are making an effort.

So, I believe that the establishment of a State Office of Planning, which would strongly interact with county and municipal governments and produce a general consensus on the total need, is a much-needed mechanism which would, in fact, reduce local frustration, local antagonisms, and local controversies. I think those are maximized in the absence of this kind of an effort.

Finally, I would like to address the question of compliance, of making the decisions of the Office of State Planning binding on lower entities. Personally, I am in favor of some kind of compliance provision, providing that the dialogue between State and municipalities is active, innovative, and constructive. Any compliance mechanism must rest on consensus. The Pinelands Commission is a good example of how compliance measures can work productively to bring about a general public benefit.

I would also like to comment on Section 5, paragraph (g) of the bill itself, which talks about coordinating planning activities in established statewide planning. It lists several substantive areas. I would like to suggest that you include sewage treatment in that language. I am not suggesting some sort of a master sewerage plan, or master sewerage authority be established in the State. However, I am suggesting that there is a need for some sort of statewide funding for sewerage treatment plants, particularly in municipalities with older sewerage pipes, where the infrastructure has gone unattended for years, due to the incapacity to adequately fund the repair and renovation on an ongoing basis at the local level.

We have a huge regional sewage authority, of which we are one member, and we are in deep trouble, in terms of funding and providing for the ongoing maintenance of the infrastructure of the sewage treatment, because of the municipalities that join in and comprise the authority. I would suggest that you include that, in terms of the fiscal impact and need for coordination, particularly since this office would be located in the Department of the Treasury.

I thank you, Mr. Chairman, for the opportunity to appear before the Committee, and I wish you well.

SENATOR STOCKMAN: Thank you very much, John. Thank you for your kind remarks also; I appreciate that.

Our next witness will be David Moore of the New Jersey Conservation Foundation.

MEMBER OF AUDIENCE: Senator, David Moore had to leave, and I am taking his place.

SENATOR STOCKMAN: Would you state your name for the record, please?

**DONALD B. JONES:** My name is Donald B. Jones, and I am the former President and present Trustee of the New Jersey Conservation Foundation, a private, nonprofit statewide membership organization concerned with open space acquisition and environmental quality throughout the State.

The New Jersey Conservation Foundation strongly supports S-1464. We do so because we feel that New Jersey is paying dearly for a lack of coordinated planning. At the State level, interdepartmental communication has traditionally been poor. Time after time we have observed the Department of Transportation planning highways through areas determined by other agencies to be critical. The result has either been long, expensive delays, or no highways at all.

At the local level, communication among towns has been inadequate. Intermunicipal and intercounty rivalry for tax ratables has resulted in a pattern of sprawl that costs all the State's taxpayers millions. This is apparent and obvious due to the fact that the State's population remains static, while building booms continue in places like Hunterdon and Ocean counties. Such growth occurs at the expense of older cities and suburbs, where the infrastructure must be maintained by fewer people, who are less and less able to pay.

Control over where the State puts its infrastructure dollars in a coordinated fashion is badly needed.

S-1464 provides for the needed coordinated planning by creating an agency housed in the right place -- in the Treasury, where the money is -- and providing for intergovernmental cooperation. That is also essential, for while the State controls infrastructure

purse strings, it is the local level where decisions are made and enforcement of land-use control regulations takes place. It has to be that way, for it is clear that the State bureaucracy can't know what is happening street-by-street, and block-by-block.

Just as it is impossible for the State administration to control neighborhood problems, it is even less likely that the Supreme Court can do so.

It is time New Jersey meets the Mount Laurel mandate, and provides administrative responses to what now amounts to judicial control over land-use decisions.

I would like to add as an individual, as a member of a Municipal Planning Board, and as Chairman of a County Planning Board, that these agencies would welcome some guidance from "up top."

SENATOR STOCKMAN: Thank you very much, Don. I appreciate your coming and testifying before the Committee.

Our next witness will be Kathy Rae from the Regional Plan Association.

**KATHLEEN RAE:** I am Kathleen Rae, Director of the New Jersey Committee of the Regional Plan Association. I am here today on behalf of New Jersey Committee Chairman, Robert V. Van Fossan, and the members of the Committee, to express our support for S-1464, an Act to establish a State Planning Commission.

Regional Plan -- which is the oldest private, nonprofit planning organization in the country -- has long advocated the importance of State and regional planning to guide development and public investment in such critical areas as land use, transportation, housing, economic growth, and environmental protection.

Last fall, my Associate, Dr. James L. Wunsch, had the opportunity to testify before the Senate Legislative Oversight Committee on the need for State and Regional Planning Legislation in New Jersey. At that time, he expressed Regional Plan's willingness, through its New Jersey Committee, to assist in the drafting of new legislation. Today, on behalf of the New Jersey Committee, I want to say that we were pleased to have the opportunity to contribute, together with representatives from a number of other organizations, in the formulation of this bill.

My testimony today will focus specifically on this legislation, as opposed to my associate's earlier testimony, on the need for regional planning. I would refer you to back to that earlier testimony. If you do not have a copy of it, we would be happy to furnish you with a copy.

This legislation is particularly timely in several ways. First and most immediate, it provides a legislative response to the Mount Laurel II decision. By authorizing the preparation of a new State Development and Redevelopment Plan, S-1464 responds to the New Jersey Supreme Court's decision that an updated State land-use plan should be the guide for deciding where New Jersey's low and moderate income housing needs should be met. Second, and more far-reaching, S-1464 creates a new cooperative process that places sound, coordinated planning squarely in the mainstream of decision-making at all levels of government in our State.

The mainstream, by the way, is a very strong current indeed. Across the country, new planning partnerships are being created between states and their local governments to manage growth and encourage new development, to renew old urban areas, and to conserve and protect natural resources. In states as diverse as Oregon, Massachusetts, Florida, and Vermont, legislation to improve statewide land-use planning has been an intrinsic part of efforts to make state and local conservation, development, renewal, and public investment policies more effective. Moreover, the shift in national policy away from growing Federal intervention has clearly accelerated the trend toward new initiatives at the State level.

Turning to the specifics of this particular legislation, S-1464 contains most of the ingredients for a successful State planning process, and I would like to quickly run through six of those.

1. It creates a new, independent State Planning Commission, which is broadly representative, drawing its members from local government, the Legislature, and various interests of the public at large, as well as from the Executive branch. And, while one might wish that for the sake of expediency, if the size of the Commission were somewhat smaller than 21 members, as proposed, the very breadth of the Commission's membership assures that a wide range of opinion will be represented.

2. Gubernatorial participation and attention to the Commission's activities is provided for by direct representation of the Governor's Office on the Commission, as well as gubernatorial appointment of most of the Commission's members.

3. Legislative interest and involvement is also provided for with four bipartisan legislative members on the Commission, two appointed by the Assembly Speaker, and two by the Senate President.

4. By placing the Commission and its staff -- the new Office of Planning -- within the Department of the Treasury, State land-use planning will be closely aligned with such complementary activities as those of the Office of Management and Budget and the Capital Planning and Budgeting Commission. Indeed, this legislation requires that the State Development and Redevelopment Plan include a long-term Capital Improvement Needs Assessment. It also provides for Commission comment on pending capital appropriations, further solidifying the essential integration that needs to exist between land use and capital planning.

5. The legislation encourages extensive public participation in statewide planning in its provisions for public hearings, public comment, and local information meetings.

6. The legislation encourages a process of intergovernmental participation in the drafting of the State Development and Redevelopment Plan that is both bottoms up and top down. Recognizing how important it is to achieve consistency among and between local decisions, regional objectives, and statewide policies, S-1464 creates a cross-acceptance process that encourages counties to serve as the middle ground between broad State goals and objectives and their application in local master plans. This innovation and its evolution over the next decade, in stimulating more effective regional planning at the county level, may well prove to be one of the major achievements of S-1464.

