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PUBLIC HEARING

before

SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

on

SENATE BILL NO. 3054

(An Act relating to the planning and regulation of land uses, and revising parts of the statutory law)

Held:
April 3, 1975
Assembly Chamber
State House
Trenton, New Jersey

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MEMBERS OF COMMITTEE PRESENT:

Senator Martin L. Greenberg (Chairman)
Senator Thomas G. Dunn
Senator James P. Vreeland, Jr.

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SENATOR MARTIN L. GREENBERG (Chairman): Good morning, ladies and gentlemen. My name is Martin Greenberg and I am Chairman of the County and Municipal Government Committee in the Senate.

Seated on my left is Senator Dunn, who is a member of that Committee, and on Senator Dunn's left is Senator Vreeland who is also a member of that Committee. Seated to my immediate right is Fred Stickel, an Attorney, who is Co-Chairman of the Legislative Committee of the New Jersey State League of Municipalities; and on my extreme right is Dan Siegel, an Assistant of mine and to the Committee, aiding us in connection with this bill.

The bill that I am referring to and the bill which is the subject matter of the hearing scheduled for today is Senate Bill No. 3054, which was introduced February 13, 1975, upon which I appear as the primary sponsor. The Co-Sponsors of that bill are Senators Martindell, Musto, Imperiale and McGahn.

This bill, the proposal that is before us today for consideration by the County and Municipal Government Committee, was prepared by a Draft Committee established by the New Jersey League of Municipalities for this purpose approximately one and a half years ago, at the direction of the County and Municipal Government Committee. The Committee was composed of municipal lawyers, planners and other officials, and the bill has the endorsement of the League and of the New Jersey Federation of Planning Officials.

This bill is primarily procedural in nature and it has three essential objectives: Number one, to simplify, clarify and, where possible, standardize land use planning and regulation; secondly, to speed up the processing of land use applications; and, thirdly, to better integrate and coordinate the various component elements of land use planning and regulation.

The bill is a codification of five basic land use statutes enacted at different points in time, including the Planning Acts and the Zoning Enabling Acts, the Official Map and Building Act, the Plan Unit Development Act, and the Regional Planning Act.

Now as everyone in this room and throughout the State, I would suspect, knows by this time the Supreme Court of the State of New Jersey has rendered a decision which is commonly referred to as the Mt. Laurel Decision. So that the record is clear, this bill is not a response to that decision. This bill, as I have stated, is a procedural bill in concept and it should not be confused with any other bills which are pending dealing with the Mt. Laurel decision, one of which is mine and that may have given rise to some confusion. I have introduced a bill, the number of which is 3100, which deals with a balanced housing concept. That is not the subject of this hearing, and I want to make that very, very clear.

We have a number of witnesses who are scheduled to appear today and for anyone who is present and who has not indicated his or her desire to testify, I would direct you to give your names, please, to Mr. Siegel at my extreme right and you will be given an opportunity to testify.

If you have prepared statements with you, I would appreciate it if you would bring them to the table so that we can distribute them among the Senators who are present and also have a copy for our files.

If anyone wishes to submit any written material in connection with the matter presently under consideration, I will keep the record of this hearing open for a period of two weeks from the date that we finish the hearing, which I hope will be today, for receipt of such additional information.

As our first witness, with regard to testimony to be offered in connection with this bill, Senate No. 3054, we will hear from George Hagemeister who is Chairman of the New Jersey League of Municipalities. Mr. Hagemeister.

G E O R G E H A G E M E I S T E R: Thank you, Senator.

My name is George Hagemeister. I am a Past President of the New Jersey State League of Municipalities and Chairman of the League's Land Use Study Committee. I very much appreciate the opportunity to speak to you today relative to Senate Bill 3054.

The various municipalities throughout the State, 567 of them, have been concerned for a number of years with the problems that have existed, caused primarily because New Jersey has an unenviable record of being about the only State in the Nation that has not upgraded its enabling legislation passed back in 1928 and, obviously, many changes have taken place in land use during that period of years.

We have been most anxious to see legislation to take care of the necessary changes that all of us involved in local planning and zoning feel are necessary.

Several attempts have been made by various administrations over the past years to take care of these changes but in each instance either the proposed legislation went too far in scope or, for one reason or another, never got off the ground.

As you have indicated, we've had a major concern in this and we appreciated a year and a half ago when your Committee more or less charged us with the responsibility of drafting legislation or drafting the proposals that are in the legislation as it is now proposed.

Working along with the League, we had the New Jersey Institute of Municipal Attorneys as well as

the New Jersey Federation of Planning Officials. And in that year and a half time they have diligently gone back through all case law since 1928, so that to the best of my knowledge the draft that was submitted has met with approval and succeeds in correcting many of the pitfalls that we have been confronted with over recent years, particularly that have caused so many of the court cases that municipalities are confronted with.

The proposed legislation retains all the present powers of the municipality in these fields but builds on to and incorporates into these powers the modern concepts of PUD, site plan review and standardizes the procedures to be employed by the various administrative agencies such as boards of adjustment, planning boards, environmental commissions as well as the governing bodies.

Among the highlights of the proposed municipal legislation are the following:

1. Broadening the statutory municipal purposes of zoning, planning and land use control.

2. Increasing and enlarging more than 50 fold the number and scope of definition of the terminology employed.

3. Spelling out in detail and unifying the procedures to be followed before the board of adjustment, planning board, etc.

4. Removing the governing body from the necessity to participate in granting use variances and subdivisions and giving it appellate power to pass upon, when requested.

5. Granting planning boards the statutory power of site plan review, which they do not now have.

6. Incorporating the powers of the PUD Act into the overall Municipal Land Use Enabling Legislation along with zoning, planning, site plan review, subdivision control and official map so that all means of exercising these important municipal functions will be in one act and in one place.

7. Making provisions for off-site improvements.

8. Providing for design control districts for areas containing buildings of historical, architectural or cultural merit.

9. Permitting planning boards to attach conditions to minor subdivision approval.

10. Permitting planning boards, instead of boards of adjustment, to act on conditional uses.

11. Eliminating the needs in most cases, of appearing before two boards to obtain land use approval.

12. Outlining specific standards for all municipal agencies to observe when exercising land use control.

I would like to reiterate that Senate Bill 3054 is essentially an administrative revision addressed to the wide range of procedural aspects of planning and zoning.

And I would like to reiterate just what you said in your opening remarks, Senator, that there has been substantial notoriety recently because of the recent court case and many of the articles that have appeared have the matter confused. So I would like to reiterate the fact that this bill in no way deals with housing in any way, shape or fashion. That's a matter, as you indicated, for some other legislation. This bill is strictly a procedural measure to aid municipalities and the various boards and agencies to better cope with planning and zoning in our municipalities throughout the State.

Thank you, sir.

SENATOR GREENBERG: Thank you very much, Mr. Hagemeister.

As a result, in your opinion, of the adoption of this legislation in its present or any modified form, what do you conclude would be the net effect upon the functionings of municipalities in connection with the

zoning and planning functions which they presently have?

MR. HAGEMEISTER: Well, it would strengthen them. It would simplify the procedures substantially. Right now in many instances an applicant before a planning board has to go back and forth between one or more agencies. This would codify the procedural aspects of it to simplify in both fashions, both for the applicant to the municipality as well as for the governing body itself in carrying out its function.

SENATOR GREENBERG: And it does, as I understand it, draw together from the various sections of the law all of the relevant requirements into one single body.

MR. HAGEMEISTER: That is correct.

SENATOR GREENBERG: Am I correct in my understanding that the League held hearings in connection with this bill?

MR. HAGEMEISTER: Yes. It held a number of them. The most substantial one was at the annual conference last fall at which over 500 interested people participated. The entire hearing that was held in Atlantic City at that time was taped. All of that was then further transcribed. Everybody that had comments pro or con, it was referred back to the drafting committee, changes that were deemed necessary or advisable were made in the draft and all participants were so advised.

SENATOR GREENBERG: All right. Thank you. This is a complex matter and we are here today for the purpose of hearing from those who wish to address themselves to those complexities in the bill in general. So I, for one, do not have any further questions of you, since I am the prime sponsor and you participated extensively in the draft but I would now, at this point, turn the questioning over to Senator Dunn, if he has any.

SENATOR DUNN: Well, I have no questions other than to ask George whether or not you are speaking for the League of Municipalities or just as one who was formerly the President of it.

MR. HAGEMEISTER: No. I am speaking for myself as a former elected official and also on behalf of the League Drafting Committee.

SENATOR DUNN: That's all I have.

SENATOR GREENBERG: Senator Vreeland?

SENATOR VREELAND: Just one, Mr. Chairman.

Does the League's Board of Trustees or membership - have they endorsed this bill?

MR. HAGEMEISTER: Yes, they have.

SENATOR VREELAND: By a vote?

MR. HAGEMEISTER: Yes. The general concensus at the League following all the hearings a resolution was discussed and we have virtually unanimous support from all segments of municipal, both elected and appointed, officials in support of the bill. There are some that feel that it could be a stronger bill; they would like to see it go further in scope but they are happy it is at least going this far to rectify many of the problems.

SENATOR VREELAND: Thank you.

SENATOR GREENBERG: Thank you very much.

The next witness listed is Mayor Wesley Bell. Mayor Bell? If he's not present now, we'll come back to him.

Stewart Hutt, representing New Jersey Builders Association.

SENATOR DUNN: Chairman Greenberg left to go downstairs to another public hearing for a few minutes.

S T E W A R T M. H U T T: Thank you, Senator. On behalf of the New Jersey Builders Association, of which I am General Counsel, I want to thank you for this

opportunity to give you our prepared, written remarks and subject ourselves to any questions or interrogation concerning our views on this bill.

I've handed in to the Committee a prepared statement. There are some changes for grammatical reasons and you can consider these changes as the official statement.

Senate Bill 3054, the "Municipal Land Use Law," is not so much a completely new law, as it is a blend of existing statutes and land use case law, intermingled with corrective new elements previously missing from the several laws which it does amend -- minus the inconsistencies and uncertainty that have persisted for some 20 years.

The result, then, is a vastly simplified, streamlined and easy-to-follow-and-understand procedural set of guidelines whose uniformity will assist the municipality to plan and regulate land use in a more logical, practical and professional way than ever before, keeping in mind that the statute is an enabling act. Thus, no attempt is made to force municipalities to adopt land use regulations.

S-3054 spells out in detail and coordinates the procedures to be followed before and by the board of adjustment and the planning board, but does not, in any way, attempt to control or influence the specific decisions those bodies make with regard to municipal land use. These municipal boards will continue to exercise full control over the use of land within their municipal boundaries.

The long overdue certainty which S-3054 should bring to the regulation of municipal land use and the procedures which govern such planning and regulation is applauded and strongly supported by the New Jersey Builders Association.

The more-than-two-years of work which have gone into the creation of S-3054, after more than five years of work and study on other attempted revisions, have succeeded in combining the salient, still-viable features of the Municipal Zoning and Planning Acts, and the Official Map and Building Permit Act, with sections of the Planned Unit Development Act.

Patchwork amendments and case law have been codified to create a coordinated revision, resulting in a change in source to a compendium of modern, up-to-date land use law easily ascertainable by any who seek to refer to it.

But this master work of drafting carries with it other, very pragmatic, reasons for supporting S-3054.

1. S-3054 will not force a single unit of unwanted housing upon a municipality, but it will set uniform guidelines and procedures which will help ensure that projects which are to be carried through the site plan/subdivision approval process, are done logically and without the often-unstructured sequences that presently exist. Uniformity and certainty of procedure is an unquestioned virtue.

2. A simplification of the municipal regulatory process can only result in more efficient and effective work by the respective municipal bodies and their agents and this increased efficiency will translate into reduced costs of local government, and the commensurate budgetary and tax savings --- a benefit for every member of the community. Duplicate review and approval which presently wastes so much municipal time, effort and money will be eliminated.

3. At the present time various municipal ordinances relating to land use and the actions of municipal land use bodies have been subject to considerable legal uncertainty and attack. While S-3054 would not eliminate all such litigation, the bill is structured to minimize

the potential for such litigation and to help ensure municipal officials and their consultants that they will be on firmer legal ground and, therefore, will be able to deal more confidently with the land use issues which they face because of these revisions.

* * *

These several basic reasons for the Association's support of S-3054 all point to one major area of concern.

EFFICIENCY, which is a direct result of certainty and consistency, is the outstanding feature of S-3054. The bill is a set of procedural standards which can be easily followed and adhered to by all participants in the municipal land use regulatory process.

The quidelines which it provides are apparent, particularly when contrasted to previous conditions and standards, and some of the more significant examples are listed below:

a.) S-3054 gives to a municipality, more control, and more responsibility, than ever before, thereby providing the wherewithal to cope with existing and developing land use issues. The additional control combined with responsibility will create a balance so necessary to achieve sound planning results without the presently existing climate of litigation and the adversary atmosphere.

b.) A further example of the clarification offered by S-3054 is the list of 70 definitions, thereby explaining the meaning of key elements of the law. The net effect is an ease of administration of the law and a more productive, worthwhile effort on the part of citizens involved in the municipal land use regulation process.

c.) Although the opportunities and the instances of review are increased, all review carries with it mandatory time periods to ensure against unnecessary delay (with mutual extensions in certain instances) and to help guarantee a timely decision.

d.) The duplication of review and the previously prevalent overlapping has been reduced to a minimum, and with it will go the "ping pong" effect which caused applicants to be "bounced" back and forth between several boards, because of technically faulty statutory provisions. In addition:

--- Gone is the ridiculous procedure whereby an applicant, desiring a variance, was forced to submit application for a building permit, knowing full well that it would be denied by the building inspector, so that he could proceed with the next logical step before the board of adjustment.

--- Gone too is the time-consuming and wasteful procedure of bringing every subdivision to the planning board in order to have it classified as "major" or "minor." This resulted in the following type of absurd situation. The developer of a 100-lot subdivision realized, as did the planning board and the citizens of the municipality, that he was not submitting a "minor" subdivision application.

However, even if he conceded in writing to this fact, existing law required him to go through a charade of submitting a so-called "classification map" to the planning board in order to have an obvious fact determined by official resolution, complete with the elaboration of Roberts Rules of Order, thereby consuming several months of wasted time and effort for both the developer, the municipal officials and municipal employees --- time which could have been more wisely devoted to more pressing needs.

e.) The uniform procedural regulations which S-3054 will bring to those municipalities who choose to adopt this enabling act will enable the municipal officials and employees of those municipalities to discuss and resolve common issues and land use concerns more easily and more quickly since all of them will be working from a single common starting

point. At the present time, when municipal officials and employees meet to discuss land use regulations, representatives of each municipality are inevitably working with rules and guidelines unlike those of neighboring municipalities and the result is often confusion rather than constructive solutions.

f.) S-3054 will allow municipal agencies to devote more of their time to a review of significant, major applications, rather than overloading these bodies with trivial, clerical considerations, thereby "wasting" time that should be used for truly vital considerations.

g.) It is not uncommon at the present time to find not only that the same municipal body in two different towns has a completely different notice and time period procedure, but that different bodies within the same town also have inconsistent time and notice provisions.

No longer will there be varying notice, publication, and time period procedures from town to town. Instead, uniform filing standards will govern throughout the State and the result will be savings in time, effort and money and a far better understanding by all parties involved of the guidelines for municipal land use review.

It is obvious that S-3054 corrects a great majority of existing, inequitable situations and that it does so not necessarily through drastic, wholesale changes, but rather by streamlining and defining procedures, which may have been practiced sporadically in the past, but never to the consistent extent brought about by S-3054.

Yet despite the widespread corrective effects of S-3054, there are several points to which the bill does <u>not</u> direct itself and we would be remiss in our analysis of the situation if we did not bring these issues to the attention of the Committee.

1. S-3054 does not provide a resolution of the problems which characterize the County Planning Act --- problems similar to those which S-3054 would rectify on a municipal level --- and unless the County Act is similarly corrected, the task of a full procedural land use revision cannot be considered complete. Obviously, separate legislation would be necessary to remedy County Planning Act problems, and we are, therefore, recommending the undertaking of such a project.

2. In concert with the recently adopted tort liability law(NJSA 59:1-1 et seq) attention should be given --- although it is not in S-3054 --- to the situation whereby municipal officials maliciously, without authority, deprive an applicant of his right to have a request granted and, if so determined, should be compensated because of such denial for any damages incurred.

3. There is a need --- unaddressed in S-3054 --- to provide a constant upgrading and education of planning board and zoning board members in order they may learn, many for the first time, the basics of sound planning, and, once having absorbed the basics, keep abreast of new developments and innovations in the area of planning and zoning --- in much the same way that building inspectors and tax assessors are continually trained through extension service courses.

* * *

It should also be noted that S-3054 does not affect the zoning powers of a municipality with respect to that municipality's power to determine use and density, lest the bill be confused with the recent Mt. Laurel Supreme Court decision. The key element of S-3054 is its procedural streamlining.

These then have been a summary of what S-3054 does and what it does not do, and unquestionably, the positive, corrective aspects of this bill stamp it as totally necessary, long overdue legislation, without the chaos and confusion that mark municipal land use regulation and have marked such regulation for the last 20 years. It is an intolerable and unjustifiable condition which demands the corrections that S-3054 will bring.

SENATOR DUNN: Thank you, Mr. Hutt, for a very fine, comprehensive presentation.

I don't have any questions because you've covered everything so well, although there is one in my mind: Are you a lawyer?

MR. HUTT: Yes, sir. I am General Counsel.

SENATOR DUNN: In pointing out things that the bill does not cover, you refer to a situation whereby municipal officials maliciously, without authority, have deprived an applicant of his right to have a request granted. Do we not have on the books already laws that would protect an applicant then? The word "maliciously" would certainly imply that you have information before the fact or during the fact or at the time that somebody is deliberately depriving you of some legal rights. And it seems to me that if you know that you're being deprived, there must be laws on the books that would protect your interest.

MR. HUTT: The problem is there's a vast deal of immunity to the actions of the governmental officials, particularly municipal officials. And while you might have remedies in terms of prerogative writ actions to compel them to correct the action, that can take years of litigation and a great deal of delay and expense. And in those situations - and perhaps the word "maliciously" should also include "willfullness" or "arbitrariness". But there are loads of situations where courts have found in prerogative writ actions that applicants were very wrongfully deprived. There are many more situations where applicants have been forced to knuckle under or concede because of the wrongful situation because they couldn't afford the litigation, the time, the expense and the delay.

I think the fact that we have in recent years how many indictments and convictions of municipal officials - indicates, in most instances that I've been able to ascertain, where corruption and bribery has been paid it hasn't been paid so much for an applicant or a developer to do something that he eventually wouldn't be entitled to do, it's been paid - and they've got that terrible situation in the City of New York -- it's been paid in order to expedite the process, not to be harassed, to get what he's entitled to get when he's entitled to get it. In this industry, with interest rates what they are carrying charges, lead time, time spent in delays can bankrupt an individual. And unless at some date in the future some means in the proper case with a tough standard, I don't mean for any action that a municipal official is determined to be wrong on, but with the proper standard if it's determined that a municipal body or agency or official maliciously and wrongfully and arbitrarily, without any color of title, ultra viresly deprived an applicant, resulting in that applicant having damages and the applicant can prove the damages, there should be a remedy for that applicant collecting.

It's not such a novel theory in other fields. For instance, if the municipal engineer, even negligently, allows a road to be constructed in a poor manner and a car passes over the road and a passenger gets hurt, we allow that passenger to recover for the negligence of the municipal engineer or either the engineer himself or the municipality for the damage caused to that passenger. That concept is all I'm talking about in terms of these procedures, and I think it would straighten out a lot of the corruption that this State is noted for. In fact, I'll show you an interesting thing, Senator. I had a friend visit me last week from Canada --

SENATOR DUNN: You're not implying that it only happens in New Jersey, are you?

MR. HUTT: No, but I am implying this -- it obviously doesn't only happen in New Jersey but apropos of your question, I had a friend visit me from Canada where they are apparently having a lot of corruption problems in Quebec, and here's an editorial from the Ottowa Journal. The title of the editorial is "New Jersey on to St. Lawrence" The last sentence of the editorial says: "Unless thorough remedial action is taken, Quebec will become another New Jersey, the state most notorious to the south as a bastion of corruption and Mafia influence." And that's the kind of image this state is projecting to other countries.

SENATOR DUNN: Well, it was not my intent to come here to defend the State of New Jersey. I have long had the suspicion in my mind that the reason that New Jersey is getting such a bum rap is because we have in New Jersey a U. S. Attorney and Prosecutors and an Attorney General who have been doing a job in the State, whereas other law enforcement people in other states haven't been doing their job as well as the law enforcement people in New Jersey have been doing it.

MR. HUTT: I would concur in that.

SENATOR DUNN: And I am convinced that we're getting a bum rap. Nobody can convince me that New Jersey is more corrupt than many other states in the country. But back to the language of your highlighting one of the deficiencies of the bill, I still can't quite understand how you at the time of making an application - and, again, I'm not arguing with you, I'm only using a hypothetical case -- how can you be convinced that a municipal official is maliciously, without authority, depriving you of a right unless it is an obvious case of

extortion or an attempt to violate a law? Sometimes can't you give the benefit of the doubt to the municipal official that he might be ignorant of some part of the law or that his judgment might not coincide with yours?

MR. HUTT: Absolutely. I didn't mean to imply otherwise. What I meant was, if you have this dispute with the municipal agency or the municipal official in which your recourse is to take an action by prerogative writ or mandamus or injunction, that you should not be barred from including within that action a claim for damages and let the court decide that if the action was granted, you win in your court action on a prerogative writ action, the court should have authority. In its discretion if it is determined that these wrongs were no more than just, as you say, an error in judgment or confusion or a mistake, if the court finds in the appropriate case that it was malicious or complete negligence, then the court should not be constrained, as it is today, from not allowing monetary compensatory damages to the builder or the applicant.

I definitely agree that you cannot say that every denial or even every prerogative writ action does not necessarily by any means mean that the fellow didn't in good faith contest your viewpoint. Obviously, as we all know, Senator, it's like a football game, in law suits one wins and one loses. But I'm talking about the appropriate case, I think it would have a salutory effect, not because there would be that many damage claims or that there would be that many big awards, but if you had even two a year it would kind of like, as they say in the army, straighten out the troops, and municipal officials would realize that they have got to be on firmer grounds on what they're doing. But there is that ever-present threat of a judge in the appropriate

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case saying, "Hey, fellows, you were so grossly wrong, you were so way off base, you've hurt this man so badly you're going to have to pay for it.

SENATOR DUNN: Thank you.

Senator Vreeland?

SENATOR VREELAND: No questions.

SENATOR DUNN: Thank you, Mr. Hutt, for your presentation.

MR. HUTT: Thank you.

SENATOR DUNN: The next witness should be John Surmay, Director of the Department of Health, Welfare and Housing for the City of Elizabeth. John Surmay.

J O H N N. S U R M A Y: Members of the Senate Committee on County & Municipal Government. As stated, I'm the Director of Health, Welfare & Housing of the City of Elizabeth. My testimony this morning I've chosen to call "Codified Development vs Continuum Chaos."

The promotion and the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and the preservation of our environment is the real test of a unified development of our towns and cities in this the great State of New Jersey. In my opinion, the Municipal Land Use Law being debated before this Committee on County and Municipal Government is the first solution to this real test of unified development.

Perhaps concurrently, or within a very short time the Senate will be asked to approve the concepts of a uniform construction code identified as A-1299 and recently passed by the Assembly. This bill creates and establishes a codified approach to new construction - known more commonly as the Building Officials & Code Administrators (BOCA) Code.

I CAN ENVISION WITH THE PASSAGE AND IMPLEMENTATION OF BOTH A-1299 AND S-3054 MORE PROGRESSIVE DEVELOPMENT AND CONSTRUCTION IN OUR STATE THAN EVER IN ITS HISTORY.

THE ONLY REMAINING ASPECT OF THIS MULTIPHASIC BUILDING INDUSTRY IS THE CREATION AND IMPLEMENTATION OF A UNIFORM PROPERTY MAINTENANCE CODE FOR THE STATE OF NEW JERSEY. WHILE S-3054 ALLOWS FOR PROPER DEVELOPMENT AND PROTECTIVE REVIEWS OF LAND USE AND A-1299 PROVIDES FOR UNIFORM CONSTRUCTION, PROPERTY MAINTENANCE REMAINS THE FUNCTION OF VARYING CODES WITHIN EACH OF OUR 567 MUNICIPALITIES!

SINCE A PROPERTY MAINTENANCE CODE IS NOT THE SUBJECT OF THIS HEARING, I WILL CEASE FROM ITS FURTHER DISCUSSION. MY ONLY PURPOSE IS TO DEMONSTRATE THE NEEDED "FUNNELLING" EFFECT OR "NARROWING" OF THE ISSUE THAT REMAINS TO BE SOLVED AFTER ALMOST TWO DECADES OF EFFORT BY VARIED OFFICIALS AND AGENCIES WITHIN OUR STATE. WITH THE ENACTMENT OF BOTH THESE BILLS A GREAT STRIDE WILL HAVE BEEN MADE FOR THE RESIDENTS OF NEW JERSEY.

NEW JERSEY NEEDS THIS MUNICIPAL LAND USE BILL BECAUSE (1) IT RANKS 46TH IN THE NATION IN TERMS OF LAND AREA (2) IT HAS A POPULATION OF OVER 8,000,000 BUSY PEOPLE (3) IT HAS A POPULATION DENSITY OF OVER 950 PER SQUARE MILE WHICH IS (1ST IN THE NATION) (4) ITS POPULATION IS 89% URBAN AND 11% RURAL (5) IT HAS 130 MILES OF VALUABLE COASTLINE (6) IT HAS NOW 1,000,000 ACRES OF LAND USE FOR AGRICULTURAL PURPOSES OF WHICH 10,000 ACRES ARE BEING SOLD EACH YEAR FOR DEVELOPMENT AND NON-AGRICULTURAL USES. I THINK S-3054 MAY STOP OR AT LEAST CURTAIL THIS SOMETIME WASTEFUL CONVERSION OF ACREAGE AND FURTHER INSURE IF INDEED THIS CONVERSION IS NEEDED THAT IT WILL BE DONE IN A WELL-PLANNED AND COMPREHENSIVE MANNER.

SINCE I'M A COMPARATIVE NEW COMER TO THE WAYS OF NEW JERSEY GOVERNMENT, BUT HAVING A BACKGROUND HEAVY ON CHEMISTRY I'VE LEARNED

THE "ACID-TEST" OF ANY LEGISLATION EMERGING FROM THIS STATE HOUSE IS "HOW DOES IT AFFECT THE SACROSANCT PRINCIPLE OF HOME-RULE?" WHILE THIS BILL REMOVES SOME OF THE EXCLUSIVE AUTHORITY HERETOFORE HELD BY LOCAL BOARDS OF ADJUSTMENT, I FEEL IT PERMITS THE ESTABLISHMENT OF AN EXCELLENT FOUNDATION UPON WHICH TO DESIGN LOCAL LAND USE AUTHORITY. SEVERAL OPTIONS ARE AVAILABLE FOR READY ADAPTABILITY TO PARTICULAR LOCAL NEEDS. SPECIFICALLY:

(1) SECTION 25 PROVIDES A METHOD FOR PROTECTION AGAINST FLOODING BY LIMITING CONSTRUCTION IN PUBLIC DRAINAGE WAYS, FLOOD CONTROL BASINS OR PUBLIC AREAS.

(2) SECTION 31B STATES-WHENEVER OPEN SPACE ORGANIZATIONS FAIL TO MAINTAIN OPEN SPACES IN "REASONABLE CONDITIONS" A MUNICIPAL BODY OR OFFICER SHALL DEMAND A CORRECTION WITHIN 35 DAYS AND FURTHER GIVES MUNICIPAL AUTHORITIES THE RIGHT TO ENTER UPON AND MAINTAIN SUCH LAND FOR 1 YEAR WHEN THE DEVELOPERS FAIL TO ABIDE BY NOTICE TO CORRECT ORDERS.

(3) SECTION 35 PROVIDES-WHENEVER A CITIZEN OR DEVELOPER APPLIES FOR A MINOR SUBDIVISION APPROVAL TO A PLANNING BOARD "FAILURE TO ACT BY THE BOARD WITHIN 45 DAYS SHALL CONSTITUTE APPROVAL". THIS IS VERY IMPORTANT IN TODAY'S RAPIDLY CHANGING FINANCIAL MARKET WHEREIN MORTGAGE COMMITTMENTS ARE WON OR LOSS BY DAYS.

(4) SECTION 56-PROVIDES FOR A ZONING BOARD OF ADJUSTMENT TO BE COMPOSED OF SEVEN MEMBERS NONE OF WHOM MAY HOLD ANY ELECTIVE OFFICE OR POSITION IN THE MUNICIPALITY. THIS GENERALLY MEANS LAY PEOPLE WHO ARE INTERESTED IN THEIR COMMUNITY AND HENCE PRESERVATION OF "HOME RULE".

(5) SECTION 28 STATES THE GOVERNING BODY MAY REQUIRE APPROVAL OF SUBDIVISIONS BY LOCAL PLANNING BOARDS AS A CONDITION PRECEDENT FOR THE FILING OF SUCH PLATS WITH THE COUNTY RECORDING OFFICER AND APPROVAL OF SITE PLANS FOR ANY DEVELOPMENT EXCEPT ONE OR TWO-DWELLING UNIT BUILDINGS, WHICH SHALL BE EXEMPT FROM SUCH SITE PLAN REVIEW AND APPROVAL. IN THIS WAY SMALL HOME OWNERS AND DEVELOPERS ARE NOT BURDENED WITH TIME OR MONEY CONSUMING REGULATIONS.

(6) UNDER SECTION 57D-A USE VARIANCE FOR ANY STRUCTURE IN PARTICULAR CASES AND FOR SPECIAL REASONS CAN BE GRANTED UPON AFFIRMATIVE VOTE OF FIVE MEMBERS OF THE ZONING BOARD. AS LONG AS THIS VARIANCE WILL NOT PERMIT SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD AND WILL NOT SUBSTANTIALLY IMPAIR THE INTENT AND PURPOSE OF THE ZONE PLAN AND ZONING ORDIANCE. AGAIN A POSITIVE STEP TO THE SOMETIMES NEEDLESS DELAY IN GOING BEFORE THE LOCAL GOVERNING BODY.

(7) SECTION 47-THROUGH ANCILLARY POWERS OF THE PLANNING BOARD, REVIEW BY THE PLANNING BOARD IS IN LIEU OF BOARD OF ADJUSTMENT APPROVAL IN THREE MAIN AREAS.

(A) VARIANCES PURSUANT TO LOT AREA, LOT DIMENSIONS, SETBACK AND YARD REQUIREMENTS.

(B) PERMIT ISSUANCES IN FLOOD AREAS.

(C) PERMIT ISSUANCES FOR BUILDINGS IN AREAS NOT RELATED TO A STREET.

(8) SECTION 51 PROVIDES-PRIOR TO THE ADOPTION OF LOCAL ZONING ORDIANCES BY GOVERNING BODIES ANY SUCH PROPOSALS MUST BE REFERRED TO THE PLANNING BOARDS FOR COMMENTS AND RECOMMENDATIONS. THIS PUTS ZONING PLANNING WHERE IT BELONGS AND ANYWAY FROM SPOT ZONING BY UNSCRUPULOUS ELECTED OFFICIALS.

(9) SECTION 22 PROVIDES-REVIEW OF AND SUBMISSION OF CAPITAL BUDGETS BY GOVERNMENTAL AGENCIES MUST GO TO THE PLANNING BOARD. "THIS REQUIREMENT SHALL APPLY TO ACTION BY A HOUSING, PARKING, HIGHWAY, SPECIAL DISTRICT, OR OTHER AUTHORITY, REDEVELOPMENT AGENCY, SCHOOL BOARD OR OTHER SIMILAR PUBLIC AGENCY." THIS REQUIRES AUTONOMOUS OR SEMI-AUTONOMOUS AGENCIES TO BE SUBJECTED TO REVIEW BY APPOINTED AND/OR ELECTED OFFICIALS. IN THIS WAY THESE AGENCIES CANNOT MAKE UNPOPULAR UNILATERAL DECISIONS FOR WHICH A MAYOR OR GOVERNING BODY IS CRITICIZED EVEN THOUGH THEY FORMALLY HAVE NO DIRECT CONTROL. AT LEAST UNDER THIS PROPOSAL APPOINTED MEMBERS OF THE PLANNING BOARD MUST REVIEW THESE AGENCIES' CAPITAL PROJECTS AND BUDGETS.