Creating a successful planning process in New Jersey ultimately depends as much on political leadership, however, as on legislation. I believe, on behalf of the Committee, that S-1464 provides the basis on which to build sound, consistent, and balanced development, redevelopment, and conservation policies in New Jersey. In the one area of funding, however, the bill is deficient. Without an

adequate appropriation, the Commission cannot do its work. And, without additional funding next year to help finance county planning involvement, the cross-acceptance process will not succeed. So, I would urge the Legislature to remedy this oversight as an expression of first political will on this bill, by providing a sufficient appropriation for the Commission to carry out its work.

I thank you for this opportunity to testify today. S-1464 is a good bill. It deserves the support of this Committee, and early consideration by the full Senate and Assembly.

SENATOR STOCKMAN: Thank you very much, Ms. Ray. Incidentally, do you have any feeling about the question of compliance by state departments, and whether there ought to be a strengthening of the bill in that area?

MS. RAY: I think it can be read implicitly within the legislation that the Commission will serve a focal point role amongst the various line departments within State government. I think that is implicit in the legislation. However, I think it may be useful to make that more explicit, and spell it out by adding whatever language is appropriate.

The Commission membership, as such, with large representation within the Executive Branch, suggests that the process -- the way the Commission is going to function -- is going to lead to consistency in State level planning, hopefully. To put that into the bill in an explicit way, as an expression of legislative intent, I think would be very helpful.

SENATOR STOCKMAN: I am concerned about the Governor's commitment to this legislation. In a way, I think you have addressed it to some degree in the funding question -- that is, you suggested we should more specifically show our political support for this notion by supplying it with an adequate appropriation. How do you feel about the question of whether the Administration, even if this bill is signed, will support the legislation? -- or, what the mischief is if they were not to sign it.

MS. RAE: The mischief of this Administration not giving the bill active support, even if it is signed? Is that what you are saying?

SENATOR STOCKMAN: How can the sponsors of the bill deal with that?

MS. RAE: Well, let me respond to the first part of that. I think what we have seen in the experience of other states suggests, very strongly, that Executive leadership in a statewide planning process is critical to its success. It really has to be in the mainstream of the political process, at the State level, the county level, and the local level. So, I would say it is going to be essential, for this State Planning Commission to function well, that there be an Executive commitment to its activities. How one does that-- I certainly can't speak for the Governor at this point, or say how strongly he feels about this legislation. I can tell you that my organization will certainly do everything we can to encourage him to be supportive and to give it the importance it deserves.

SENATOR STOCKMAN: Thank you very much. Our next witness will be Harry Sayen, Mercer-Somerset-Middlesex Regional Study Council, Inc. I put my county first. I'm sorry. It is Middlesex, isn't it?

**HARRY SAYEN:** Yes.

SENATOR STOCKMAN: Welcome. I am sorry you have had to wait so long.

MR. SAYEN: That's all right, I am used to waiting.

I appreciate the chance to appear before you, Senator Stockman, and I also want to commend you for taking leadership in what I think is the prime issue in this State.

My name is Sayen -- S-A-Y-E-N -- Harry Sayen. I am President of MSM, which is an independent, nonpartisan civil planning and research organization. We have over 100 corporate members, as well as numerous individuals, institutions, and local government members who are concerned about the future of Central New Jersey.

Our members share a conviction that we can do better in the future than we have in the past in the realm of land use, and that we can avoid the sprawl, congestion, and even blight that has overcome many older suburban parts of our State.

To accomplish this, we must improve our system of land use administration, concentrating on substantive concerns: Are we providing housing within a reasonable distance of jobs? Are we

managing our transportation resource effectively? Are we protecting our water resources and prime farmland?

There are also questions bearing on the governmental process: Can we harmonize the policies and programs of State agencies so that they promote development in well-situated locations, with restricting development where it should not be? Can we reduce red tape so that local, county, and State agencies work more productively on agreed-upon objectives?

These are the longstanding concerns of many nongovernmental groups in the State, groups with interests ranging from housing, to transportation service, to environmental conservation, and to economic development.

In Mount Laurel II, the New Jersey Supreme Court sharply crystallized a public issue of longstanding and widespread public concern. In speaking of the costs of unplanned growth, the Court stated:

"These costs in New Jersey, the most urbanized State in the nation, are staggering, and our knowledge of our limited ability to support them has become acute. More than money is involved, for natural and man-made resources are irreversibly damaged. Statewide comprehensive planning is no longer simply desirable; it is a necessity..."

The bill before you goes a long way toward meeting these longstanding public concerns. It is the product of many hours and weeks of discussion among representatives of government and civic interests. In the end, they agreed on the legislation before you. And, as you know, MSM took a very large part in those discussions.

Local government officials in our rapidly-growing central New Jersey region want this legislation desperately for two reasons: First, they would like the opportunity to respond fairly and responsibly to Mount Laurel II, without having their community plans dictated by foot-loose developers and an unchartered judiciary.

Second, and of greater significance, local government officials understand the absolute need for county and State assistance in community development, and for stronger ties to county and State government in order to achieve their own community development objectives.

S-1464 is not perfect, and we would like to see improvements in the following areas:

1. The Commission is too large. We would prefer a Commission without legislators, for planning is inherently an administrative function and responsibility for it resides properly in the Executive Branch.

2. The provisions for coordinating the plans and programs of State agencies remain vague and we doubt they will be effective without specific language. As a means of enforcing consistency among agency plans, a provision should be made for the Governor to approve or veto the State Plan.

3. The all-important county role in plan development remains optional. A strong county role should be required, for the State cannot practically deal with 567 municipalities as well as uncounted civic interests, in the preparation of any plan.

4. The legislation should accord a presumption of validity to municipal plans that are consistent with adopted county and State plans. We believe that legislative validation of the principle implicit in Mount Laurel II is essential in order to protect communities from unwarranted litigation.

While improvements can and should be made in this legislation, you and your Committee must decide what revisions are feasible, given the urgency for approval. Should the opportunity present itself, we would be pleased to work with you and your staff to amend it expeditiously.

We would like to commend you, Senator Stockman, for your leadership in developing a legislative response to Mount Laurel II. We also commend the Administration for its receptivity to this initiative. We urge your Committee to release this bill as expeditiously as possible and to work hard to secure its passage.

The proposed State Planning Act addresses widespread public concerns that are among the most important facing New Jersey today. Far from undermining "Home Rule", it provides for a consensual procedure by which communities can regain control of their own destinies, while accommodating regional needs. If our State is to fulfill the expectations of its citizens and its leadership, we must

have a State Planning Act and we commend you for your leadership in providing it.

I'd like to add a couple of comments that are not in my prepared statement. One is, I think we have to stand the "Home Rule" boogeyman on its head, because I think the time has come that, through a State Development Guide Plan, municipalities will find succor within it. They will find comfort in a State Guide Plan. Because the way it is now, developers can go around and pick off communities, one by one, and this is what is happening. With a State Guide Plan, I suggest that municipalities can have much better control over their own affairs by working with their counties, and, in turn, counties can work together on a statewide basis.

Secondly, I completed a series of about 36 interviews for one of the papers I write for in Central Jersey, and I drew three conclusions over a period of about seven months: First, was the dedication and expertness of the local officials, planning departments, etc.; second, was an understanding of the import and the necessity of complying with Mount Laurel II; and, the third conclusion was rather amazing, in that a great majority -- not all, obviously -- of the people, Republican and Democrat alike, both elected and appointed officials, are ready for regionalization -- they are ready for regionalism in planning. They see the problems they have as they experience "village creep" down county roads: Towns turn into suburbia, and suburbia turns into the Lord knows what when you see Route #1.