(10) SECTION 26 STATES-NO PERMIT FOR THE ERECTION OF ANY BUILDING OR STRUCTURE SHALL BE ISSUED UNLESS THE LOT ABUTS A STREET GIVING ACCESS TO SUCH STRUCTURE. ADDITIONALLY, THERE SHALL BE THE REQUIREMENT FOR CERTIFICATION OF THIS STREET AS ADEQUATE IN RESPECT TO PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OF THE SPECIAL CIRCUMSTANCE OF THE PARTICULAR STREET.

(11) SECTION 34 ESTABLISHES-DURING SITE PLAN APPROVAL PROCEDURES BY LOCAL PLANNING BOARDS IF ARCHITECTURAL PLANS ARE REQUIRED, THE ORDINANCE MAY ONLY REQUIRE PRELIMINARY PLANS AND ELEVATIONS. THIS IS ESPECIALLY GOOD FOR DEVELOPERS IN THAT THEY DO NOT HAVE TO EXPEND HUGE SUMS OF MONEY FOR DETAILED ARCHITECTURAL PLANS ONLY TO HAVE THEIR DEVELOPMENT PLANS DENIED BY A PLANNING BOARD. DETAILED PLANS SHOULD AND UNDER THIS BILL WILL BE RESERVED FOR SUBMISSION TO BUILDING OFFICIALS.

ALL OF THE AFOREMENTIONED SPECIFIC SECTIONS ARE THE GOOD ASPECTS OF S-3054. AS WITH MOST BILLS I'VE HAD THE OPPORTUNITY TO REVIEW AND OFFER COMMENTS, THERE ARE SOME OMISSIONS AND WEAK POINTS FOR CONSIDERATION. WITH S-3054 THIS IS ALSO TRUE! HOWEVER, THEY ARE MINIMAL---BUT I WOULD LIKE TO LIST AT LEAST TWO AS REPRESENTATIVE.

FIRST, SECTION 55 DEALING WITH NON-CONFORMING STRUCTURES AND USES LACKS CLEAR DEFINITION AND CAN LEAD TO FAULTY INTERPRETATION. MY EXPERIENCE OF FIVE YEARS IN ADMINISTRATIVELY DIRECTING THE BUILDING DEPARTMENT OF ELIZABETH THE THIRD OR FOURTH LARGEST CITY IN NEW JERSEY (WE HAVE FRIENDLY ARGUMENTS WITH MEMBER CITIES OF THE BIG SIX ON THE EXACT RANK) ALLOWS ME TO CALL FOR FURTHER CLARIFICATION OF THIS SECTION 55. ELIZABETH IS A CITY IMBUED WITH A HISTORY PREDATING THE REVOLUTIONARY WAR, AND AS SUCH, HAS A FAIR SHARE OF NON-CONFORMING STRUCTURES AND USES. WHILE THE SENTENCE AS WRITTEN IN THIS SECTION READS VERY SIMPLY "ANY NONCONFORMING USE OF A STRUCTURE EXISTING AT THE TIME OF THE PASSAGE OF AN ORDINANCE MAY BE <u>CONTINUED</u> UPON THE LOT OR IN THE STRUCTURE SO OCCUPIED AND ANY SUCH STRUCTURE MAY BE RESTORED OR REPAIRED IN THE EVENT OF <u>PARTIAL</u> DESTRUCTION THEREOF "---I CAN ASSURE YOU THE INTERPRETATION OF THE TWO WORDS <u>CONTINUED</u> AND <u>PARTIAL</u> WILL CREATE THE BIGGEST HEADACHE.

IN MY OPENING REMARKS I REFERRED TO A PROPERTY MAINTENANCE CODE AND ITS NEED FOR CONTINUED GROWTH OF OUR BUILDING INDUSTRY. IF MY PREMISE IS CORRECT, THEN NON-CONFORMING STRUCTURES WILL HAVE TO BE MAINTAINED TO PREVENT DETERIORATION OF NEIGHBORHOODS IN OUR 89% URBAN STATE.

MY PERSONAL INTERPRETATION OF THE WORD <u>CONTINUED</u> MEANS A REFERENCE TO A POINT IN TIME AS USEDIN THIS SECTION---BUT I CAN RECALL MANY

BUILDING INSPECTORS IN MANY MUNICIPALITIES INTERPRETING THIS VERY SAME LANGUAGE TO MEAN CONTINUED AS "TO CARRY ONWARD EXTEND AS A DIMENSION OF DISTANCE" A FAST EXAMPLE,---IF A NONCONFORMING STRUCTURE HAS A FOUR FOOT SIDE YARD WHEN THE ZONE REQUIREMENTS DICTATE A SIX-FOOT SIDE YARD THESE SAME BUILDING INSPECTORS SAY AS LONG AS THE STRUCTURE IS NON-CONFORMING IT MAY BE ADDED TO OR EXTENDED USING THE FOUR FOOT SIDE YARD INSTEAD OF THE REQUIRED SIX.

THE WORD PARTIAL MUST HAVE A PERCENTAGE FIGURE TO IT AS A POINT FOR EASY REFERENCE, A LIMITATION AS TO ITS STRUCTURAL INTEGRITY AND A PERIOD OF TIME FOR REPAIRS TO BEGIN. I WOULD SUGGEST IT BE AMENDED TO READ "MAY BE RESTORED OR REPAIRED IN THE EVENT OF DESTRUCTION TO LESS THAN 50% DAMAGE OF ITS STRUCTURAL SUPPORT SYSTEM OR FOUNDATION AND ALL REPAIRS MUST BE INITIATED WITHIN ONE YEAR OF SAID DESTRUCTION." BASED ON PERSONAL EXPERIENCE, UNLESS THE PROVISION IS ESTABLISHED, SEVERELY DAMAGED NON-CONFORMING STRUCTURES WILL BE OPEN TO ALL TYPES OF RECONSTRUCTION AND AN ENDLESS CONTINUATION OF NON-CONFORMITY WHICH IS NOT THE INTENT OF ANY GOOD PLANNING FOR ANY COMMUNITY.

SECONDLY, SECTION 46 ON CONDOMINIUMS NEEDS TO BE RESTRUCTURED OR ADDRESSED TO IN ANOTHER COMPANION BILL. AGAIN BASED ON EXPERIENCE IN ELIZABETH I HAVE SEEN GREEDY AND RAVENOUS LANDLORDS RUSH TO CONVERT APARTMENTS INTO CONDOMINIUMS WHICH IF BUILT NEW COULD NEVER BE SOLD AS COOPERATIVE STRUCTURES. IN TOO MANY INSTANCES THE CONVERSION IS SUCCESSFUL BECAUSE OF FEAR AND THE NEED FOR HOUSING BY MANY OF THE TENANTS PRESENTLY OCCUPYING THE STRUCTURES.

ADMITTEDLY, IT IS THE FEELING OF THE DRAFTERS OF THIS BILL THAT CONDOMINIUMS CANNOT BE SPECIFICALLY REGULATED BY THIS BILL---BUT

PRIVATELY I KNOW THEY SHARE MY CONCERN FOR THE PROMOTION OF SOME MECHANISM (AND IT IS MY FEELING---THROUGH LEGISLATIVE ENACTMENT OF ANOTHER BILL) TO PREVENT SUCH CONVERSIONS OF OLD BUILDINGS AND TO ESTABLISH A FULL SET OF CRITERIA FOR REGULATING CONDOMINIUMS.

IN CONCLUSION, WHILE THE LANGUAGE OF THIS DAY AND AGE IS TO BUILD HEDGES AGAINST INFLATION, OIL DEPLETION, ENERGY CONSUMPTION, ETC. I FEEL S-3054 IS A HEDGE AGAINST FEDERAL, STATE, AND/OR REGIONAL INTRUSION INTO LOCAL HOME RULE. AND THIS IS GOOD! WHILE IT IS NOT 100% PERFECT, THERE CAN NEVER BE A BILL THAT IS 100% PERFECT FOR 100% OF THE PEOPLE. AND THIS IS GOOD!

IT IS GOOD BECAUSE RALPH WALDO EMERSON, THE GREATEST PHILOSOPHER OF OUR TIME ONCE STATED;

> "A FOOLISH CONSISTENCY IS THE HOBGOBLIM OF LITTLE MINDS ADORED BY LITTLE STATESMEN AND PHILOSOPHERS AND DIVINES. WITH CONSISTENCY A GREAT SOUL HAS SIMPLY NOTHING TO DO-- SPEAK WHAT YOU THINK TODAY IN WORDS AS HARD AS CANNON BALLS, AND TOMORROW SPEAK WHAT TOMORROW THINKS IN HARD WORDS AGAIN, THOUGH IT CONTRADICT EVERYTHING YOU SAID TODAY."

WITH THIS ADMONITION TO CONSISTENCY, I ENDORSE AND RECOMMEND THE PROVISIONS OF S-3054 ON THIS DAY THE 3RD OF APRIL 1975 WITH THE FREEDOM AND CHOICE TO CONDEMM IT OR URGE ITS REPEAL SHOULD IT BECOME A LAW OF THIS GREAT STATE OF NEW JERSEY AND SHOULD IT BE SHOWN TO BE A WORTHLESS PIECE OF LEGISLATION. MY CAREFUL REVIEW, ANALYSIS AND SUPPORT, HOWEVER, ALMOST TOTALLY PRECLUDES THIS LAST POSSIBILITY. IT IS A GOOD BILL AND WILL BE A GOOD LAW!!

SENATOR DUNN: Thank you, Mr. Surmay.

I also define your presentation, as I did Mr. Hutt's, to be a very comprehensive one and one very well thought out. I disagree with you about Ralph Waldo Emerson being the greatest philosopher of all times; I think Tony Imperiale has taken title.

John, Mr. Stickel, who has been working with this Committee, evidently, according to Mr. Greenberg especially, requested permission to make a comment on one of the objections you raise to the non-conforming use. At least I construed that.

MR. STICKEL: That's correct.

SENATOR DUNN: You have no objection. Mr. Stickel, do you want to make a comment?

MR. STICKEL: First, I would like to express appreciation for a very well-done job. You have evidently gone through it very thoroughly.

My only comment in connection with your suggestion as to the language of the non-conforming use statute is this: That's the language that Bassett put in back in 1923. We've had many, many sessions with that.

I am in complete agreement with you that that section should be changed. I have tried, over the years, to get the theory of amortization of non-conforming uses changed into language - but the purpose of our drafting this bill was not to change in substance any of the law as it existed today. We got into an awful hassle when we tried to do that with a bill a few years ago. So we decided to leave it as it is principally because the language has been interpreted by the courts over the past twenty or thirty years, and if there is a real genuine feeling in support of your position, and my position incidentally, I would think it would be the subject matter of a separate bill, that we could amend it in that

way. We did not feel it was appropriate to do it in this particular legislation.

I also agree with you on the condominium proposition but, as the Maplewood case says, we can't in zoning get into the ownership of land, so that your comment is correct, it should be the matter of a separate bill.

Thank you.

MR. SURMAY: I would accept your comments in light of my analysis of the condominiums and its analogy. My only fear in asking that it be clarified is that on too many occasions some municipalities will use the State law as the bible and not amend it by any local ordinance for its own particular needs.

SENATOR DUNN: Senator Vreeland, do you have any questions?

SENATOR VREELAND: Well, just one, Mr. Chairman.

Under Section 9 that the capital budget must be submitted to the zoning board from all the different boards in a municipality, I think you say that they cannot make unpopular, unilateral decisions for which the Mayor or governing body is criticized. But, by the same token, if that board, if the zoning board makes decisions on the submissions, the governing body still can be criticized because they appoint the zoning board.

MR. SURMAY: Well, the only comment or correction I would make is that I said planning board and not the zoning board.

SENATOR VREELAND: The planning board. I'm sorry.

MR. SURMAY: There is a difference, I think, in concept many times of the people serving on - there is professional disagreement between zoning officers and planners too. But I think that a governing body has more control over appointing people to a planning board and backing into responsibility than it would be when you

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have a big redevelopment, school boards, special districts parking and highways. They tend to make decisions. Right in our own County of Union, right now, we have a big dispute over a Vo-Tech school. We have a big dispute over parking authorities doing some things for which the residents, the voters, hold the Mayor responsible for. And knowing the operations of those agencies and the operations of the Mayor's Office, I know that he was not responsible. And that's why I list it as a good point for this bill.

MR. STICKEL: Are you saying that the Mayor is responsible for a board of education decision?

MR. SURMAY: I'm not saying that he is responsible. I am saying that he is held by the electorate to be that and is criticized whenever a school board, a parking authority, a highway district or what-have-you makes a decision.

MR. STICKEL: For capital construction.

MR. SURMAY: Anything.

SENATOR DUNN: Well, a Mayor takes the rap for everything, not for the actions of a school board, I don't think. I disagree with that. I don't think so, locally. Probably as far as the planning board goes because he made the appointment under the statute to the planning board. Right?

MR. SURMAY: Yes. I would respect your right to disagree with me.

SENATOR DUNN: I think what you're saying here though, the planning board could in the capital budgets of anybody who sends it to them, which is provided for in this statute, - could cause the governing body some discomfort by their decision. I don't think there's any question about that.

MR. SURMAY: I don't disagree with that either. I don't disagree with that premise. What I'm stating is,

by backing into control the Mayor and the governing body, who in most cases consents to the appointment that the Mayor has over a planning board has better control over the planning boards than they would have over the school districts, the parking authorities, the housing authorities.

SENATOR DUNN: I would like to point something out as one of the totally unfair things allowed today, and it's not on the bill but for your edification at least, Mayors do not appoint to autonomous bodies and yet, as Mayor, I have no voice, no vote, no appointment power to an autonomous agency. Yet the actions of autonomous agencies, such as housing authorities, redevelopment agencies, parking authorities, in error, reflect on the Mayor and he gets blamed whenever there is a failing or a deficiency of these autonomous agencies yet very seldom gets credit for any good thing that they do. And the same holds true, however, with boards of education, depending on the district. Ours is under the Faulkner Act and the Mayor appoints commissioners to the Board of Education. Therefore, the board supposedly reflects the thinking of the Mayor.

John, just one question that has come to my mind. This would not in any way affect, for example, - recognizing that you are an expert in this field, this would in no way affect the operation of the Port Authority of New York as it relates to its operation within the City of Elizabeth.

MR. SURMAY: In my opinion, no.

SENATOR DUNN: Although you haven't been here for Mr. Surmay's presentation, you have a copy of it. Do you have any questions?

SENATOR GREENBERG: No, I don't.

SENATOR DUNN: Then I will thank you again, Mr. Surmay, for a very fine presentation. And I will turn

the meeting back to the Chairman.

SENATOR GREENBERG: Thank you very much, Senator Dodd.

I want to explain to the members who are here, because of a conflict in scheduling I am also sitting on a committee hearing on wiretap testimony downstairs, I will be in and out today but that does not indicate my lack of interest in this major piece of legislation and I ask your indulgence. Senator Dunn will fill in as Chairman when I am not here.

The next scheduled witness we have is Robert Molnar. Mr. Molnar.

R O B E R T A. M O L N A R: Thank you.

SENATOR GREENBERG: Mr. Molnar, will you please identify yourself and state on whose behalf you are appearing?

MR. MOLNAR: Yes, of course, Senator.

My name is Robert Molnar. I am an Attorney and am Chairman of the Housing and Urban Affairs Committee of the New Jersey Bar Association. And on my right is Mr. Peter Buchsbaum, another member of the Committee. I have a prepared statement which I would like to read.

This statement is being submitted on behalf of the Housing and Urban Affairs Committee of the New Jersey State Bar Association. However, the views expressed herein are solely those of the Committee and have not yet been submitted to the Board of Trustees for their consideration prior to submission to the entire New Jersey Bar Association at the annual May meeting.