We are observing planning out of control. These local municipalities realize they have lost control, and they are looking for help. I don't care whether you talk to the Mayor of Princeton Borough, a Democrat, or the Mayor of Hopewell Township, a Republican, or the new Mayor of Lawrence Township, they are looking for help from the counties, and then, in turn, from the State.

I think the time has come. I don't think legislators who, in the past, have always hidden behind the skirts of local officials, can say: "Look, the local officials don't want to break through the hard shell of home rule." I think the time has come when legislators are going to find -- and I can only speak for Central Jersey --

that there are a great many elected people who want to see some sort of Plan. The time has come -- the child has been killed where there was no red light. I think that is important. Thank you.

SENATOR STOCKMAN: Thank you very much. Our next witness will be Lisa Digiulio.

**LISA DIGIULIO:** May I say before I start that a lot of the strong points made in my written testimony are not directed to anyone personally; they are directed to the Legislature as a whole.

Senators, ladies and gentlemen: My name is Lisa Digiulio, and I am an irate concerned citizen from Mahwah, New Jersey. I thank you for allowing me to speak at this hearing, and I will try to be brief and to the point.

I certainly appreciate the Legislature finally recognizing the confusion that has beset this State, introducing legislation, S-1464, to establish an Office of State Planning, even though for my town of Mahwah, the cow is out of the barn, so to speak, and you are now trying to lock the door.

As I see it, the developers got a piece of the pie, the Urban League got theirs, and now the State wants its share. How dare any judicial or State office tell me how to live, or force me to pay for anybody's first house? Why didn't the judge order you to legislate what the difference is between Judge Wilentz and a vigilante creating his own law, and then putting a gun to the heads of the municipalities to enforce that law?

The Mount Laurel II decision by the New Jersey Supreme Court was based upon outdated maps, and has resulted in mandating unrealistic low-cost housing quotas. The decision has also created confusion among governing bodies, planners, developers, and all involved in the zoning and housing process, and it has also created heartbreak for the elderly and the Founding Fathers of our towns.

You have allowed the courts to overextend their inherent powers and become a court of Chancery and of Equity, and overstep its ground. How will they enforce or control this mandate? Is Judge Wilentz a tyrant? Are we now being solely ruled by appointed people who will order us, as in Russia, to submit to their orders, totally bankrupting towns and making New Jersey one big welfare state? How

dare you do this to me, a hard-working mother of five children who pays taxes and works two jobs to own a home? The court is usurping its powers, and you are letting it.

The Governor said he sees the eventual establishment of housing quotas by the courts as an intrusion on home rule. Its a socialistic, communistic approach when you have somebody's big brother saying this is what you have to do. This is not how the country grew and prospered. Nobody wants every municipality looking exactly like the one next to it: the same open space and the same big and small houses. We don't want to look like we were taken out of the same mold.

The Mount Laurel II decision says the definition of low and moderate-income households should allow for "generally accepted judicial, State, or Federal agency standards," since it is likely that the judiciary will continue to have a role in designating income standards for Mount Laurel II households. If a builder's remedies cannot be profitable, the incentive for builders to enforce Mount Laurel is lost. Just wonderful!

They have been granted less buffer zones, which means a large \$250 thousand house will have a 35-foot buffer, and then 14 units to an acre density right next door. Very fair, isn't it?

They will have the right to set the controls for resale and re-rental. Well, that ought to be a mess! We can all quit our jobs and get a house. Two exact houses next door to each other, one at \$60 thousand or \$70 thousand, and the other at \$19,500, one paying \$3,000 in taxes and the other \$600 -- or will you let the builders section them off and build in clusters, totally defeating the purpose of housing integration? If you let them cluster, they will make money, won't they? Who will control the assessments? The courts? The State? Who will pay the difference? Who? I'll tell you who, me. For the extra services, schools, ambulances, sewers, water, fire department, garbage -- who? Me? No way. Let the judge, the tyrant, pay for it; or, better still, let the State pay. There is no implementation of this mandate.

Look, I agree there is a need for affordable housing all over the country, but there is also a need for more jobs so people can work to get those houses. Make more mortgage money available, and more Federal and State aid available.

You have now finally decided to do something: S-1464, to establish an Office of State Planning, to develop a State Development and Redevelopment Plan, to serve as a coordinated and comprehensive guide for policies dealing with economic development, urban revitalization, natural resources, conservation, land-use planning, transportation improvements, and capital expenditures -- all this to discourage the State Supreme Court from further involvement.

Please give us a moratorium so your bill can do its job. This push for a Commission unites those like Senator Stockman, who supports the sweeping 1983 Mount Laurel II ruling, and those like Governor Kean, who opposes it. The common thread is the desire of both sides to see the Supreme Court out of the picture. Many supporters of the Mount Laurel II ruling wanted the Governor to issue an order implementing the court's wishes, but Governor Kean and other Republicans contend that planning policies should not be dictated by the State.

Senator Stockman says that he doubts the Commission can create a Plan by the court deadline, but he thought the court might allow more time if progress were being made. Well, Senator Stockman, if you are sincere and your bill is really to help, then our concerned citizens groups, mayors, and municipal governments believe in a moratorium to prevent further use of the Plan by the courts, until the proposed Office of State Planning has had an opportunity to develop up-to-date maps and guidelines. If this is not granted, or if this is illegal, then a stay of implementation, or a stay of execution, should be attached to your bill. If this is not granted, then by the time your bill becomes productive, the courts will have already zoned and planned the towns, and building will have begun. Unplanned growth is destructive. What good are you then? Then you will have created just another level of bureaucracy.

Even condemned criminals get a stay of execution, and I feel the Mount Laurel II decision is totally killing, destroying, and executing my town, and many other towns in the State of New Jersey.

If you are sincere in discouraging development where it may impair or destroy natural resources or environmental qualities that are vital to the health and wellbeing of the present and future citizens of

this State, you will attach such a stay, or moratorium to your bill, and as responsible legislators you will review Senate Concurrent Resolution #24, and not let it die in Committee. This would be a great disservice to the people.

I want to know who will pay for everything? Who will be in control? And, when things go wrong, who will pick up the pieces and pay for it all?

Everytime the government gets involved, we, the public, wait forever. Example: Center barriers along Route #17. Several people had to die horrible deaths before this State acted. Now emergency barriers are being put in. Well now, you are killing whole towns, and you have given your powers to the courts. How will you get these powers back?

You have not been responsible to the very people who elected you. Please stop playing Democrat or Republican. I stand before you, an American citizen of the United States, and a citizen of the State of New Jersey, and I ask you to get up off your political butts and start legislating for the people. You have shirked your duties and let us down. You have a much wiser group of voters out there who are now more aware of the issues, and you better act for all the people. If this is the best you can do, I strongly suggest you adjourn permanently, and let the Judicial Branch use their powers to make us a totalitarian State. Take away competitive incentive, give everything away, and you have nothing. Beware of a New Jersey welfare state. Take action, or the people will vote you out. Stand up and legislate for a government of the people, by the people, and for the people, not the judges. You are sowing the seeds of tyranny.

Before I close, I would like to say I really respect you for doing something. I only hope and plead with you that you will somehow get us a moratorium, or a stay of implementation, so that my town can benefit from your bill. Thank you.

SENATOR STOCKMAN: Thank you, Ms. Digiulio. I appreciate your appearing. We have talked about this before, and I understand your position.

MS. DIGIULIO: Thank you.

SENATOR STOCKMAN: We have with us three representatives of the Save our Rights Equally organization. I would suggest that perhaps all three of you come up and take seats. If each of you want to speak, or if only one wants to speak, fine. We have Richard Ryan, Les King, and Nancy Amalfitano.

**RICHARD RYAN:** I can shortcut the whole thing. I am a representative of the organization, and with me is Samantha Moore, who is not on your list. She is taking the place of Les King. We are still having a flooding condition in Bergen County.

SENATOR STOCKMAN: Have a seat. And, your name again is--?