However, the New Jersey State Bar Association is aware of the appearance today, as well as the general tenor of our remarks and supports the work of our Committee in connection with its study of New Jersey's zoning and land use laws, particularly as they relate to housing for this State's citizens. Our Committee did not concern itself with technical provisions of the bill relating to planning and zoning applications, approvals and the like, as these provisions are not within the purview of our Committee. After much study and discussion of this bill and others dealing with zoning and land use, it is the opinion of our Committee that Senate Bill No. 3054 relating to the planning and regulation of land uses and revising parts of the statutory law, is totally inadequate in relation to remedying the existing housing situation in the State of New Jersey. In fact, there is not one word in the entire bill as to the housing needs of the citizens of the State particularly those citizens of low and moderate income, although there are provisions for open space and transportation routes. Even Section 19(b)(3) of the bill is permissive and vague as to a housing plan element in any master plan, which master plan is also permissive for the municipality.

Even in those sections of the Bill where there are provisions, such as Sec. 29(b), for planned unit development, these provisions are permissive rather than mandatory with reference to the zoning powers of a municipal body, and are also subject to a number of restrictions (Sec. 33).

This Bill is void of any provisions concerning the problem of exclusionary zoning as set forth in the recent New Jersey Supreme Court decision of Southern Burlington County, N.A.A.C.P., et als vs. Township of Mount Laurel, which was decided on March 24, 1975. While we realize this Bill was introduced prior to the Supreme Court's decision, the lower court had already ruled in favor of the plaintiffs and the problems of exclusionary zoning have long been known.

While perhaps twenty years ago this may have been a good recodification Bill on zoning and planning, our Committee strongly feels that "it is too little too late" or as one committee member more eloquently stated it--the Bill merely changes one or two strings on Nero's fiddle while Rome continues to burn.

In order to be more specific, we wish to call the Committee's attention to the various other provisions of this Bill which we consider to be inadequate. More particularly, the requirement in Section 50 that a two-thirds vote of the governing body be required to approve any zoning change protested by owners of 20% of surrounding lots. Such a requirement would come into play almost every time that any multi-family zoning is contemplated since if past experience is any guide inevitably 20% of the surrounding owners will oppose such a change. Multi-family zoning ought not to have to face any special barriers particularly in light of the great need for housing existing in the State of New Jersey.

Furthermore, the Committee feels that this Committee should consider making mandatory, ordinances such as those existing in Franklin Township, New Jersey, requiring that a certain per-

centage of all planned unit developments must have a fixed percentage of lower and moderate income housing. This proposal has also been suggested by the Court in the Mount Laurel opinion.

Further, Section 52 of this Bill places complete discretion on the local governing body as to the nature of any PUD'S or planned unit residential development. Also, regional planning boards are permissive rather than being mandatory.

It is the thinking of our Committee that even with the benefit of hindsight, it should never have been necessary for the Mount Laurel decision to have been rendered but rather that the State Legislature should have moved years ago in order to break down exclusionary zoning practices to alleviate the critical housing situation and the problems facing the urban areas of this State. Although Sec. 76 of the Bill provides for an examination every six years of any master plan and to submit reports to the adjoining community and the county, this provision lacks any teeth for enforcement.

Although we realize this hearing is not on Senate Bill 3100, we think the time and attention of this Committee would be better directed to the provisions of that Bill in terms of meeting the issues raised by the Mount Laurel decision. Our Committee feels that the time has long passed for any half-way measures and that strong affirmative action will have to be taken by the New Jersey legislature so that these vital matters can be settled here where they rightly belong, not in the Courts by default.

Thank you.

SENATOR GREENBERG: Thank you, Mr. Molnar.

I wonder whether you would be kind enough to schedule an appearance before this Committee when we hold hearings on my other bill dealing with the subject matter which you have just addressed yourself to.

MR. MOLNAR: We plan to.

SENATOR GREENBERG: Because I agree with almost all that you have said. What I disagree with is that this bill and this vehicle is the time and place to do that. And I don't know if you were here at the opening of this hearing but I expressed the distinction between the two bills, in my mind, at that point, and the fact that they should not be confused.

I have a question for you and I note that you are not a member of the Committee which concerns itself with the technical provisions of this bill, as you stated in your prepared statement. Does such a committee of the Bar Association exist?

MR. MOLNAR: I believe it does concerning local zoning laws.

SENATOR GREENBERG: That is the municipal section. Do you know whether or not they intend to appear?

MR. MOLNAR: I have no idea.

SENATOR GREENBERG: Okeh.

MR. MOLNAR: Might I answer at least your remark? I did not hear your opening remarks, although I did hear one or two of the previous speakers.

It was the thinking and feeling of our Committee that if this bill is to be adopted in its present form, particularly in light of the Mount Laurel decision, which admittedly came out after the bill was submitted, you will be reinforcing basically, as has been said by other

speakers, home rule as it has existed in the State of New Jersey back to 1927. I believe this reference was made in the Mount Laurel decision. It's this particular situation, with home rule powers, which has brought the State, as we see it, to the particular problem that we are in now concerning housing, and the reason for the Mount Laurel decision. I don't think that this bill, if it is passed - I think it will hurt the chances of any other county or statewide, regional planning methods being approved by the State. I would see nothing wrong if the Committee would consider this bill in conjunction with the others. There is no objection to some of the other technical provisions to recodification provisions of the law, but to adopt, after Mount Laurel, a bill which in effect reaffirms home rule as it has existed for all these years, I think would be a mistake for this Committee.

SEN. GREENBERG:Well, I appreciate your views. Since you were not here, let me just succinctly state again that this bill has been approximately one and a half years in the drafting at the direction of this Committee. It is true that the Mount Laurel decision was making its way up through the courts at that time. And almost simultaneously with the drafting of this bill, I have been engaged in the drafting of a bill dealing with housing which is presently pending in our Committee, to which you have also referred. I do not agree that the matters must be considered at the same time, and I have so stated. This is a bill which I deem to be procedural in nature and will permit, in my judgment, the implementation of any modifications which the Legislature sees fit to make as a result of the mandate directed to the Legislature in the Mount Laurel decision. I have very carefully attempted to read the Mount Laurel decision and I have only read it three times, so I am not quite yet sufficiently

familiar with all of the ramifications to comment on it, nor do I think it's appropriate today. But I have also re-read this bill that is under consideration today in the light of the Mount Laurel decision to determine whether or not there is anything in it which runs contrary to the concepts and principles of the Mount Laurel decision, and I do not find such conflict. I do find that local municipalities will have to function in some capacity with some element of home rule maintained in this State in the future but in conformity with the decision in the Mount Laurel opinion.

My view, and I speak for myself on this subject, is that this bill would permit those municipalities to function more effectively from a procedural point of view, regardless of any ultimate legislation that the Legislature may see fit to adopt in conformity with Mount Laurel. But I do appreciate what you're saying and I think you can tell by the fact that I have sponsored both bills that I am in accord with your view as to the need for the Legislature to do something on Mount Laurel.

I must, however, conclude this short statement by adding that I would like, as much as possible, - and I did not cut you off and I will not cut you off - to confine the discussions to the deficiencies, if any, or the suggested changes, if any, that you envision should be made, or any other witness testifying here envisions should be made, in this bill, having as its limited purpose that to which I have already referred.

Do you understand what I am saying?

MR. MOLNAR: Yes, clearly, Senator.

Well, we did, in the prepared statement, make reference to various provisions concerning master plans, PUD's. We would submit, as a minimum, that those

should be required, mandatory, and not permissive. It just seems to us, from reading this bill, that whenever this bill gets into an area that might be a little controversial, such as PUD's or master plans, then it becomes permissive, in other words allowing each municipality to decide for itself. Maybe in years past that may have been good - I'm trying not to get into Mount Laurel - but not with the situation of the State concerning the housing problems more particularly felt in the urban areas. The time, we feel, has long past for such permissiveness on the municipalities and accordingly, at a minimum, directed specifically to this bill, you should have mandatory PUD's and not only mandatory PUD's but, as also suggested in our statement, such as Franklin Township and as referred to in the Mount Laurel decision, the mandatory PUD should provide for a certain percentage of low and moderate income housing.

I think probably if you and I disagree on a matter of procedure, although I commend you for S-3100 and we will try to speak to that when that bill comes up --

SENATOR GREENBERG: Well, one out of two isn't bad.

MR. MOLNAR: Well, fair enough. But specifically yes we would think that those areas that are permissive should be made mandatory and I think this would be in line with what federal legislation may be taken up later in view of Mount Laurel.

SENATOR GREENBERG: Right.

And I appreciate that view. And my point is, if you start to make things like that mandatory before you know where you're going with the legislation that's going to deal with Mount Laurel, you may find that you may have to restructure this entire procedural bill in

accordance with what the Legislature subsequently does. And it may be that we will have to restructure it.

MR. MOLNAR: Well that's the way we see it.

SENATOR GREENBERG: But we don't have that second piece of legislation under consideration yet nor is there any concensus as to where it's going, so, therefore, I appreciate your views, I accept your testimony with regard to the mandatory versus permissive nature, and the Committee will certainly give that consideration.

MR. MOLNAR: Okeh. Thank you.

SENATOR GREENBERG: Senator Dunn?

SENATOR DUNN: Well, I have no questions other than to reiterate the witness is speaking in terms of political philosophies and this bill is geared for talking about the mechanics of making application for certain things, and whatnot. And because these are public hearings and because the Mount Laurel decision came out after this legislation was roughly drafted, perhaps some amendments might be considered by the Committee or by the Senate and the Assembly that would change or amend the bill to take in some of the philosophies dictated by the Supreme Court decision.

SENATOR GREENBERG: Senator Vreeland?

SENATOR VREELAND: I have to say, Mr. Chairman, that I concur with your remarks and I think that this bill stands on its own and that it does, as you say, settle some problems as to the procedures. And I don't think it delves into statewide zoning, if that's what you're talking about, or mandatory zoning in that respect. And I certainly think that this bill serves the purpose for which it's intended. And I disagree with the witness in many areas but I don't think this is the place or the time to go into that.

SENATOR GREENBERG: We will have that place and

time and I would like to see you back again because I'm going to need your help.

MR. MOLNAR: In the words of our famous General, We shall return.

SENATOR GREENBERG: Thank you, Mr. Molnar.

The next scheduled witness on my list is Mayor Bell, whom I called earlier. Is he here now? He is still not present.

Is Louis Raupp present? He's not yet present.

Is Malcolm Kasler present? Please come forward. Would you identify yourself, please.

M A L C O L M K A S L E R: My name is Malcolm Kasler and I am appearing here as a representative of the American Institute of Planners and I also participated as one of the members of the Drafting Committee for the League of Municipalities.

I have the following statement that I would like to read:

The New Jersey Chapter of the American Institute of Planners supports S-3054, the Municipal Land Use Law. The American Institute of Planners actively participated with the League of Municipalities in drafting this bill.

We recognize that S-3054 is a concensus legislative effort designed to meet a broad array of planning and zoning needs in the State of New Jersey. This includes our largest urban areas, our suburban communities and our more rural communities as well. While individual members have indicated modification to certain provisions of the bill, it is not certain that the Chapter collectively could agree on all of these provisions to improve upon the pending legislation.

We all recognize the need to modernize and update our present enabling legislation, and therefore urge the enactment of this bill. As you well know, the bill consilidates various administrative policies, legal decisions and current law into a consolidated and uniform municipal land use bill. S-3054 incorporates a number of new features which the American Institute of Planners support including the following:

-- Broadening the statutory municipal purposes of zoning, planning and land use control.

-- Spelling out in detail and unifying the procedures to be followed before the board of adjustment, planning board, etc.

-- Granting planning boards the statutory power of site plan review, which they do not now have.

-- Incorporating the powers of the PUD Act into the overall Municipal Land Use Enabling Legislation along with zoning, planning, site plan review, subdivision control and official map so that all means of exercising these important municipal functions will be in one act and in one place.

-- Making provisions for off-site improvements.

-- Providing for design control districts for areas containing buildings of historical, architectural or cultural merit.

-- Permitting planning boards to attach conditions to minor subdivision approval.

-- Permitting planning boards, instead of boards of adjustment, to act on conditional uses.

-- Eliminating the needs in most cases, of appearing before two boards to obtain land use approval.

In summary therefore, we recommend your favorable consideration of S-3054 and would be willing to work with your staff in making any modifications in the bill, if this is deemed necessary.

Respectfully Submitted,

Denton S. Layman

Denton S. Layman, A.I.P., P.P.
President, American Institute of Planners,
New Jersey Chapter

Malcolm Kasler

Malcolm Kasler, A.I.P., P.P.
Member of the A.I.P., Legislative Committee &
Member of League of Municipalities Municipal
Land Use Law Drafting Committee

SENATOR GREENBERG: Thank you very much.

I have no questions. I appreciate your appearance and your comments.

Senator Dunn?

SENATOR DUNN: No questions.

SENATOR GREENBERG: Senator Vreeland?

SENATOR VREELAND: No questions, Mr. Chairman.

SENATOR GREENBERG: Thank you Mr. Kasler.

MR. KASLER: Thank you.

SENATOR GREENBERG: The next scheduled witness is Leon Solis-Cohen. Would you please identify yourself for the record.

L E O N S O L I S-C O H E N: Yes, thank you, Senator Greenberg and members of the Committee. I am an Attorney. I am active with the State Committee of the International Council of Shopping Centers which covers, among other states, New Jersey, and we're charged with the responsibility of examining and expressing our viewpoints, at least as a Committee, respecting any legislation affecting land use and certainly your monumental bill here will affect land use and development in the State of New Jersey.

I have here some comments which I would like to submit to the Committee. (See p. 88.)

SENATOR GREENBERG: Yes, thank you.

MR. SOLIS-COHEN: Rather than read these comments, which are some suggestions and observations, I would just like to endorse on the record the fact that I have reviewed the bill and believe it has been most carefully drafted; it's quite comprehensive, yet clear; it achieves the objectives which you stated earlier when you convened the hearing, Senator Greenberg, in that it collects in one statute prior enacted law relating to the same subject matter; it represents a logical approach to land

use planning from a procedural point of view and has adequate safeguards.

Quite frankly, it appears to be an excellent measure and one I trust the Committee will endorse and the Legislature will enact. However, there are some technical matters that I would like to call to the attention of the Committee and perhaps one policy decision the Committee might consider making.

Not included in my prepared remarks, because these matters were called to my attention subsequent to preparing them, are two points I would like to make in respect to two of the definitions. The first such definition is that of "Developer" appearing on page 3.

Consideration, we think, should be given to expanding that definition to include a ground lessee and perhaps to making it clear that a mortgagee is not in fact a developer, at least while not in occupancy or possession of the mortgaged premises.

The other matter not covered by my remarks that I would like to call to your attention is on page 8 in terms of the definition of a "Subdivision". And, here again, the problem relates to the financing individual or institution. What did the Committee contemplate by that definition including the lender or mortgagee? It's not really clear and again the question comes up, what about foreclosure? Is foreclosure a subdivision, particularly if it's only foreclosure of a portion of a larger site where the mortgage may not cover the entire tract. This is highly technical and obviously will have to be considered in a further Committee meeting and for appropriate wording if it's desired to exclude that from the purport of this bill.

The chief reason for my appearance is the

rather heavy emphasis on housing development, planned unit development relating to housing with little or no mention of planned commercial development. We would encourage your Committee to adopt a technical amendment, one or more, defining either commercial cluster or planned commercial development so that it is clear that a developer contemplating a planned development - our primary interest, of course, is shopping centers - would be within the ambit of this statute.

We feel that it's a good statute. It simplifies the procedures, as other witnesses have testified. It follows our precept, our aim of one-stop permit shopping. In other words, the developer doesn't want to have to go to three, four or five separate agencies to get the permits to develop.

It also, I think, seeks to limit the time within which the board or bureau or division, site planning board, whatever, has to grant a permit so that the developer is not forced into inordinate delays. To the extent those periods could be shortened, the bill could be perhaps improved a little bit, but that's a minor development.

My prepared observations cover other matters. I don't really feel I should take your time this afternoon to testify orally in respect thereto. And I do thank you for this opportunity.

SENATOR GREENBERG: Thank you, Mr. Solis-Cohen, and I have a question for you.