**SAMANTHA MOORE:** Samantha Moore.

SENATOR STOCKMAN: All right, Mr. Ryan.

MR. RYAN: I want to thank you for giving us this opportunity to express ourselves. We are trying to clarify our position as taxpayers and voters. Everytime a citizens group speaks up, for some reason we are automatically dubbed as being against the poor, or against low-income housing. I can't speak for everyone, but in our case, we are not concerned about that. We are concerned with the problems that are going to arise from Mount Laurel, in the sense that it was not a thought-out planning process; it didn't take years, from a planning point of view, or from a financing point of view, to establish the right criteria in order to straighten out the 300-year-old problem we have with housing in this country -- discrimination, and what have you.

This is now running rampant like a stampeding herd of cattle, and unless someone slows it down and takes a good, hard look at it, and then puts some checks on it, it could be a major disaster. We have tried to straighten out the problems in our cities with many State and Federal funds -- Jersey City, Hoboken, Newark, Camden. I was born and raised in Hoboken. I won't name them all; you are well aware of them. Many of these programs have just been failures, and that was with foresight and planning.

Now, no matter how well Judge Wilentz feels about it -- and I know he certainly feels he is doing the right thing -- we just can't allow this stampede to go on. The cost to the taxpayers -- the homeowners -- in the State of New Jersey is going to be horrendous.

I would like to read to you what we refer to as our position paper -- it is really not. We would like to offer to you, or anybody, including the Governor's office, who would like to listen to us, a rational explanation of our concerns. We are the first to admit that there is a housing problem in the State of New Jersey. There is also a problem right now with the financial aspect. The tax rate in the State of New Jersey, like many other states in the country, is staggering, and it just can't continue.

From what we can find out about the Mount Laurel II decision, with its concept of density building to offset the cost of the low-income housing, it is going to be disastrous. I would like to invite this Committee to come to Mahwah and view some of the sites that are being considered for Mount Laurel II, the sites that the builders have come in and proposed. The problem is that most of the land was not suitable, from an economical standpoint, for standard types of construction, or what we would call market-value homes. And, now what we are faced with is, we have land -- and I will give you a good illustration -- that is having environmental problems; it is in a flood plain area; it has terrain problems with the topography; it has traffic problems. This particular land was turned down by our Planning Board approximately one to one and one-half years ago, for 46 homes. We now have a proposal for those same 26 acres -- the same piece of land, with no modifications -- for 600 homes.

Now, if it was not suitable for 46 homes at what we call market value, because of traffic problems, flood plains, and environmental problems, how can it now be, all of a sudden, from a planning perspective, good for 600 homes?

We have two others like that, where the incline is over 13 percent grade. It is a disaster. The builders have taken this as an opportunity to land-rape the municipalities. They are going in behind a well-meaning decision, and they are taking advantage of every taxpayer.

I wrote an article about the piece of property that I mentioned to you in the Suburban News, and we projected the gross increase in that piece of land, from the 46 homes, assuming that the 46 homes would have sold for \$136 thousand each. By taking into account

the 20 percent requirement for Mount Laurel, plus the rest at the market value of 130 percent, the builder stands to make an additional \$59 million. Now, this is speculation, I admit. I have no figures for the net. There is just no way I could obtain them, or I would have been glad to use them. Fifty-nine million dollars -- and the same builder, Mr. Napolitano -- the construction site is known as Beaver Creek -- has gone to our Planning Board and said: "Gentlemen, it will be necessary for the taxpayers of Mahwah to pay for the sewers without Federal assistance, for the water, for the curbs, for the sidewalks, and on top of that, we want you to pay on the low-income portion for the garbage collection and the snow removal."

Gentlemen, I don't believe that Judge Wilentz meant for this to happen. I just cannot comprehend it. Our taxes are going to go way out of proportion. We have a senior citizen in Mahwah who is 74 years old, and, Senator Stockman, I invite you to talk to her; I will make her available to you; I will even drive her down here for you. She has lived in Mahwah for 50 years. She has a modest Cape Cod home with five rooms. She is a widow. Her son is deceased. She has no living relative, except a sister. She still has a mortgage on that home, and with an income of \$9 thousand she is trying to exist.

Judge Wilentz had nothing to do with this, nor did the Senate or anyone else, but the Ford plant closed down in Mahwah, and Apex closed down. Because of this, our tax increase is 70 cents per 100 this year. She will be able to withstand that. But, with the school teachers, and the new police department, and the fire equipment, and everything else that we are going to need, Mount Laurel is going to force her out of her home.

One of the cries of the Supreme Court is "economic discrimination." Sir, where are her rights? She is not only being discriminated against; she is having her properties taken away from her for the welfare of somebody else. We find this appalling, because Mary Carey is not one senior citizen in Mahwah, or in Bergen County, or in the State of New Jersey; I am sure if we look, we can find hundreds and maybe thousands in that similar situation.

Now, it has been suggested that they will qualify for low-income housing. The problem, as I see it, is twofold. The first

thing is, Mary doesn't want to leave her home. Her husband died there. Her son died there. It is her home. She wants to stay there until she dies. I think that is her right. I think it is a very human right.

On top of that, we are looking at a situation where if she moves to a low-income house, we are still going to have a moderate, or what we are calling "market-priced" house there. What have we accomplished? We have accomplished nothing.

SENATOR STOCKMAN: Mr. Ryan, let me say this to you: I appreciate some of the problems -- the peculiar problems of Mahwah and the peculiar problems of Mary Cary. I also appreciate that there may be many other people in that same condition, and, I appreciate the depth of your feeling. You came down here to Trenton today to share these thoughts with me and with the Committee.

My problem is one of time, and also the fact that we are looking at a specific bill today. One of the things I do want to know from you is, do you feel this State Planning Commission is a move in the right direction or in the wrong direction? We are not talking about what you support -- and I guess you support a constitutional amendment.

MR. RYAN: I was getting to that.

SENATOR STOCKMAN: In terms of the time constraints we have, I would like you to tell me what your position is on this bill, or what you propose. Maybe that is what you are leading to, a constitutional amendment.

MR. RYAN: I was, sir. We have not had a chance to review 1464. We tried to get a copy from Senator Hagedorn's office, and we were not able to get a copy, so I am not completely familiar with the bill. But, if I understand it correctly, and it refers to establishing a Guide Plan Commission, I am for that. What I am requesting is to put a moratorium on it. I know there is a question as to whether a moratorium would be legal -- I shouldn't say legal; I should say as to whether the Supreme Court would allow it, and not overturn it.

We would like to see a moratorium placed on the bill. Your bill for the Guide Plan, as I understand it, is fine. We feel the moratorium is necessary, so that we are not just going to plunge the

State of New Jersey into a possible planning disaster which is going to come back and haunt us later.

SENATOR STOCKMAN: Okay. That has been talked about. I appreciate the position of your organization.

I'm sorry, would you like to add something on behalf of the Save our Rights Equally group?

MS. MOORE: Yes, I would, as an individual. Briefly, I would like to mention that the case involving Mary Carey is not unique. In about a one-block radius of my home, out of about 18 homes, approximately 12 are owned by senior citizens on fixed incomes. There is a very large senior citizen population in Mahwah.

We personally, my husband and I, have two mortgages on our home, and if taxes go up much higher, we are not going to be able to stay where we are. We will probably lose everything we have. And, anyone who has bought a home in Mahwah in the past three or four years either has two mortgages, or the mortgage they now have is at such a high rate, they are just making it. So, this could cause quite a few problems for many people in the town.

I wanted to quote something from the Mount Laurel decision, written by Judge Wilentz. It is in the footnotes. It says: "Of at least equal importance, the criteria will not necessarily result in the imposition of the obligation, in accordance with sound planning. There may be areas that fit the developing description that should not yield to inevitable future residential, commercial, and industrial demand in growth. Those areas may contain prime agricultural land, open spaces, and areas of scenic beauty. Apart from these, their development might impose unacceptable demands on public investment to extend the infrastructure required to support such growth.