With regard to your second point dealing with the language on the top of page 9 of the bill, are you familiar with the exemption #3 "divisions of property upon court order". Does that not solve your problem with regard to the exemption referred to or is it insufficiently definite?

MR. SOLIS-CHOEN: Thank you, Senator Greenberg, for calling my attention to that. I dare say it would cover part of it but not the entire problem because in many instances there is no court order in respect of a foreclosure. You don't necessarily have to go to court to accomplish foreclosure. If it's not contested, you can get the deed in lieu of foreclosure, for example, from the borrower to the lender. There are provisions for voluntary transfers or abandonments of real property to the lender that are completely without judicial process respecting mortgage foreclosures in the State of New Jersey. So it's not quite adequate to the purpose.

SENATOR GREENBERG: I understand your problem and I appreciate your bringing it to our attention.

Thank you for appearing.

Senator Dunn, do you have any questions?

SENATOR DUNN: No, I have no questions, Senator.

SENATOR GREENBERG: Senator Vreeland?

SENATOR VREELAND: No, Mr. Chairman, thank you.

SENATOR GREENBERG: Thank you very much, Mr. Solis-Cohen.

The next witness or witnesses scheduled are Tom McCoy and Harvey Moskowitz.

T H O M A S J. Mc C O Y: Senator, I'm Tom McCoy. Mr. Moskowitz will actually do the testifying today. However, I would perhaps be able to enlighten you. You asked a question as to whether the Local Government Committee would appear on this bill.

SENATOR GREENBERG: I did.

MR. McCOY: On March 12th, I believe it was, I attended a meeting. It was a joint meeting of the Local Government Committee of the Bar and the New Jersey Municipal Attorneys on this bill. And some 48 people were in attendance. At that point it was impossible

to get concensus on the bill. So I would assume, at this point, they would not be in attendance.

MR. GREENBERG: Thank you for that information.

Mr. Moskowitz, will you identify yourself for the record, please?

H A R V E Y S. M O S K O W I T Z: Thank you, Mr. Chairman. My name is Harvey Moskowitz. I am a Planning Consultant and I am here in my capacity of Planning Consultant to the Township of Morris, Morris County, New Jersey.

At the outset, we would like to make one point with respect to Senator Greenberg's comments on the essential differences between the bill presently being considered and the subsequent bill dealing with housing. And our comments, of course, are confined to the technical aspects of this particular bill before us.

We also appreciate the extremely difficult task that the Committee and Sub-Committee had in coming up with a bill of this type, reconciling the many divergent points of view with respect to planning. I think we believe they have come up with a workable, substantial bill.

Our statement is as follows, sir:

The Planning Board of the Township of Morris is generally in favor of the objectives, procedures, and standards set forth in Senate Bill No. 3054. We recommend and respectfully submit several suggestions of both a general and specific nature to improve the administration of the Act, clarify certain sections, protect the general welfare of the citizens and encourage proper and careful land use development in New Jersey.

The suggestions are noted below and except for the first comment, they follow consecutively the pages of the official bill reprint.

1. Paragraph 34, page 36 entitled Procedure for preliminary site plan approval and paragraph 36, page 38 entitled Procedure for preliminary major subdivision approval contain two similar sentences except one refers to site plans and the other to subdivision. The sentence(s) read as follows:

> "The (site plan) (plat) and any other documents to be submitted shall not be required, as a condition of preliminary approval, to meet customary record or engineering standards"

We believe this is a most serious weakening of present procedures particularly relating to plat approval. The preliminary approval stage is the most important stage of the entire plat approval procedure. Prior to preliminary approval, a sketch plat has been reviewed and the general layout considered. After preliminary approval, final approval is automatically granted when a bond is posted to guarantee installation of improvements or after the improvements are installed (in lieu of a bond).

The preliminary stage requires precise and detailed engineering calculations to provide the planning board and its engineering, legal and other technical staff with the necessary information to determine that all ordinances are met, that all utilities are properly designed and capable of handling the proposed development, that construction standards have been followed, and that applicable county or State requirements such as relating to drainage, soil erosion, flood plain, stream encroachments, etc., have been properly considered.

The preliminary approval stage is when the required public hearing is held, when comments from the county and other statutory referral agencies are read and considered, and when the public may question the board and applicant on all aspects of the particular site plan or subdivision.

Precise standards are required at this preliminary stage because it is from the preliminary approval exhibits that the bond estimates for improvements

are calculated. It is obvious that there is a substantial difference in the cost of installing a 24 inch drain pipe versus a 36 inch pipe. Yet only through detailed and accurate engineering calculations can the size of the pipe be determined.

We strongly recommend that the two sentences be changed to require, as a condition of preliminary approval, that all site plans and plats meet customary record or engineering standards. This can be done by deleting the word "not" in line 7, paragraph 34, page 36 and in line 9, paragraph 36, page 38.

2. Page 2, line 21, definition of "building." We believe this is awkward and unclear. We suggest the following:

A structure having a roof supported by columns or walls.

3. Page 3, line 2, definition of "common open space." This provision restricts the use or enjoyment of the common space to residents and owners of the development. In some situations, common open space may be used or enjoyed by residents of the entire community. For example, where several PUD's abut, joint common open space may be used for a municipal school or recreation area. Indeed, the Act provides for municipal ownership (p. 33, line 15) where appropriate. We suggest that a clause be added after the word development (line 36) " . . . and such other groups as may be provided as part of development approval."

4. Page 3, line 60, definition of "development," includes the words " . . . the division of a parcel of land into two or more structures . . . " This is actually the definition of the word subdivision (page 8, line 277). It should be deleted from the definition of development since development can obviously take place without subdivision.

5. Page 3, line 67, definition of "development regulations." We suggest that the following specific ordinances be included: soil erosion and sedimentation control, storm water control and flood plain ordinance, building codes, and housing maintenance codes.

6. Page 4, line 95, definition of "interested party". This is extraordinarily broad and we cannot think of any single person who might be excluded. We presume this was the intent of the draftors. We would suggest that since the term "interested party" is defined, it should be used throughout the act. For example, p. 11, line 32 refers to "person", line 43 to "members of the public", and page 18, line 23 refers to "interested person". All should be changed to "interested party."

And in that paragraph there is an error which we pointed out in spelling: line 100 "effected" should read "affected."

7. Page 4, line 110, definition of "maintenance guarantee". Parenthetically, the Act does not provide for maintenance guarantees or any portion thereof to be in cash. We recommend that a portion of the maintenance bond be allowed to be in cash, for two reasons. We find that a cash guarantee often insures performance; and, secondly, there is an extraordinarily difficult task in collecting on purported defaults by developers or applicants.

8. Page 5, line 123, definition of "minor subdivision". We recommend that the definition be broadened to include the extension of other utilities (other than a street) that this be cause for classification as a major. In addition, where the proposed minor would adversely affect the development of the remainder of the tract or adjacent parcels, the planning board should have the right to classify it as a major.

9. Page 6, lines 156-166, definition of "offsite, off-tract, onsite, on-tract." We are in agreement that the definitions are necessary but we find the ones suggested (with the exception of "onsite") are vague and unclear. Unfortunately, we have no alternatives to suggest to the Committee at this time.

10. Page 6, line 179, definition of "performance guarantee." We strongly recommend that the maximum amount of a performance guarantee required to be in cash be raised to 20 percent. We believe this is reasonable and has been upheld as such in court cases. Again, the reason for cash, as indicated before, it assists in insuring performance from an applicant.

11. Page 6, lines 183-197, defintions of "planned unit development and planned unit residential development." The minimums are much too low based on all generally accepted planning standards. We would suggest 50 and 20 acres respectively. At the very least, let each community decide on its own minimums.

12. Page 7, line 216, definition of "public drainage way". This should include retention and detention basins. They are part of such systems.

13. Page 7, line 226, definition of "quorum". Use municipal agency rather than board or body since the former is defined (page 5, line 130).

14. Page 8, line 241, definition of "sedimentation." Add "ice" as a means of deposition.

15. Page 8, line 279, definition of "subdivision." Strike out words "for sale or development" - we feel they are irrelevant to the definition itself.

16. Page 11, paragraph h, line 45. We recommend that the phrase "reasonable hours" be changed to "normal business hours."

17. Page 11, paragraph i. This paragraph refers to publication of notices which may be arranged by the applicant. We suggest that in the interests of uniformity and maintenance of high standards, the municipality should be responsible for publication with applicable charges to the applicant.

18. Page 17, line 8. We suggest that a fourth (4) item be added, "Soil erosion and sedimentation control measures."

19. Page 19, line 6. We suggest that the environmental commission member be a class IV member since many boards retain the building inspector or engineer as the class II member. We feel they are important to the work of the planning board. We do want to have an Environmental Commission member on but they should be under the public rather than the public official member.

20. Page 35, paragraph 32, Reservation of public areas. We strongly recommend that the emphasis in this section be changed. Streets, roads, flood control basins or public drainageways should not even be mentioned since they are prerequisites for development and not "optional" public areas per se. This section should deal only with parks, open space, school sites, recreation areas, historic areas and other public areas. And we have included in the statement a revised first paragraph as follows:

Reservation of public areas. If the master plan or the official map provides for the reservation of parks, open space, school sites, historic areas or other public areas within the proposed development, before approving a subdivision or site plan, the planning board may further require that such public areas be shown on the plat in locations and sizes suitable to their intended uses. The planning board may reserve the location and extent of such public areas shown on the plat for a period of 1 year after the approval of the final plat or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the municipality shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such public areas, the developer shall not be bound by such reservations

shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. (This provision shall not apply to the streets and roads, flood control basins or public drainageways.)

21. Page 37, paragraph e, line 24. The 45 day limit based on ten (10) acres - that's a 45 day limit for approval or denial based on 10 acres - may or may not be realistic depending on the proposed development. We suggest 60 days as more desirable.

22. Page 39, paragraph c, line 23. Here again, 45 days because the subdivision is 10 lots or less may not be realistic and we suggest 60 days.

23. Page 40, paragraph b, line 15. We suggest a relatively minor change to permit a complete record of the final approval procedure and allow sufficient time for review. The application should be officially accepted and the time start running from the first public meeting after filing with the administrative offices rather than on the date of filing with the administrative offices. This permits the minutes to reflect this fact.

We suggest that this method be used for preliminary plat and site plan approvals as well (page 36, paragraph 34; page 38, paragraph 36.)

24. Page 43, paragraph (1), line 8. We strongly again suggest that a cash requirement of up to 20 percent be allowed, for the reasons previously stated.

25. Page 52, paragraph 55, line 1. There may be a typographical error in the first sentence. It should read (as does the present law) "any nonconforming use or structure." The bill says "any nonconforming use of a structure". Also, we urge that partial destruction (line 5) be defined. A possible standard might be 50 percent of fair market value.

26. Page 54, line 33. Word "variance" should be changed to "relief" since it also includes paragraph "a" and "b" (page 53) which do not deal with variances.

27. Page 55, paragraph 63 (2)b, line 9. We understand the intent of giving the board of adjustment original jurisdiction on subdividion and site plan approvals for "d" variances. We question whether they are equipped to undertake the type of technical review. This is not a reflection on the capabilities of boards of adjustment but rather an appraisal, based on long years of collective experience, on the many and extraordinary elements required for effective planning review.

We urge that the planning board review and recommend to the board of adjustment subdivisions and site plans even in "d" variance cases.

Thank you, gentlemen, for the opportunity to submit this statement.

SENATOR GREENBERG: Thank you, Mr. Moskowitz.

Mr. McCoy, you serve as Counsel, is that correct?

MR. McCOY: That's correct.

SENATOR GREENBERG: And I thank you for your appearance here today.

It's obvious that you gentlemen have revised and recodified our revision and recodification. For that, I'm grateful because your expertise will undoubtedly bring before us - and your suggestions will bring before us considerations which we perhaps have not given to all of the areas that you have touched upon.

I would like to deal with one, though, if I might. And I would like Mr. Stickel to discuss - so that we have it on the record and we understand each others views - with Mr. Moskowitz the first point that he made, dealing with the procedure for preliminary site plan approval, Item No. 1 in your presentation. Mr. Stickel.

MR. STICKEL: Mr. Chairman, I am aware of that particular provision. It was the thought of the Committee, after much discussion, that one of the things that we wanted to accomplish in this bill was to make applications for site plan approval and subdivision approval somewhat easier for the average owner and developer. And to have a developer or owner come before the planning board for site plan review with final plans and all engineering information, and so forth, and then have the board make the necessary changes that result from the hearing and review of the plans, we felt was unnecessary. If they came there with the basic essentials and then the changes were made and finalized after the hearing, it wouldn't necessitate all the additional engineering expense and whatnot that the property owner now has to go through.

And when you come to final approval, before you can record the subdivision, you have to have all that engineering done anyway.

SENATOR GREENBERG: Mr. Moskowitz, is there something wrong with that approach, in your view?

MR. MOSKOWITZ: Yes, Senator and Mr. Stickel. We recognize some of the difficulties that often result from the procedures that are presently used. Presumably at sketch plat stage, the first submission to a planning board, where the requirements are considerably less than at any other stage, where precise engineering drawings and standards are not adhered to, you have an opportunity to work with the applicant and the engineer in coming up with what we believe will be a viable subdivision plan. At some point along the line, the applicant's engineer and the community's engineer, for example, - the applicant's engineer must present the drainage runoff, for example, in order for the township or the community engineer to determine whether or not the proposed pipe system can in fact handle the proposed

runoff. The public has a right, we feel, and the public's attorney, for example, any attorney who might be representing the public, and the community as well, - have a right to know precisely the bases for these calculations. The detailed information is used, as we point out, in coming up with the bond estimates. And, again, these estimates will vary depending on the basic information submitted to the community on the particular subdivision plat. And this takes place, and it's the only place where it does take place, at this one stage, the preliminary approval stage.

SENATOR GREENBERG: But is it not true that that information does not have to be on the map, it can be submitted in some other form?

MR. MOSKOWITZ: They are. You are entirely correct, Senator. The information usually is submitted in the form of supplementary exhibits showing profiles of roads, construction details, which are in fact handled by the community engineer and handled, many times, by a letter to the planning board indicating that the proposed details and construction standards have been met. But I think this opportunity - it ought to be noted in the law at some point when this type of information is met.

We have employed, I might add for the edification of the Committee, in Morris Township, and it's a practice which I think is growing, a technical review committee procedure. Before an applicant submits the detailed preliminary and goes to the expense of coming up with the detailed preliminary exhibits, his engineer and the applicant meet with the technical personnel of the community, the engineer, the attorney, the planner, the director of public works, and work out any of the discrepancies or the differences of opinion which may have come up between sketch plat and preliminary approval. These are worked out in a sense as a technical sub-

committee procedure, at which time, after all differences are reconciled, the applicant then makes application for his preliminary approval.

One other point I think is that preliminary approval gives an applicant a three year period in which to move for final. And we think before you give the three year period with two extensions now permitted, which we feel are good, we should know exactly all the details that are going to be included as part of this particular development plat.

SENATOR GREENBERG: Or as many as possible consistent with financial ability of the applicant and consistent with the public's need to know.

MR. MOSKOWITZ: That is correct. I would point out that in many cases the applicant's engineer, by in a sense requiring this kind of detailed review at this time, Senator, - the applicant may become more aware of all the cost involved in a particular development. You can't say whatever the township wants or the community wants in terms of a drainage plan or a drainage improvement will be conformed to if after preliminary approval is granted the applicant finds that the cost and expense of such improvements are so high that he may in fact have some financial difficulty at that point.

SENATOR GREENBERG: Thank you very much.

Senator Dunn, any questions?

SENATOR DUNN: No, other than to add to your commendation of a fine technical presentation. As a Mayor, I can spot, now that it has been brought to my attention, words that would cause a great deal of argument when applications are being made, such as the normal business hours versus reasonable hours, things of that sort. So I think many of these suggestions should be included in the amendment.

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SENATOR GREENBERG: Senator Vreeland?

SENATOR VREELAND: I would just like to compliment you, as well, on the thoroughness of this report. I just have to say that this is one of the fine well-run communities in Morris County.

SENATOR GREENBERG: I'm sure it is, and much of the credit goes to some of the people who are in this room, I think.

SENATOR VREELAND: Yes.

SENATOR GREENBERG: If there are no further questions, I thank you gentlemen for appearing.