"Indeed, to some extent, the very definition of developing suggests results that are quite the opposite of sound planning, for the whole purpose of planning is to prevent, or deflect, what would otherwise be inevitable."

I would also like to mention the fact that I support this bill, but it really must have a moratorium attached to it. What is the point of developing a Planning Board without first putting a halt to this? What is the good of putting the cart before the horse? You are

not going to get anywhere. You are going to let a judge allow developers to go haywire, and they obviously will go haywire. They are champing at the bit to get at us and swallow us whole. And, you will have a Commission which five years down the line will tell us: "Well, you guys really messed it up; you went about it the wrong way." Then it is going to be too late for a lot of people. I think those two things really must go hand-in-hand.

One other thing is an absolute necessity to this State's Development Plan revision is. You may have seen a program on television a few weeks ago -- there was a lot of fuss about it; I believe it was on Channel 52. It was about the 1980 census, and the trend in New Jersey.

SENATOR STOCKMAN: Yes.

MS. MOORE: You may also have noticed that an article in the Bergen Record said that population has actually decreased in Bergen County by six percent. Mahwah alone has lost 12 percent of its jobs. Now, if the whole idea is to provide a better way of life, and better housing -- housing for the people -- we have unemployed people right now that we have to take care of; how can we absorb more unemployed people? We have companies that are leaving, as Mr. Ryan said. They are closing down. The census shows that targeting Mahwah the way it is targeted, is totally unjustified and completely inaccurate, because it is not a growth community. It is not a high growth community; it is a small town. The reason that people presently live in Mahwah is not because of snob appeal, because if they were so rich and snobby, they would be living in Ridgewood or Saddle River, which is not being hassled by Mount Laurel. The reason we live in Mahwah is because it is a small town; it is basically a rural community. I mean, it is practically a village. Everybody knows everyone, and it is a lovely place to live.

These types of entities are going to change Mahwah completely. It will no longer be the Mahwah that it is today.

SENATOR STOCKMAN: Let me repeat my comments about the obvious sincerity and depth of concern you have shown just by being in Trenton today.

I am not as familiar with Mahwah as I would like to be, in terms of its character and makeup, although I have a little familiarity with it. I realize it has had a bad turn of fate with the closing of a major plant. That had to have a considerable impact on the town.

I have been concerned, and I am part of a group that is concerned, about taxes and municipal overburden. I can tell you that if you are troubled by the situation in Mahwah, and with your tax rate, I have in front of me part of a study -- I am working on this with other members of the Senate -- and a chart that reveals the equalized tax rate in New Jersey. It is basically a statement of what the average taxes are per \$100 of fair market value, and the State average is \$2.48. It has changed a little bit, but not dramatically.

The average is \$2.48. I have a list of the urban aid towns and Mahwah is not one of them. There are 52 of them, and every one of those towns has a higher tax rate -- clearly higher -- than Mahwah. But, more important than just a higher tax rate, many of them have tax rates that are two and three times that of the State average. Apparently Mahwah is not on this list, and I am pretty confident that it doesn't have that kind of staggering tax problem.

It is a problem; and, to you, the fact that it is going up is a dramatic problem, I am sure. But, this problem of individual municipalities and the tax burden-- I agree there is a necessity to do something about it. We have to do something about it anyway because of what is happening to our funding for public education, and our funding for municipal government.

But, this bill, and the issue we are dealing with, is separate from the tax question. It does, of course, raise questions about what the proper density of a particular area should be. But, the purpose of pursuing this legislation -- as has been said by others -- is to try to form an agency within State government, in a logical place, to try to develop a Plan -- a Development and Redevelopment Plan -- that will give the court something to work with, rather than have them do it.

The question of a moratorium is a very difficult one. We have had a lot of testimony about that. There have been Resolutions sent to me, and people have talked to me about it. I think the Public

Advocate expressed the problem very clearly when he pointed out that we are talking about the Legislature attempting to tell the courts to put a stay action on an area that the court has determined to be of such fundamental importance, that they have cast it and described it in that manner. I don't think we can do that.

I do think -- whether this will alleviate some of your concerns or not, I do not know -- it is likely that the court will be sensitive to the creation of a State Planning Commission, and to the efforts it will quickly start to undertake in order to develop a statewide plan. Hopefully, the court will go slow in further pursuit of judicial remedies. I can't guarantee that, but I suspect that is what will happen.

I think a moratorium built into the bill would guarantee its being found unconstitutional.

MS. MOORE: I'd like to ask if you were unaware of the fact that Mahwah has been ordered to reassess its property values? It is a town in one of the counties that is considered to be under-assessing. We are facing that.

I would also like to state that in Judge Wilentz's decision, he himself said that it is not his place -- it is not the place of the State Supreme Court -- to make a decision on Mount Laurel. It is the place of the Legislature to do that. He said that the only reason he felt compelled to do so was because of the inaction on the part of the Legislature.

So, I think it is time to make up for the mistakes of the past. They are not our mistakes. He is obviously clearly overstepping his bounds, and I think it is time the Legislature make him toe the line.

SENATOR STOCKMAN: Well, if he agreed with you, there would be no problem. But, I don't think he agrees with you, that he is overstepping his bounds.

MS. MOORE: Well, I think you cannot give up the fight. That is what you are here for.

SENATOR STOCKMAN: Okay.

MR. RYAN: Senator, may I make a closing remark? Here are four copies of what we call our position paper. I don't know if they

will be of any help. But, may I just address myself to the problem of the tax?

First of all, Mahwah, right now, without Mount Laurel, pays something like \$4.30-something.

SENATOR STOCKMAN: Equalized tax rate?

MR. RYAN: Yes. It would be per \$100.

SENATOR STOCKMAN: Okay.

MR. RYAN: Now, it is suggested that we can expect anywhere from a \$1.00 to a \$2.00 increase because of Mount Laurel, and that does not include direct assessments.

The thing that bothers me -- going back to Mary Carey -- is the point I am trying to make. If, in fact, the tax rate goes up specifically in a town because of its natural growth, or its natural needs, that's fine. But, this is a thing that is being pushed. In other words, Mary is not now part of a natural growth rate. Her taxes are being excelled, and she is being put out of the town. If the court's decision is that this is for the welfare of the 40 percent, which Mr. Rodriguez pointed out concerning Montville, I would like to know what her rights are along those lines? You can't have the best of both worlds. You can't say you are going to help 40 percent, and then take the senior citizens, or anybody on a fixed income, and destroy them, as far as their home and everything else is concerned.

So, I see a very serious problem here. My only concern is with the funding and the densities -- giving the builders the densities to pay for the low-income houses. In other words, if you had a bill here right now to bring in-- I think we are required by the court master, the appointed court master, to have 699 low income houses. If you told me you were going to bring in 699 units right now, I wouldn't even be here -- okay? But, we are bringing in 2800 to support those 699, and that is what is going to force our people out of the town.

I would like you to look at the tax structure and how Mount Laurel suggests low-income people get their taxes subsidized, because I consider the houses to support them will be unmarketable. We are going to create such a disaster, that it isn't even funny. Thank you, gentlemen.

SENATOR STOCKMAN: Thank you. Our next witness is Jim Gilber from the New Jersey Federation of Planning Officials.

Just so my records are clear, and the public has an understanding of the progress of this hearing, we have one more witness listed after Mr. Gilbert, and he is Carl Hintz.

**JAMES GILBERT:** Good afternoon. I am Jim Gilbert. I am the Director of the New Jersey Federation of Planning Officials, and a former President of the Federation. I am also a former Chairman of my local Planning Board in Englewood, of which I was a member for over ten years.

The Federation is an organization -- a nonprofit organization -- whose membership is principally made up of over 400 planning boards and boards of adjustment in the State. We are really the only organization that addresses itself to the very particular problems of local planning boards. I think it is particularly appropriate -- if I may say so -- that we give testimony at these hearings.

We have taken the position -- our Board of Directors took the position, after hearing from our Legislative Committee -- and it was unanimous both on the part of our Legislative Committee and our Board of Directors -- that we feel this is a good bill; it is good for everyone in the State.

This is a State where -- and, I have heard this said over and over again today -- home rule is sacrosanct, and we don't dispute that. We, nevertheless, think there has to be some flexibility in this. Over the last 40 years -- actually 50 years -- we have had at least some kind of a State planning presence in New Jersey, ever since the 1930's. That, most recently, was the Division of Planning within the Department of Community Affairs. That Division, as you know, was virtually eliminated over the last couple of years by Executive decisions in the State. Consequently, the localities were left with no place to go when they had questions or needs, and the State itself has no coordinating mechanism for the various types of planning that are going on within the Departments of the State, such as the Department of Transportation, the Department of Community Affairs, the Department of Environmental Protection, and so forth.

We would like to point out that this seems particularly inappropriate in a State that is bigger, in terms of population, than the country of Sweden, just as an example.

One of the things that has promoted, to a great extent, the interest that seems to be cropping up in planning at this time is the Mount Laurel decision, obviously. But, we would like to point out that as important as that is, it is only one aspect of land-use management and land-use planning.

Nevertheless, the Mount Laurel decision has awakened a lot of people, local people -- home rule people -- to the need for cooperation, to some degree, with their neighbors and with the State, particularly because if there is no updated guide plan within the next couple of years, then the current wild scene with the three regional judges will be even wilder.

I was very interested to hear about the problems of Mahwah, which are real and very great indeed. I will give as an example -- a very brief example -- our own Town of Englewood, and how much confusion is going on right now. We are a community that has bent over backwards to meet the housing needs of the disadvantaged, and people of low income. We are a town of 26,000 people. We have at least three major public housing projects in our town for low-income people. We have subsidized housing. We have moderate-income housing. We have housing for the elderly. We have so much tax-exempt property in the town it is unbelievable. On top of that, we do practically all of the rental housing for what they call the Northern Valley, which is about 15 towns above us, all of whom pretty much exclude apartments -- pretty much, by and large. The result is that about 40 percent of our population is in rental housing of one sort or another; and, yet, we have been told, by the latest formula that has come from a consultant, that our judge has said we need another 1,000 units of low-cost housing. I assume that is going to be cut back, and that reality will shine on it. But, it is just an example of the kind of confusion that is going on.

I would like, very briefly, to review the history of the development of the bill before us. There were a number of groups concerned with planning who approached the Administration a couple of years ago, when it first took office, regarding the question of statewide planning, and the need to have more coordination. I don't think it struck anybody as a possibility that we would reach the point where we would actually disband -- totally disband -- the planning

function in the State. So, over the course of a year and one-half, we had this amazing unraveling of events, where we had DCA eliminate the Division of Planning. No matter what you think about the Division of Planning -- whether you think they were effective or ineffective -- let me tell you, as a local planner, they were of real help to us. That is where we used to get copies of things as simple as the Municipal Land Use Law. We would get that from the Division of Planning. Well, that sort of thing doesn't exist anymore. It didn't exist as of last spring.

At that time, I was still President of the Federation of Planning Officials, and we got together with the other obviously interested parties -- the professional planners in the State, and particularly the New Jersey Chapter of the American Planning Association. We got together with the county planners, the Land Use Law Section of the State Bar Association, the League of Municipalities, and the Regional Plan Association. We contacted the Administration and finally received a hearing, not from the Director of Policy and Planning for the State, Gary Stein -- not at this point -- but, rather, with Cary Edwards, and that was the beginning of a process where Cary Edwards, as legal counsel to the Governor, decided to participate. We had Amy Piro from his legal staff there, and she was a great help. We got together as wide a group as we could get. We got representatives of all the departments to come up with a bill that could work for New Jersey.

Our Organization's own particular bent is not to run up against home rule. We were trying to get something in the middle, something that would legitimately serve the needs of the community, without going around beating them up left and right. However, we needed something. And, that is what this bill was supposed to be. It was supposed to be a workable planning presence at the State level.

When you think about it, there were 80 people in the Division of Local Planning only five years ago. I don't know what we are talking about here; it will probably wind up to be something like ten people, or less.

We also decided that it should be in Treasury, because Treasury is a Department that, because of the budget, impinges upon

every other department, and, really, land use planning cascades over to any number of departments down here in Trenton. Also, in this Administration, the Office of Management and Budget has become quite important. They have done, I think, a very commendable job in pulling together management concerns at the State level. One of the things they have attacked is long-range planning, and that is where we come in.

Now, since the introduction of this bill, there have been a number of groups who have come forward, groups who either thought the bill was too much, or too little -- or you name it. I am here here to tell you, on behalf of our Board of Directors, that we hope there will not be many changes in this bill, because we think otherwise you are going to stir up a hornet's nest of opposition at the local level.

We think this is both the least and the most. We really think it gets right in the middle. I will just, very briefly, read you a three-sentence recommendation for this bill from our Legislative Committee, which was accepted and adopted by our Board of Directors a few weeks ago:

"We find the bill to be very well drafted. We find nothing which should be objectionable, from the standpoint of localities" -- and, keep in mind our Board is made up of not just local planning board members, but local attorneys who represent planning boards, and so forth -- "since we do not see how the implementation of this bill will adversely affect municipal planning boards, or boards of adjustment. Moreover, it is evident that a State Planning Commission is a necessity in order to update and, hopefully, vastly improve the State Development Guide Plan, which is presently being used by the courts in connection with Mount Laurel type litigation.

"From the State's standpoint, the State Planning Commission is a needed entity to coordinate the capital improvement plans of the various divisions of the State government."

I think that pretty much concludes my remarks on behalf of the Federation. I would just like to say, Senator Stockman, that we would like to take this opportunity to thank you for your efforts in calling attention to these important matters through this bill. We would also like to commend the other sponsors of the bill. Good luck, and thank you for the opportunity to be heard.

SENATOR STOCKMAN: Jim, thank you very much. You had a major part in this. We have worked together, and I appreciate your coming in and expressing your Organization's support for the bill. Thank you very much.

Our next speaker will be Carl Hintz.

**CARL HINTZ:** My name is Carl Hintz. I am the Legislative Chairman for the New Jersey Chapter of the American Planning Association.

Just to preface my remarks somewhat, the New Jersey Chapter of the American Planning Association, just as the New Jersey Federation of Planning Officials did a couple of years ago, saw the need for new planning legislation. We saw the need for better State planning coordination between county planning and other levels of State government. We started to meet, not only amongst ourselves, but also to meet with those other agencies and interested parties, such as the New Jersey Land Use section of the Bar, and the New Jersey Federation of Planning Officials. We have had a long interest in this area, and we very much welcome the opportunity to be here, and to push for this particular bill.

I would like to thank Senator Stockman, and the other members of this Subcommittee, for providing the New Jersey Chapter of the American Planning Association with the opportunity to support this important legislative proposal.

The NJAPA brings together governmental and consultant planners, members of planning boards, as well as those from non-governmental organizations. NJAPA members work at all levels of government -- municipal, county, State, and Federal. They have a wide range of experience in administering the State's land-use regulations over a period of many years.

The NJAPA Legislative Committee has reviewed this bill with care. Several of our members participated in the many months of deliberations that were required to bring it to its present form. We urge your Committee to release it as soon as possible, and to work hard for its passage and approval.

Statewide planning has been a top priority APA concern. We have repeatedly emphasized that our New Jersey system of land use administration requires an overhaul. We have stated that the roles for

State, county, and local government in the land use planning and administration process need to be clarified.