MR. MOSKOWITZ: Thank you.

SENATOR GREENBERG: We are going to take a ten minute break and give the girls an opportunity to rest their fingers. And when we reconvene, I will try to give you a schedule of where we're going, in terms of time, today.

(Recess)

(After Recess)

SENATOR DUNN: Ladies and gentlemen, let the record show that in the absence of the Chairman, I will conduct this part of the hearing until his return.

If my record is correct, the next witness is Mr. Dick Klein from the New Jersey Association of Realtors.

R I C H A R D C. K L E I N: Gentlemen, the New Jersey Association of Realtors, a 13,000-member trade Association comprised of licensed real estate brokers and salesmen, appreciates this opportunity to speak in support of Senate Bill 3054.

The Association knows of no other piece of legislation that has been in the study, review, and drafting stage for as many years as S-3054.

In the 1960's, two members of the New Jersey Association of Realtors were appointed by former Governor Richard J. Hughes to serve on the Study Commission charged with the responsibility to review existing laws and practices in the area of zoning and planning and make recommendations for modernization. Several interim bills were drafted as a result of the Commission's deliberations, all of which fell short in addressing the problems faced by municipalities and developers.

S-3054 is a vast improvement over earlier prototypes.

The bill under discussion today is not new legislation in the sense that what is being advocated will invalidate customs and practices that have existed for a quarter of a century - - - rather S-3054 is an amalgamation of present statutes and case law, plus positive new concepts long overdue. The statement contained in S-3054 spells out in "layman's" terms what the "Municipal Land Use Law" intends to accomplish.

"It is a comprehensive strictly municipal land use act, incorporating into one law - zoning, planning, PUD, site plan approval, master plan and official map legislation. It retains all of the present powers of municipalities in these fields, but builds onto and incorporates into these powers, the modern concepts of PUD, site plan review, and standardizes the procedures to be employed by the various administrative agencies..."

NJAR would recommend the sponsor amend the statement to spell out for the casual reader, that the bill is not an attempt to reduce to legislation the Supreme Court mandate in Southern Burlington County NAACP vs Mount Laurel. The timing between the Court decision and this public hearing is unfortunate because of the misunderstanding which might be created due to the title of the bill, "Municipal Land Use Law". S-3054 does not address itself to the zoning powers of a municipality insofar as the type of real estate development which will be permitted. S-3054 should be classified as procedural legislation designed to increase the operating efficiency of the municipal bodies in question while insuring a degree of certainty to the petitioner that is questionable under present law.

NJAR is not going to review the bill section by section; we are content to leave this task to those with greater expertise. We would urge the Senate County and Municipal Government Committee to recognize the fact that total agreement by all parties to all sections of the bill will be impossible. Valid objections should receive your serious consideration; however, we request that criticism be weighed in relation to the desired end result.

NJAR has one important recommendation which might be incorporated into S-3054 or be the subject of companion legislation. Namely, the creation of a Standing Committee of State Government charged with the

responsibility of drafting recommendations to the Legislature to update the "Municipal Land Use" law to reflect new techniques and case law. Through this vehicle or some similar body established under law, we will be assured that it will not be another 20 years before there is a meaningful codification and modernization of such an important municipal function.

Thank you.

SENATOR DUNN: Thank you, Mr. Klein. I think, as Senator Greenberg has pointed out several times today, this particular bill and, in fact, this public hearing on same, both originated prior to the release of the Mount Laurel decision. So the record is replete with references to that.

I have no questions. Senator Vreeland, do you have any questions?

SENATOR VREELAND: No.

SENATOR DUNN: Is Mr. Al Gershen here? Mr. Gershen, will you identify yourself and tell us for whom you are speaking.

A L V I N E. G E R S H E N: My name is Alvin E. Gershen. I am a professional planner. I am speaking for myself.

Senator, before I give my formal remarks, let me say I was present this morning when Senator Greenberg on two occasions indicated the difference between this bill and I guess it was S 3100, which he is working on in terms of a housing allocation bill. I will make myself available when Senator Greenberg comes back because I do have a view on that. I express it in my formal remarks. And I would like the Senator to have an opportunity to ask me any questions he may have because I feel that there is some interrelationship between both bills, as my remarks will show in a moment.

SENATOR DUNN: Senator Greenberg did admit that there is some interrelationship. But, based on comments made to previous speakers, I think he would like you to hold those comments until the public hearing on that bill. If you could spare the time, I know the Committee would like to have you come back.

MR. GERSHEN: I certainly will come back when that bill is before public hearing.

Let me make my formal remarks. Then I think you will see what I mean by an interrelationship. I think there are instances where this bill, S 3054, should contain some references to two areas that S 3054 is now silent on. Let me make my remarks and then I will answer any questions the Committee or the staff might have.

During the course of the last 15 years, a number of bills have been drafted and introduced in the New Jersey State Legislature, each calling, in one fashion or another, for the remodeling and codification of the basic land use statutes which collectively prescribe the ground rules under which the various jurisdictional entities of the State control and guide land development. Today, these basic land use statutes consist of five pieces of legislation, each enacted separately and oftentimes with little attention to the inevitable procedural and substantive interractions and subsequent conflicts which have resulted. The end result of this ambiguity and lack of coordination in the statute provisions has been to burden the process of planning and land development and has detrimentally affected everyone associated with the planning and development process.

In addition to the enabling statutes, a multitude of bills have been passed by this Legislature dealing with land use on a statewide basis and assigning specific responsibilities to the various departments of State government. While the intent of the legislation is admirable,

the proliferation of agencies and sub-agencies has led to confusion in the development process. As an example, the Coastal Area Facilities Review Act, known as CAFRA, requires the State Department of Environmental Protection to hold certain hearings regarding potential development of the coastal areas of the State. I might say, Senator, that includes some 1900 square miles or roughly 2/7ths of the State, and that is an awful lot of land area in New Jersey. The procedures followed by the Department, in the absence of any specific criteria or procedural guidelines in the enabling legislation, inevitably have resulted in policies which are different to those policies pursued at the local government level. The result is that given the same factual information, CAFRA and the local government often reach contrary conclusions. This regrettable outcome will continue to occur when there is no prescribed interrelationship between the various levels of government.

The five existing land use statutes which have been enacted over the years include the Zoning Enabling Act of 1928, the New Jersey County and Regional Planning Enabling Act of 1935, the Municipal Planning Act of 1953, the Official Map and Building Permit Act of 1953, and the Planned Unit Development Act of 1967. We need not dwell on the areas of difficulty which have emerged over the years concerning the procedural and substantive administration of these enabling acts and the laws which they have fostered; for the courts of this State have provided a seemingly never-ending list of interpretations and reinterpretations of the statutes and the legislature today, by means of the Bill before you and the hearings being held on that Bill, are obviously cognizant of the inadequacy of the five existing enabling statutes. Moreover, there are very few individuals in this State involved in the overall planning and development process who will quarrel with that point. Many of these individuals, indeed, may disagree with certain of the specifications of the proposed legislation. For example, it is questionable

whether appointed officials should have the authority to grant use variances rather than the elected officials who are more readily and directly answerable to the residents of the jurisdiction. Nevertheless, the specific objections become less pronounced when evaluated against the difficulties we are experiencing today as a result of the oftentimes antiquated and uncoordinated criteria, standards and procedures within which we operate. It is unfortunate, therefore, that we cannot unanimously and in an unqualified manner rally in support of the proposed legislation. However, the legislation which you are now considering for adoption is clearly too little too late.

A rather basic parameter against which the adequacy of a municipal Zoning Ordinance may be measured is the frequency and extent of justified variances which are granted from the general provisions of the Ordinance which are prescribed to guide and control the land development in the jurisdiction. It is a documentable fact that a vast number of the multiple-family dwelling units which have been constructed throughout the State of New Jersey are the result of requested and granted variances from established zoning regulations, and not the result of the inclusion of these multiple-family uses in the specifications of the Zoning Ordinance itself.

In many ways, this factual condition is inevitable. Even a municipality which has an open door policy for the construction of low- and moderate-income housing will desire to concertedly limit and control the development of multiple-family units, for regardless of the zoning provisions set forth as controls for such development, the type and cost of each unit will be determined by market considerations. Most often, such conventional development will not fulfill the "need" of low- and moderate-income persons and families.

We are all aware of the need for housing to be constructed. The courts have clearly made the same conclusion and indicate that our system of land use controls and procedures is not functioning to this end. The office of the Governor of the State of New Jersey and the State Legislature have manifested recognition of this need and problem through messages and proposed legislation such as the Balanced Housing Act before the legislature at this time. Given the intent of the proposed land use legislation to codify and clarify the overall development process in the State of New Jersey, the lack of any specific consideration of the provision of housing is a blatant omission.

The recent Supreme Court decision written by Justice Hall indicates that in ascertaining its responsibility to supply housing for a total spectrum of economic needs, a municipality must consider itself vis-a-vis the "region" of which it is a part. Justice Hall further asserted that the regional basis of need evaluation and allocation is not the County. Thus, Justice Hall's decision is far-reaching and raises many questions. The dilemma which has constantly faced municipalities throughout the State is exemplified by the questions: What is our share? How do we determine it? Must it be satisfied only in multiple-family housing? Under what rules for the allocation of housing do we operate as a State? Are all municipalities affected evenly?

It is presumptuous to expect that every municipality has the wherewithal, including financial capabilities, to sponsor its own in-depth study in evaluating its need allocation. Moreover, if two adjacent municipalities embark upon such an analysis independently of each other, and each with separate definitions of "region", the end result of both analyses and subsequent implementation decisions is suspect. Clearly,

there must be established a uniform guideline for the housing parameter of land use regulations and, as such, these rules, criteria, procedures and specifications must be established at the legislative level and should be included in any comprehensive land use enabling act.

One course of action that can be followed by the legislature is to adopt the limited Bill before you now, recognizing that it is, indeed, a step forward from our existing condition, and then, subsequent to the enactment of this particular Bill, enact legislation regarding housing in the State.

However, it seems more appropriate that the Committee, at a very minimum, incorporate within the Bill the criteria, standards and procedures insofar as they affect two general areas of land use control: housing need and government jurisdiction.

1. Housing Need

   Fair share housing formulas relating to:

   a. Definition of regions;

   b. Methods by which prospective housing needs can be ascertained; and

   c. Definition of mechanics for fair share allocation.

2. Government Jurisdiction

   Insofar as various levels of government jurisdiction are related to land use planning, the criteria, standards and procedures should be specified in order to coordinate the efforts of the various agencies now called upon to make determinations in this now sophisticated planning development process. I refer now to the CAFRA Bill, the Wetlands Bill, and similar bills at the State level affecting local land use.

I have offered my remarks to this Committee this afternoon as a planning practitioner. It is because I meet with these problems on a day-to-day basis that I urge the modification of this Bill in the two areas indicated above. I do not wish to diminish the possibility of the passage of this long overdue planning codification; but, I do not wish to see a codification bill passed at this sensitive moment in time which does not incorporate at least the minimum criteria to which I have addressed myself or which does not acknowledge the fact that there are these criteria. I think the word "housing" is mentioned in this bill just twice. And all of the issues I raise are utterly ignored.

At this moment in time, gentlemen, it seems to me that the Legislature has got to be cognizant and indicate their cognizance of the problem in a more direct fashion.

Among the many benefits this State has, is that in our universities and among our planning practitioners are some of the nation's finest and best-qualified minds in land use planning. I urge this Committee to consult with these people and improve this Bill to the ends I have discussed. Thank you.

SENATOR DUNN: Mr. Gershen, although you identified yourself as a private citizen, for the record you are a professional planner, I assume.

MR. GERSHEN: I tried to identify myself as a planning professional. I am a professional planner. I represent some 30 or 40 municipalities in the State. I am a licensed professional planner. I formerly was President of the State Board of Professional Planners, and I am a licensed Professional Engineer as well.

SENATOR DUNN: I think it is important that the record identify you as such.

I have no questions other than to make a comment that you are talking basically of a philosophy that

encompasses the need for housing in the State, if I understood some of your remarks, at least.

MR. GERSHEN: Senator, I am trying to say that when you say "land use," you include as a very important element of land use what we have come to call housing. In March of 1975 or April of 1975, to adopt a comprehensive land use statute which incorporates five existing pieces of legislation and ignore last week's Supreme Court decision in toto, to me would be an indication of being remiss in recognizing the problems of the citizens of the State.

Let me make this point clear, Senator.

SENATOR DUNN: Mr. Gershen, have you been here today for most of the testimony that has been given?

MR. GERSHEN: I have heard some of it. And I have heard Senator Greenberg on at least one occasion address himself to the problem. I have consulted, incidentally, with Senator Greenberg and with the staff on a number of occasions on this other bill, 3100. I am not saying that we ought to incorporate 3100 in this bill. I am suggesting there ought to be references to the structural elements of 3100 in this bill. We ought to call for certain elements of housing.

Incidentally, let me give you an example of the kinds of things ---

SENATOR DUNN: Now you also imply that we as a Committee or as the sponsor of the legislation have deliberately ignored the Laurel Decision, when, in effect, the legislation that we are considering today was drafted many months - in fact, years - prior to the Supreme Court rendering this decision.

MR. GERSHEN: Oh, I understand that.

SENATOR DUNN: I don't think there is any question and there shouldn't be any question in anyone's mind

that we all recognize the need for housing, per se, in the State of New Jersey. But I don't want anybody to get the impression that this public hearing is being held, completely disregarding the Supreme Court decision, commonly known as the Mount Laurel Decision. It is something that came after the fact and I am sure that before this bill or other bills will be enacted into law, a great deal of consideration is going to be given to the ramifications of the Supreme Court decision.

MR. GERSHEN: I will apologize to you directly and to the Committee in general if I have left the impression that I think your remarks would indicate I left. I do not mean to imply that at all. Had this hearing been a month ago, my remarks would of necessity have been different. In the time since this hearing was called, and today, the Supreme Court has, in fact, acted on Mount Laurel. And I think, given the opportunity of this hearing, I am saying to the Committee that my own views as a practitioner of planning for 25 years are that it ought at least be modified to that extent. I am not suggesting ---

SENATOR DUNN: There is no argument then.

MR. GERSHEN: None whatsoever.

SENATOR DUNN: Very good. All right, I have no questions. Senator Vreeland?

SENATOR VREELAND: No questions.

SENATOR DUNN: Chairman Greenberg.

SENATOR GREENBERG: Thank you, Senator Dunn.

Mr. Gershen and I have had these discussions before. We still disagree. Frankly, I think your argument today could have been made a month ago, in spite of the fact that you don't. The Mount Laurel decision was pending and we knew the court was going to make a decision on it. Regardless of that decision, my bill on housing would have been introduced because I believe

in it. But it will confuse the subject of the codification and revision which is the purpose of this bill to start to deal with what you call, number one, housing needs, and, number two, governmental jurisdiction, because you get into a very complex and controversial area.

There is no doubt in your mind, I am sure, that that bill or the administration measure or any other bill that will be introduced on that subject will give rise to a great deal of controversy and will require many days of public hearings, and undoubtedly a great many amendments. It just seems to me that the legislative function is one which is best followed where you take separate subjects that can be dealt with separately, without confusing them with each other, if they do not necessarily require a joining with another subject, deal with them as expeditiously as possible, and move on to the next subject.

I can't argue with you in your philosophy because you and I share the same philosophy with regard to the need for that ultimate legislation. But I do disagree that this bill should make any reference to it in any manner which will elicit controversy where controversy is not necessary; that is, in an area of codification and pulling together the various statutes that have existed for so long, and the court decisions which are not even compiled, which this bill attempts to do.

I just want to add one more thing. I don't think you can accomplish your objective by referring to housing need and fair share formulas, without creating that type of controversy. And I have given this a great deal of thought. I have also - and I want to repeat in the event you weren't here earlier - reread the bill as against the Mount Laurel decision to see whether or not there was any language in the bill which would require modification in the face of the Mount Laurel decision, and I have not yet seen any. It may be that on a rereading, we will find

some. We are looking for that kind of a problem. We haven't yet determined that it exists.

MR. GERSHEN: Let me say that I agree with you completely in terms of your obvious philosophy on how bills should be passed. I am not about to substitute my judgment or lack of wisdom for your judgment and wisdom on how bills should move through the Legislature.