NJAPA filed a brief with the State Supreme Court in the Mount Laurel II case, urging that the State embrace the State Development Guide Plan and provide a presumption of validity for local plans that are consistent with the Guide Plan. As you know, the court adopted this point of view.

Now, the State Development Guide Plan is in need of revision. It was prepared in the late 1970's, when demographic and economic factors were quite different than they are today. In addition, development has changed conditions in many parts of the State since the date, almost four years ago, when the Guide Plan was promulgated. S-1474 would provide for revision of the Guide Plan under the auspices of a Commission "in but not of" the Administration. We applaud this approach.

There is room for improvement in the proposed State Planning Act. First, the provisions for coordinating the plans and programs of the various State agencies, to bring them into accord with the State Development and Redevelopment Plan, remain unclear. We doubt that they can be effective unless they are more clearly stated, which may be done in this legislation, or through carefully-drafted rules and regulations.

Second, we would like to see a stronger role for counties in the plan development process. For the Plan to have widespread support, local input is required. This cannot be accomplished by a State planning agency acting alone. The State requires the partnership of the counties in the complex effort to achieve consistency among plans at all levels. Our New Jersey counties are, in most cases, experienced in this task. Their role in the plan development process should be mandatory, not merely optional. I take note at this point that I understand one county, at least, is no longer with a county planning board, and this would result in problems if it were made mandatory. But, I think something has to be done in that regard, to try to bring a closer relationship with the counties, in order for them to work as a coordinating agency with municipal and State agencies in preparing a plan.

Third, this bill suffers throughout from undue vagueness regarding important aspects of administrative procedure.

The NJAPA membership has had considerable experience in working with planning statutes, and we are convinced that the public interest is best served by explicit "rules of the game" that everyone understands. If it should prove impractical to make necessary revisions in this bill, the greatest care should be taken in drafting explicit rules and regulations for implementing the legislation.

Finally, we note there have been proposals to amend this bill, or introduce rival legislation, allowing a moratorium on compliance with Mount Laurel II until the new State Plan is adopted. This would be counterproductive. It would relieve pressure for timely completion of the State Plan. It would also undermine the current efforts of numerous municipalities and development interests throughout the State to come to settlements in Mount Laurel disputes. The NJAPA members have had considerable first-hand experience on both sides of these settlement efforts. We can vouch for the productive spirit of accommodation that characterizes them.

Improvements can and should be made in this legislation. Your Committee must decide what revisions are feasible -- given the urgency for timely approval. As we have in the past, we offer you our Organization's professional experience in revising, promoting, and, most important, in implementing this legislation. Thank you.

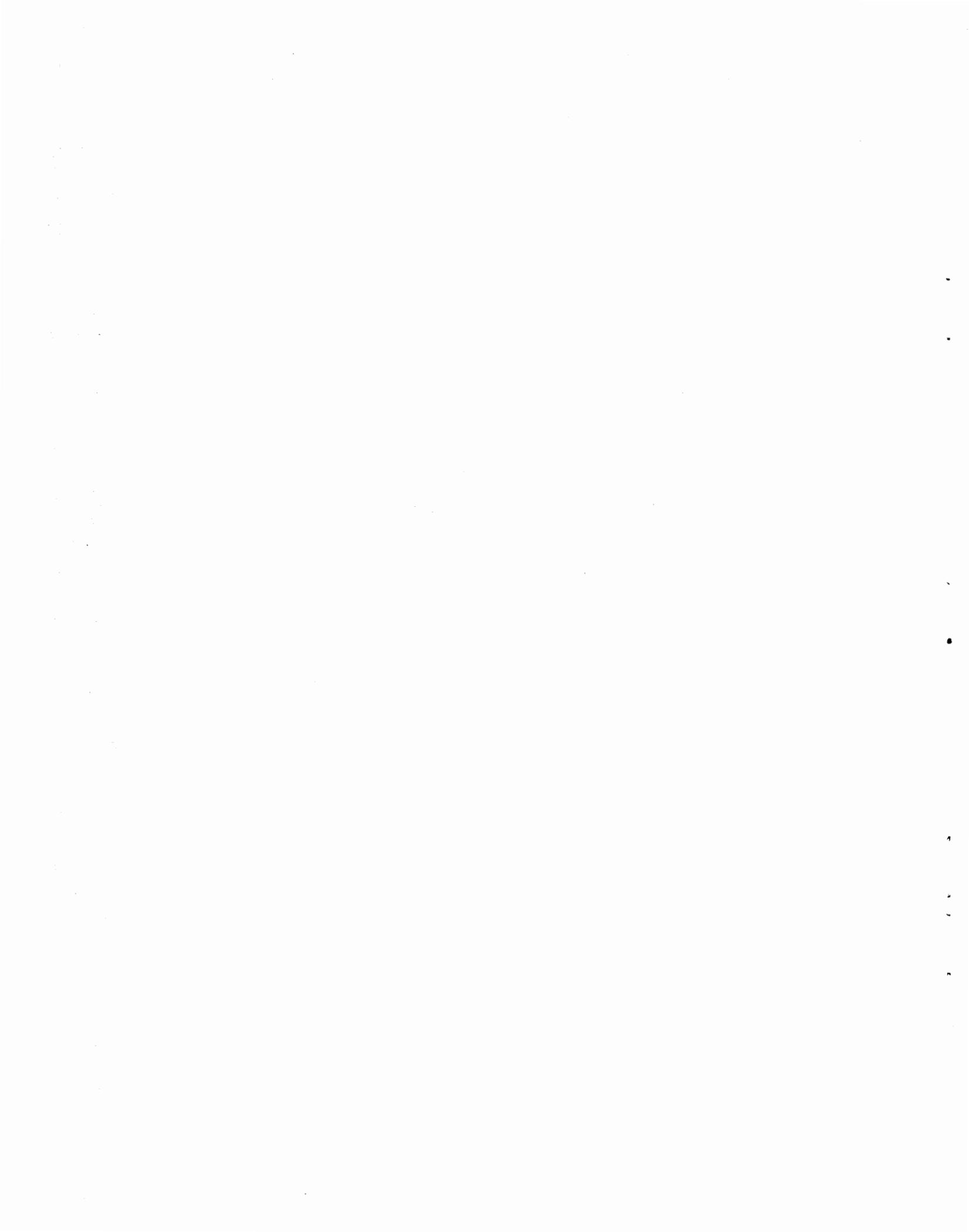
SENATOR STOCKMAN: Thank you very much, Mr. Hintz. I would be very happy, as would the State Government Committee, which will hopefully take this bill up in the near future, to consider any amendments you would like to submit, or that your Organization would like to submit, along any of the lines you have suggested.

I think I should make it clear that the bill is not necessarily in its final form at this time. There is concern that too many revisions could be troublesome to its passage. But, certainly, I think there is time for refining and strengthening the bill. If your Organization has any suggestions, or if you have any specific suggestions, you can talk to our staff people about them.

Unless there is anyone else with a burning desire to testify -- and I hope not, because I am running into some serious problems,

timewise, myself -- I will adjourn this hearing. I would like to thank everyone here for their interest and attendance.

(Hearing Adjourned)





SAVE OUR RIGHTS EQUALLY

P O BOX 725 MAHWAH NEW JERSEY 07430

As co-chairperson of SORE, with Nancy Amalfitano, who founded SORE, I would like to make reference to Gail Scott's February 20th article in The Record.

It appears that many attorneys, judges, writers and residents of New Jersey have some pre-conceived ideas of what SORE is all about, and like many other organizations, we are finding ourselves being misquoted and misunderstood on the Mt. Laurel issue.

SORE stands for Save Our Rights Equally, and the name expresses the purpose of the organization to a T.

SORE will be the first to admit that there are many problems with housing in New Jersey, and some drastic measures must be taken to remedy this situation. We are NOT sore at people from exploited city dwellings, the young couple with a low or moderate income, the single parent trying to give his or her children a decent home, or the senior citizen living on a fixed income and trying desperately to survive the onslaught of ever-increasing taxes and costs of living. Nor do we have any quarrel with the minorities, who have had to fight for recognition and are trying desperately to gain acceptance into the middle class.

We acknowledge that each and everyone of these groups have rights, and that these rights should be guaranteed by the constitution and be enforced by the courts.

However, as a member of the group, which has been dubbed "middle-class Americans," I feel that we TOO have rights. These rights are in serious jeopardy due to the Mt. Laurel II doctrine. The N.J. Supreme Court, in particular, has jeopardized these rights by usurping their authority above what would be acceptable under the U.S. Constitution.

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CITIZENS AGAINST "MOUNT LAUREL II"

At the birth of our country, its brilliant founders deemed it wise to formulate our government and constitution with certain checks and balances. The legislature, federal as well as state, was to be elected to create and pass new legislation, and monitor and correct laws and statutes, all for the benefit of the citizenry. The key word here is "elected." We have the right to VOTE for our legislatures, and in N.J. that includes the governor, senators and assemblymen. Mt. Laurel is really THEIR problem, NOT that of the courts, which are staffed by NON-ELECTED judges.

Many years ago the N.J. Supreme Court requested that the legislature do something about the state's housing problems, but since this was a hot, political issue, the legislature ignored the request. Subsequently the citizens are now paying the penalty for the politicians, who very simply, passed the buck in order not to lose votes. The end result was that the N.J. Supreme Court, in its "wisdom," decided to establish a new precedent for New Jersey and probably the nation. Supreme Justice Wilentz has cleverly written a doctrine of law, known as Mt. Laurel II, which gives "teeth to Mt. Laurel I."

In his mind this doctrine was necessary because the elected officials and the numerous municipalities in New Jersey were not addressing themselves to the housing problems and didn't pay heed to the original Mt. Laurel decision.

The key issue here is that since our elected local and state-wide officials ignored the housing problem, Judge Wilentz decided that the court would remedy the problem by mandating certain zoning practices and forcing the municipalities to conform. If they didn't conform exactly as the court deemed proper - with housing densities not acceptable to the court, or if they didn't conform fast enough - a court-appointed master would be assigned. And to rub salt into the wound, these court-

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appointed master planners must be paid extravagant fees by the municipalities.

Further, to avoid future litigation, the court has assigned a Supreme Court justice, who approved the Mt. Laurel decision originally, to judge what is, in fact, his own decree. Consequently, no group of citizens or municipal officials have any real avenue of appeal. How can you possibly get a fair interpretation of an issue if the creator of that issue is also the final judge?

Also, Judge Wilentz wrote the doctrine within the confines of the N.J. Constitution, thus eliminating our rights, as citizens, to appeal to the Federal Supreme Court. No matter how well intentioned this doctrine may be, it is outright dictatorial and spells the ruination of this state, and, a bit further down the road, the rest of the country as well.

If the N.J. Supreme Court, "in its wisdom," can mandate housing through a Mt. Laurel decision, who knows what future mandates await us. Why not a mandate for equal jobs for all? Or how about a pay scale pleasing to the court? Why not mandate mass transportation and compel N.J. residents to pay for it? Any why not mandate high-rise construction? For 10 years down the road we still won't have housing enough.

Now, why would the courts consider mandating such things? Let us consider the facts:

The Mt. Laurel II decision calls for 20% low-income housing as a fair share for Mahwah. But we already have 25% low-income housing, and we are STILL being badgered by the court. We presently have a trailer park with room for expansion. We have lowered our densities to comply with Mt. Laurel I. Yet, the court's interference with our zoning continues. Will there ever be enough compliance?

According to recent statistics, the population and jobs in the Hudson, Bergen

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and Passaic region are declining, but the court has us listed as a growth area. We must wonder what knowledgeable planner, builder and developer with indisputable credentials created the supposedly well-founded facts on which the regions and growth areas were based. And who was the extraordinary planner/developer, who felt that his academic credentials and vast knowledge of land and housing development entitled him to seal the fate of New Jersey? Why, none at all! Incredibly, it appears that the Mt. Laurel II guidelines were established by an antiquated relic of a N.J. study. It was formulated in the 70s, and has no value whatever at this time. Even the 1980 census proves that the guide plan on which the Mt. Laurel doctrine was based is totally outdated.

So why should we be sore? We have already stated that we are not sore at those citizens, who are only trying to better their living situations. Then are we sore at our elected municipal and state officials? Not entirely, I DO feel that some municipal officials have dropped the ball in their zoning practices, and some have contributed to the Mt. Laurel doctrine because of their lack of concern for the issue. I am upset (not sore) at our state-elected officials, because they ignored their responsibility to the voters of the state, and have created a legal monster, which will gobble us all up unless we act to defeat it.

Indications are that the legislature now is making a half-hearted attempt at formulating something, which will soothe the pain of the Mt. Laurel bite. But they are still refusing to put a muzzle on it.

The long and the short of it is that SORE is really sore at the courts because they have made middle-class America the scapegoat for the State of New Jersey's years of bad judgment and lack of concern for the housing issue. Just how will we be the scapegoat? For one thing, the char-

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acter of our town will change completely. The court claims that it won't, but how this can be avoided when you double the population of a suburb like Mahwah is beyond me. I contend that the court either has its head in the sand or is deliberately trying to sandbag us when it make such claims. Secondly, we can't even cope with the present traffic. Thirdly, many parts of our town is not yet sewered. Then there are water problems, the capacity of our schools is questionable, our taxes are being increased in outrageous proportions, and finally, there is the plight of our large block of senior citizens, who are being forced to leave their homes and the town that they have lived in most of their adult lives. And all of this is done under the pretext that the N.J. Consitution now preserves the rights of the state's low and middle-income families.

We are frankly sore at the fact that the courts are dictating the demise of the free enterprise system obligating middle class America to provide housing for the masses. Nobody cared about my ability to pay a mortgage or accumulate enough for a down payment when my wife and I started out in a small apartment in Ramsey. Now we, the middle class homeowners of this state, are ordered to subsidize many parts of the Mt. Laurel doctrine.

What is SORE's answer to the problem? Because of the way the Mt. Laurel doctrine is worded, litigation in the courts of New Jersey is at best a token remedy. Therefore, SORE feels that our best weapon will be a lobby of middle class N.J. residents. Individually we have very little hope of getting this unfair doctrine overturned, but collectively, as a voting block, we can be successful.

Right now we need the support of everybody, who sees the potential disaster of the Mt. Laurel doctrine. If we pool our resources, contributing whatever time and

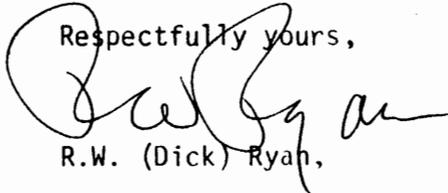
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money we can to this cause, we can create a powerful lobby, which will make our legislators sit up and take notice. We hope that other towns destined for Mt. Laurel destruction will join us and adopt the name SORE as well. Then six months from now, we can create a statewide SORE delegation and "march on Trenton." We are also planning an array of demonstrations, both locally and in the state capital itself.

Some of our legislators feel mighty smug because they are not up for election till 85. We hope to shock them right out of their smugness with a remedy known as recall. SORE is presently exploring the possibilities to start such a recall movement for those legislators, who continue to ignore their responsibilities and allow middle class homeowners to become the bankers for Mt. Laurel II.

So, it should be clear that SORE is in fine fighting form, and we aim to win.

Respectfully yours,



R.W. (Dick) Ryan,

Co-chairperson, SORE  
P.O. Box 725  
Mahwah, NJ 07430