I am addressing myself to you gentlemen this afternoon as a planning practitioner. Assuming somehow this bill in its present shape were to be passed miraculously this afternoon, tomorrow morning when I either appear on the stand in behalf of one of my municipalities or, tomorrow evening, before the Planning Board or the governing body of a municipality, I would then be guided by a far superior set of pieces of legislation in one codified bill, which is a great improvement. I don't agree with it one hundred percent. But I waive those arguments for the sake of uniformity. As you know, Senator, this has been years in drafting and redrafting. I suggest that tomorrow night I would have a much easier time in those elements of land-use planning to which the bill addresses itself. But even if we don't ever get adopted by this Legislature anything in terms of what I call "housing" or "governmental jurisdiction," those problems are still present before that planning board tomorrow night. And when I am in Rocky Hill on the stand in defense of their ordinance or that of other municipalities that we currently are working with, I am doing it in the absence of a piece of legislation.

That to me, it seems, weakens home rule; it doesn't strengthen it. It puts the courts in a position of making interpretations that I don't think the courts ought to be doing. The absence of a specific piece of legislation addressing a particular problem or a legal fact in a state does not strengthen home rule; in my judgment, it can weaken it.

The Supreme Court spoke last week. That is the law of the State and I have, it seems to me, to deal with it.

SENATOR GREENBERG: You do. But as you and everyone else dealing with this subject know, a bill cannot be prepared and go through the legislative process to solve the problem of what a municipality shall do with regard to that problem in a week or a month.

MR. GERSHEN: You are doing pretty well with 3100, Senator. I don't know whether it is in its final shape, but at least where it was a month or so ago ---

SENATOR GREENBERG: That is a bill. We have had six proposals to solve the Botter decision. The municipalities have to deal with that problem. It doesn't strengthen home rule either that they are in a position not to know which way to go. This is the legislative process and we are struggling to reach a solution in that area. So, too, when we get into Mount Laurel, those who deal with this subject, including yourself, know that by the passage of this bill, should it pass, the one we are now discussing, the Legislature has not sent out a message that this is the solution to Mount Laurel. On the contrary, I have said four times today and I am now saying again that this bill does not deal with the Mount Laurel problem. As a matter of fact, the Mount Laurel decision doesn't yet depositively deal with the Mount Laurel case . There are other cases on the way up. There are going to be new decisions, and that is the process of democracy and legislative movement which we have to struggle with.

MR. GERSHEN: You have just pointed out the continued need for a State Senate and State Assembly.

SENATOR GREENBERG: Thank you for appearing.

MR. GERSHEN: Thank you, gentlemen.

SENATOR GREENBERG: The next witness will be Peter Larson.

P E T E R L A R S O N: Thank you, Senator. My name is Peter Larson. I am speaking as an individual. My position is Executive Director of the Upper Raritan Watershed Association, Far Hills, New Jersey. I also hold the honorary title of President of the Middle Atlantic Council of Watershed Associations, a group of 45 organizations in 6 states. My thrust is as a professional environmentalist, dealing with 20 communities in the Upper Raritan Watershed, which spans Morris, Hunterdon and Somerset Counties. Dealing with municipal planning boards, I have a familiarity with the area of this legislation, Senate 3054.

I find,in terms of review of the legislation, no big problems with the bill and would like to see this kind of codification take place to simplify the planning process. I find it a commendable effort and in general terms would support the concept of the legislation.

However, I find that there are a number of minor problems which I think could be taken care of by amendment, which would strengthen the land-use planning process in New Jersey. My major concern is with a couple of elements and I will detail those concerns and I will follow this oral statement by some written documentation.

The PUD section of the ordinance is my principal concern. I think we have a weak PUD state law, which is the root of concern. This is carried over in S 3054; specifically on page 6 of the draft bill on line 186, there is a required minimum contiguous acreage of 10 acres or more for a regular PUD. I find that 10 acres is much too small to effectively utilize the benefits of planned unit development in particularly suburban and rural areas. This may be appropriate in an urban area where the infrastructure, the carrying capacity, if you will, is pretty well established.

In the same context, on line 231, residential density is defined as "dwelling units per gross acre."

There must also be a required definition of "net density" so as to set maximum guidelines for effective utilization of a site if that site is a critical area where very small portions of the site may be usable without detriment to environmental concerns.

"Planned unit residential development" is defined on line 192, page 6, as a minimum of 5 contiguous acres or more. That is also much too small for effective use of PUD and is perhaps best compatible with cluster development. If subdivision regulation were fully sensitized by environmental planning tools, such as a process including review under an environmental impact statement and cluster options, small PUDs would be unnecessary. PUD can allow much too much flexibility in small tracts and perhaps should be limited to larger tracts, such as a minimum of, say, 200 acres, using cluster option on standard subdivisions for smaller tracts with environmental sensitivity. Since there is no definition or standards for an environmental impact statement in the bill, I find that a major shortcoming of any codification reported to be a state-of-the-art land use planning act.

I, therefore, urge amendment of S 3054, as related to PUD in elements discussed above. If it is not possible to amend the PUC Act sections, as suggested, then I urge deletion of those sections dealing with PUD as an incentive to improve the utility of an otherwise highly desirable planning tool, that being the PUD Act.

As treated in the bill, PUD can, in fact, be a destructive force upon the environment as bad or worse than suburban sprawl, which it counteracts, reportedly.

Article 4 on page 24 deals with capital improvements programs and project review. There is a requirement in line 18 that the program,"as far as possible, be based on existing information in the possession of the departments and agencies of the municipality and shall take into account

public facility needs indicated by the prospective development shown in the master plan of the municipality or as permitted by other municipal land use controls." There is no requirement here for environmental studies as a basis for capital improvement or carrying capacities which they purport to allocate. It leaves too much for an assumption that the municipal land use plan is up to date, has a reference base of environmental studies and is, in fact, reasonable.

The section further raises questions as to feasibility due to federal law, which requires studies of alternatives for capital improvements. Federal regulations also prohibit funding of sewerage projects with excessive growth factored in. The Council on Environmental Quality study called "Interceptor Sewers and Suburban Sprawl" should be required reading for the Committee in review of this section. The major problem is that existing information may be inadequate as a basis upon which to make a master plan, let alone as a basis for capital improvements programs. Federal law under P.L 92500 requires environmental assessment before capital projects are eligible for cost sharing.

One of the biggest complaints the Federal EPA has is that they are forced to make unwise land-use decisions because options have been foreclosed by poor comprehensive planning. I see nothing in this bill which improves that comprehensive planning process.

Any capital improvements program should be required to undergo a complete environmental assessment prior to implementation of any project permitted by any changed zoning where density is increased as a result of that program or project.

Under section 22 on page 25 is "review of capital projects." This review is not sufficient as a check unless the process of review and standards are specified. Again the environmental impact statement format provides social,

economic and environmental review, and should be so included.

On page 28, Article 6 deals with site plan review. There should be required as a part of preliminary review an environmental impact statement.

With reference to Section 52 (c) on page 50, under density, there are not adequate safeguards to protect the public interest in a comprehensive manner.

On page 42, Section 40, line 25 provides for consideration of economic conditions. I suggest that is on the thin edge of fiscal zoning by that definition and flirts with the contents of the Mount Laurel decision we have been debating all morning, and deals with the economics of housing. I suggest that may be inappropriate in this particular bill in this location.

Section 41 - this is page 43, section 41 (d) - covers inspection of improvements by the municipal engineer. This section should require additional review since more than one person should be charged with the review to insure broad spectrum review of comprehensive planning requirements, and to keep both human error and possible conflict of interest to a minimum. Possible final review by the board of health, such as the sanitarian and health officer and/or the environmental commission perhaps could be adequate.

Page 44, paragraph (e) should also be revised in the same context to broaden the basis of an acceptable report to the governing body.

Notwithstanding the aforementioned, Section 52 (c), which is the contents of the zoning ordinance, mandates establishment of standards for density and intensity of land use - and I will paraphrase - further such standards may authorize deviation for planned development. This is deviation in density. The standards shall be set forth in the zoning ordinance with sufficient certainty to provide reasonable criteria by which specific proposals

for planned unit development can be evaluated. This is not at all specific as to how the evaluation should proceed. In a matter as important as variable density, there needs to be a lot more guidelines. So I find lacking totally are guidelines or procedural requirements again, and suggest the use of the environmental impact statement as an appropriate tool.

On page 60, Article 11 deals with periodic re-examination of municipal plans and regulations. The six years suggested for review is not mandatory nor is any incentive for review, since the mandate is for a mere report, which is easily ignored by a cursory,narrative report.

On page 61, Section 77 is a new section on moratoriums. I strongly oppose elimination of the moratorium as a planning tool. It is a useful tool when a governing body is faced with an unforeseen problem, not dealt with adequately by existing planning and zoning. The expeditious time frame of earlier processing requirements, such as 45-day review, 60-day review, etc., may in itself create a problem with due process if the only alternative is passage of an interim ordinance, as suggested by this bill. The time frame for appropriate drafting of such an ordinance, notice, hearings and procedural requirements for an ordinance, in itself creates a problem. If the moratorium were alternatively required to be specific to the problem and not general and if it were limited to the same time frame as interim ordinances were, then perhaps it would be a reasonable tool to be continued in use.

I would suggest that perhaps the best of both tools could be preserved with some consideration.

With consideration of these comments, I would suggest that the concept of 3054 could be improved.

But as a bill, it is reasonably effective as a land use planning and regulatory law and I would certainly not oppose its passage.

With that, I thank you for your consideration.

SENATOR DUNN: Mr. Larson, without attempting to be facetious, I thought you started out by saying you were in favor of the passage of this bill. Then you did a good job of tearing the hell out of it.

I don't have any questions. You have given a very comprehensive presentation and I am sure that a lot of consideration will be given it by members of the Committee, especially your suggestions for possible amendment. Can you make available copies of that statement?

MR. LARSON: I will do so, yes.

I would like to make one further comment on your last remark here. I would not object to passage of this bill as it exists now if this were the only alternative the Legislature offered us, just to get something like this going. I think that these amendments I have suggested would be highly desirable improvements in New Jersey Planning Law. I would like to see the language of the bill submitted last year which had a great deal more consideration for environmental planning -- I would like to see the sections on environmental planning in that bill be reconsidered for possible inclusion. Recognizing the political climate in New Jersey at the present time and the resistance such a bill might have, I would certainly compromise in the direction of favoring 3054 as it exists.

SENATOR DUNN: I understand. In the absence of my colleagues who have been called out to other assignments, Mr. Stickel, do you have any comments you would like to make?

MR. STICKEL: We purposely have left this gentleman's suggestion out because of the controversial nature of them and because our task was that of codifying existing

law and not changing things. There are many things I would like to see, as I indicated earlier, such as amortization of non-conforming uses, etc. But our job was to codify the existing law and try to put it in some shape where it was workable. I believe a lot of the suggestions that you have made should be the subject matter of maybe separate legislation after this bill is enacted. Then we can argue each of these issues in a separate bill. If you put them all in the same bill, you are going to have a complete hodge-podge, which is what happened with the Merck bills and with previous bills.

MR. LARSON: Exactly. I would hope to so motivate the Committee to sponsor some further legislation to take care of these problems, if that is the appropriate route.

SENATOR DUNN: I am sure that will happen. Thank you very much, Mr. Larson.

Next I will call on Glenn Cowan.

G L E N N C O W A N: My name is Glenn Cowan. I am a Principal Planner with the Local Planning Assistance Unit of the New Jersey Department of Community Affairs. I would like to make it perfectly clear that I am not speaking on behalf of the Department; I am here as a private citizen. My primary responsibility as a planner i s to provide technical assistance to municipal planning boards and governing bodies. And, as such, my comments come from that experience.

As a recodification of the old Planning Acts and the Zoning Acts, I have no real problems whatsoever with the bill that is before you. There are two practical effects of this, however, that I would like to address myself to.

Article 8, Section 49, on page 48, beginning with the sentence numbered 1, near the bottom of the page, states: "The governing body may adopt or amend a zoning

ordinance relating to the nature and extent of the uses of land and of building and structures thereon. Such ordinance shall be adopted after the planning board has adopted the land use plan element of a master plan," etc. I must assume that the intent of the drafters was that zoning ordinances should follow a land use plan - should follow the planning process. And, as a planner, I certainly can have no argument with that. My arguments relate primarily with the financial wherewithal of municipalities to afford the process implied here. It is my understanding that at some time after the pasage of this act, should it be passed, all those municipalities that do not at current have a land use planning section or whose land use planning section of an old master plan is no longer considered valid would have to rewrite their zoning ordinances in order to be in conformity with this new legislation. If this is in fact the case and they do have to at the same time rewrite or write for the first time a land use planning element, then this is going to cost them in many instances some considerable sums of money.

Many of the municipalities in this State currently do not have any form of master plan. In fact, there are at least 200, if not more,- perhaps as many as 250 - that have no master plan whatsoever. Of the 300 and some that do have master plans, there are at least another hundred that have never been adopted by the planning boards. So you are talking about approximately 300 to 350 municipalities out of 567 that will be affected by this section.

In the absence of the financial wherewithal to carry out a land use planning element and then to rewrite a zoning ordinance, I can see instances where municipalities may be forced to abrogate their responsibilities to zone through a lack of financial wherewithal. I think this would be unfortunate and can be overcome, perhaps not so

simply in our current economic times, but in other times it would have been very easy, I would think, to have introduced companion legislation that would provide that either the State or the county provide technical and financial assistance to those municipalities that do not have the money to write land use planning sections and zoning ordinances. Currently at the State level there is only one such program, the STAPLE program, which is State Aid for Planning Local Effectiveness and which is administered by our office. It provides planning assistance to perhaps no more than 10 or 15 municipalities a year, simply due to the small amount of money allocated for that program. The Federal 701 Program,which provides comprehensive planning and management assistance,has also been cut back. There are far fewer funds available than there were in past years. This is going to mandate a resurgence of land use planning. There is no money available for it.

It has been expressed to me that if a municipality does not feel it is important enough to spend the money on this type of endeavor, then they can simply not zone. That to me is an unfortunate view because it indicates, fine, if you are a municipality that is wealthy enough to afford zoning and planning, you can do it, but if you are unfortunate to live in a municipality that is not, then you can't do it and you have to suffer the land use consequences that will accrue.

So that is my first comment.

SENATOR DUNN: Certainly the two or three hundred towns you are talking about I would assume are very small in area. There are no big cities in that number, are there?

MR. COWAN: No. In fact, every large city that I know of does in fact have some form of land use plan and the zoning ordinance that goes along with it. But of those 300 that do not, there are a considerable number of larger

municipalities that have never adopted their master plans. They may have written one, but this will mandate that the planning board adopt at least the land use planning section of that master plan. I suspect that if they were not able to adopt the entire plan, to adopt the synthesis of it, which is the land use plan,would be extremely difficult.

My second point addresses itself to notice that must be given by developers and the protest clauses for a zoning change. These are found in Article 1, Section 7, which is on page 12, line 30, for notice; and on page 49, line 1, which is Article 8, Section 50, for the protest provisions. Both of these mandate that only property owners, land owners, are those who are to be notified by registered mail or personal service or, in the case of a protest, who may form the 20 percent that requires the two-thirds majority of the governing body. Given the fact that we already have a considerable number of renters in New Jersey, and given the mandate of the Mount Laurel decision which has been brought up so many times, I can only presume that we will have even more renters in the future; this to me is somewhat of a disenfranchisement in that it places renters in the disadvantageous position of not having as much information as those people who own property.

The argument can be brought up that renters do not pay taxes, but I think this is specious at best. The tax on the owner is shifted forward to the renter who, in fact, pays the taxes for the owner of the property. So they are in every sense of the word taxpayers. In the past it may have been said that renters were transients and they lived in an establishment for two or three years until they were able to afford a single-family dwelling. I think that current economics as well as the future development patterns in this as well as other urban

states will show that renters will become long-term occupants of their dwelling units and may, in fact, stay there for the rest of their lives. Certainly many people over the age of 62 who have already given up their homes due to size and tax burdens and moved into apartments may live there for 20 or 30 years. All of these individuals are prohibited from forming the 20 percent which it takes to protest a zoning change; also they do not get notice of any impending variance action or any other hearings that come before various boards.

I think this is unfortunate. It is a carry-over from the old law. Perhaps when the old law was written in 1928 it made some sense to do things this way. Today I no longer feel that it does.

That's all I have.

SENATOR DUNN: Thank you, Mr. Cowan. I have no questions. I will reiterate what has been said before, that consideration will be given to all these points by the Committee.

You have no prepared statement.

MR. COWAN: No, I do not.

SENATOR DUNN: I am sure that the notice aspect will be given very serious consideration by the Committee.

Thank you very much. Mr. Stickel, do you have any comments or questions?

MR. STICKEL: No. I can only say as far as the notice provision is concerned that legally, which Mr. Cowan doesn't realize, zoning is a restraint on the ownership of property. Therefore, since time immemorial in all 48 states, notice is given to owners, not to tenants.

SENATOR DUNN: But he takes exception to that.

MR. STICKEL: In addition to the fact that it is the owner's property which is being restrained in its use by any ordinance, you have a situation where if you

have a high-rise apartment with 150 tenants, the matter of serving each person with notice is almost beyond comprehension. And, of course, every notice of adoption of an ordinance is put in the newspaper and tenants can read the newspaper. They do get notice that way.

MR. COWAN: And property owners can also read newspapers; they can get notice the same way.

Might I address the Senator's attention, if he has the time, which I doubt, to a book called, "The Power Broker," by Robert Caro. There are two chapters in that book, entitled "One Mile" and "One Mile Afterward," which deal with the East Tremont Section of the Bronx in New York, where property owners were affected and notified and didn't care. It was the renters who were affected by the action of Mr. Moses and the Tri-Borough Bridge Authority. The consequences of that action - I think one could look to New Jersey and see similar things occurring if renters are not finally included as full-fledged citizens in the State.

SENATOR DUNN: I understand and I agree with you. Thank you very much.

The last name on the list, unless there is to be an addition, is Donald Gil. Mr. Gil, will you please identify yourself for the record.

D O N A L D G I L: I am Donald Gil and I am the Chairman of the Fairlawn Planning Board and I am here speaking for that Board.

First of all, I would like to compliment the Committee for putting in all this work and coming up with such a fine bill. We do approve it and rather than waste the Committee's time in going over our reasons for approving it, I will skip that. What I am going to speak about I will hope will not be misinterpreted as being against the bill.

There are three items which the Fairlawn Planning Board is concerned about, the first of which is the term of office of planning board members. The change in this bill will make it a four-year term. Previously, it was a six-year term. The advantage that we see to that is the fact that once a year a new member will come on the board. If you have a four-year term, there will be times when there will be two men appointed at once.

The ideal situation is to try to keep politics out of a planning board. By spreading it over a six-year term, when a member receives his appointment for six years, there is no way of telling who will be in office at the time of his reappointment. So he has complete freedom to act as he sees fit.

The Federal government acts this way where you have Senators and Representatives with two different terms. Also on the State level, you have Senators and Assemblymen having different lengths of time to give stability to the actions they have to take.

One of the previous speakers mentioned there was nothing in the bill about education of the planning board members. With a four-year term, it limits the ability of a man because until he learns his job, so to speak, which takes approximately two years, he is not able to function efficiently, at least this is by my experience. That would mean that you would have a man only serving really for two years. So I can see a great deal of advantage in maintaining the present situation of a six-year term rather than a four-year term.

The other item that concerns us is the right to appeal zoning decisions to the governing body. Senator, I understand that you are a mayor and you must know the amount of work you have to do in that capacity. In most municipalities the governing body is a part-time job. If they have to review all of the zoning cases, reading

the testimony, just to relieve the courts, which I agree have a problem -- but I don't think we should take the over-work of the courts and place it on another over-worked body, which would be the governing body. So this is of concern to us.

The third thing is the right of the board of adjustment, under certain circumstances ---

SENATOR DUNN: Excuse me. What do you wish to substitute for that, to have the final decision made by ---

MR. GIL: --- by the board.

SENATOR DUNN: (Continuing) --- by the board of adjustment? Then the next step to the courts?

MR. GIL: And then the next step to the courts on zoning board, not planning - planning has always been that way.

On the right of the board of adjustment to grant under circumstances subdivision and site plan approval - this was touched on by one of the previous speakers - we feel that this is rather a dangerous thing to give to a zoning board. It is not that we feel they are not qualified to make this, but their basic training is related to the individual's problem rather than the over-all problem of the town. I feel, when it comes to subdivision and site plans, the final say should be in the hands of the planning board, just because of the fact they are trained basically to look at the over-all problem of the town.

That basically is our concern. But I would like to repeat that the Board feels this bill should be passed.

SENATOR DUNN: Mr. Gil, then the Fairlawn Planning Board does endorse this piece of legislation?

MR. GIL: Yes, it does.

SENATOR DUNN: You have given some very constructive suggestions. However, I disagree with you on the six-year term. This is an editorial comment from a mayor. I have appointed some lunk-heads to six-year terms and then found

they weren't quite as interested in the assignment as they first indicated and absented themselves from too many meetings. It is impossible to get them off the board without some legal action. But it is a matter of opinion. I have others too that I have appointed who have worked diligently for whatever the prescribed period happened to be and of whom I am very proud. But a six-year term does seem to be a rather long term. Again it is a matter of opinion.

Your comments will be taken into consideration by this Committee before any final recommendations are made to the Senate as a whole. Thank you very much.

MR. GIL: Thank you.

SENATOR DUNN: I understand Mr. Nagler is now here. Mr. Nagler, are you representing the ACLU?

S T E P H E N M. N A G L E R: Yes, I am. My name is Stephen M. Nagler. I am Executive Director of the American Civil Liberties Union of New Jersey and a resident of Newark. I thank you for the opportunity of appearing before you today to present our views on the over-all subject matter of Senate Number 3054.

Our concern with the bill is a very general one, aside from several specific provisions, such as Section 19, subdivision (b)(3) where we feel that stronger language would be desirable to specify the contents of a housing plan as the element of a master plan. We feel that the present language is so vague as to be meaningless.

We have other exceptions to Section 50 and Section 52. The general concept of the fair-share kind of system that has been adopted where there is a requirement for a certain amount of low- and moderate-income housing to be built into a master plan is a concept which we feel has earned recognition and should receive recognition in any sort of a codification dealing with planning

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and regulation.

Our feeling generally about the legislation, aside from the fact that we feel codifications generally are a good thing in that they bring together laws, is that a codification in the form in which it is now before the Senate, in view of the recent decisions of the New Jersey Supreme court, including most prominently the Mount Laurel decision, involves the development of what may be a substantially obsolete piece of machinery. What perhaps is required at this point is a development, not of a codification in this form, but of a new system for regulating land use and for regulating the construction of housing generally in the State of New Jersey, to avoid the future problems of suburban sprawl as it exists today, of environmental disaster and destruction, which have developed out of the kind of municipal hodge-podge of zoning that exists now, and the replacement of that system by a new system of land use planning, involving some form, perhaps limited, of mandatory control through some sort of centralized system, based either on a county or multi-county region.

To attempt at this point to deal with the problems of land use control through a system that is built solely on the municipality or primarily on the municipalisy is perhaps a fallacy that I think would be in error for the Legislature to attempt to promulgate at this time.

The role of the municipality in land use always has been, of course, in New Jersey a pre-eminent role and will remain so in the future. Certainly, no one is more familiar with the problems of a community or the needs of a community than the people residing in the community and their elected officials. So, of course, the role of municipal officials and planning boards in future land use planning is bound to remain significant.

However, what is suggested so strongly by the New Jersey Supreme Court decision in the Mount Laurel case is that, if we are to avoid the hodge-podge individual case-by-case decisions which will tend to focus on individual municipalities the burden for developing new plans for the development of low- and moderate-income housing, more centralized planning and zoning is going to be required.

In Middlesex County, we filed a major piece of litigation challenging the standards used in 21 of the 23 municipalities in the county. It is our hope that out of that will develop a system, at least in Middlesex County, for developing a plan for land use in which the municipalities, as I have said, will play a critical role, but in which regional planning will be a major factor and perhaps a decisive factor in determining the fair share of different municipalities in terms of low- and moderate-income housing construction, as well as the over-all needs of the area in terms of transportation, environmental needs, etc.

I think that sort of approach from the start is what is fundamentally needed in terms of land use planning on into the future rather than the bill that is presently before this Committee. Thank you.

SENATOR DUNN: Thank you, Mr. Nagler. I have no questions.

Is there anyone else in the audience who wishes to speak for or against the bill? If not, I will adjourn the hearing and emphasize what has already been stated by Chairman Greenberg, that for a period of two weeks, any presentation in writing that anyone would wish to submit will be accepted by the Committee. The hearing is adjourned.

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(Hearing Concluded)

SUBMITTED BY: Leon Solis-Cohen, Esq.
International Countil of Shopping Centers

SOME OBSERVATIONS AND SUGGESTIONS REGARDING S3054

INTRO 2/13/75

REFERRED COMMITTEE ON COUNTY AND MUNICIPAL GOVERNMENT

1. Generally: This bill has been most carefully drafted. It is comprehensive, yet clear. It collects in one statute prior enacted law relating to the same subject matter. It represents a logical approach to land use planning and appears to have adequate procedural safeguards. Overall it would appear to be an excellent measure; one deserving of enactment.

2. The bill as it stands could be improved by the following additions:

   a) Add to the definitions "person" means an individual. corporation, governmental agency, business trust, estate. trust, partnership, association, two or more small persons having a joint or common interest, or any other legal entity.

   b) "Commercial Cluster" (or "Planned Commercial Development") should be defined. It is a term used in Section 51(c). It could be defined as "an area with a specified minimum contiguous acreage of _____ acres or more to be developed as a single entity according to a plan, containing one or more structures, clustered, for commercial or office use. and such incidental residental and other use as shall be shown thereon as shall be specified in the zoning ordinance. Commercial cluster shall include areas for use in common for ingress, egress, landscaping and offstreet parking and may provide for other uses or services incidental thereto."

   c) There may be an ambiguity in the definition of "Development". Line 64 on page 3 refers to a "change in the use of any building or other structure". Does this mean physical change? Does it mean external change or internal change? If this definition is not clarified how would the act apply if without increasing the leasable area involved. curtain walls are moved within a structure, or for example if existing retail space is converted into office space or other commercial use. or vice versa? The definition is not restricted to new or additional construction but that may have been the original intent. If so. it should be clarified.

d) Does the definition of "Public Development Proposal" include plans for private as well as public use of land?

e) Does the definition of "Zoning Permit" include a certificate of occupancy? If so, was this intended?

f) If the definition of "Planned Development" is expanded to include commercial cluster then the definition of "Application for Development" should be modified to include in line 12 or 13 "planned development" or in the alternative the definition of Application for development should be amended in line 13 to include commercial cluster and industrial cluster.

g) Section 26 on page 27 should be amended to make it clear that not every lot which is part of a commercial cluster need abut a street provided there is a perpetual easement for ingress and egress benefitting any such lot which does not so abut on a public street. The lots comprising a commercial cluster such as a shopping center (perhaps the statute should incorporate a concept of "Planned commercial development" rather than "commercial cluster") may be owned by one or more persons but subject to a common plan of development. Not every lot will abut a public street but every lot will have the benefit of a perpetual easement for ingress and egress to a public street. As written, Section 26 does not reflect this possibility and it should be provided for.

h) Article 6 should be supplemented to make it clear that sub-division and site plan review and approval is applicable to commercial cluster and/or planned commercial development. It is a little fuzzy as written. For example, in Section 29(c), line 29, page 29, the word "residents" appears. The same appears in (e). Probably this should be expanded to include occupants. Unless the definition of planned developments is expanded it is not clear that Section 33 would apply to commercial cluster.

While the time periods set forth in Articles 6 and 7, Sections 36 et. seq. may be consistent with existing law, the cumulative effect thereof totals to six months or more. To a Developer, time is money and if these could be shortened without doing violence to thoughtful consideration of applications for development that would be desirable. Similarly with respect to Section 59 and 69 relating to appeals to the Board of Adjustment. If all of the time permitted were utilized this would equal six months.

PGW

April 8, 1975

Mr. S. Camarallis
Staff Director
Senate Committee on County & Municipal Gov't
State House
Trenton, New Jersey

Subject: Land Use Bill #3054

Dear Mr. Camarallis,

Mr. Westberg and I wish to go on public record as being totally opposed to the above mentioned bill.

This bill appears not only to be taking away from the local municipalities the responsibility for its decisions as to zoning requirements, but further it requires no environmental considerations before decisions are reached.

We are fully aware that we live in a "priviledged" and beautiful area of the state. Let us keep it beautiful! Industry is rapidly moving into our area without apparent concern for what their building does to the land. AT &T in Bernards Township and the Long Lines Division in Bedminster Township are but two examples.

Granted, we ~~as~~ although long-time residents of this area, have little ability to fight these powerful companies. However, we can at the very least express our opinion to our representatives and hope that they will take up the fight for us.

Thank you for taking the time to read this letter.

Yours truly,

Priscilla G. Westberg

(Mrs. John E.)
41 Deer Ridge Road
Basking Ridge, New Jersey
07920

274 N. Maple Ave.
Basking Ridge, N.J.
07920

April 4, I975

Mr. S. Camarallis
Staff Director Senate Comm.
on County and Municipal Government
The State House
Trenton N.J.

Dear Sir;

I read S3054 with considerable interest, however there are sections that seem to give less possibility for public influence on changes that directly influence their lives, and this seems to be retrogression to me.

Line 32 " to encourage planned unit development"; this is fine but not at the expense of having land that is properly flood plain counted as part of the land to support intensive development.

Line 40-39 "conditional use" this concept would lead to great abuse, as conditional use would be constantly subject to actual use, then hardship, because the owner could not use land in any way they saw fit. There is no retreat from more intensive use once the first conditional use has been given.

Line 40-2I6 "public drainage way"**** preserving the chanel and for the flow of water to safegard the public against flood damage, sedimentation and erosion". There is no way to provide constantly increasing capacity for flood water in the densely populated areas down stream. The only way to safegard these communities is to retain the water where it falls on the headwaters of our rivers, so there is no increase in the already critical down stream areas.

There are several references to reasonable reproduction fees. Specifically this should be at the actual cost, not at $I.00-$.50 a sheet. Such high costs effectively prohibit the public from access to what is ostensibly public information.

RS 40:55-38.d-I9-25 referrs to cutting off evidence and debate at the discretion of the presiding officer. Here again the exclusion of the public to debate and have a say is inappropriate.

The sections on personal notification of the residents within 200 feet is completely inadequate in suburban and rural areas, and greatly favors the developer, residents within I000' to a mile are directly affected by what a developer does, and often do not know what is proposed until the bull-dozers arrive, long after permission has been given.

Page I6-45f provides for a copy of the decission of the board of adjustment to the appellant. There is no similar provision of copies to citizens who may have been opposing the granting of the varience to the appellant.

Page 2I Thirty five days referral time for the planning board does not give time for review by the Environmental Commission.

Page 25 There is no provision for public review of "capital improvements", and environmental assessment of "improvements".

Regulation of uses of land subject to flooding, should be only those uses that are not damaged by flooding, and do not impede the flow of water.

Page 35, Open space land once reserved should not be subject to review, and more intensive, or different use.

Page 36 40:55-6I (e_i,s7) Environmental impact reports should be studied befor preliminary site plan approval.

Provisions for the planning boards to be able to grant exceptions are not in the public interest, and should be reserved for the board of adjustment. As proposed under Article 7 of the Ancillary powers of the planning boards.

Page 49, Lines 26-28. "No zoning by referandum". This further removes the ability of the residents to control their own environment, and should not be enacted.

RS 40:55-32 Any protest by interested, or affected residents should be heard, and not just the glowing promises of the developers.

Page 59, the disolution of local planning boards, infavor of regional boards, is one more step in the wrong direction to keep the public from having some control of their own environment.

Page 6I, The prohibition of moritoriums on the land development to allow study of master plans and possible changes, is very bad for the total environment and is designed to allow any developer to submit hastily made plans, to the detriment of the total community, and should not be part of this bill.

Sincerely,

Elfreda Finch

Elfreda Finch