

PUBLIC HEARING

before

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

on

S-1913

(To provide for phased-in compliance
with the Mount Laurel II court decision)

S-2046

(To provide for implementation of
the Mount Laurel II court decision)

SCR-24

(Proposes an amendment to the Constitution
prohibiting restrictions on municipal
zoning ordinances regarding housing for
persons of diverse financial means)

Held:

August 2, 1984

Room 114

State House Annex

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

New Jersey State Library

Senator Wynona M. Lipman, Chairwoman
Senator Gerald R. Stockman, Vice Chairman
Senator Gerald Cardinale
Senator H. James Saxton

ALSO PRESENT:

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

TABLE OF CONTENTS

	<u>Page</u>
Assemblyman David C. Schwartz District 17	2
Senator S. Thomas Gagliano District 12	5
Senator John H. Dorsey District 25	16
Saul G. Hornik Mayor, Marlboro Township	28
John E. Coley Warren Township	48
John Trafford Executive Director New Jersey State League of Municipalities	53
Stephen M. Eisdorfer Department of the Public Advocate	62
Kathleen W. Rae Director of the New Jersey Committee of Regional Plan Association	80
Sue Kovan New Jersey Association of Realtors	89
Stuart Hutt General Counsel New Jersey Builders Association	93
Lisa DiGiulio Mayor's Assistant on Mount Laurel II Mahwah Township	106
Catherine Graham President Trenton Branch NAACP	111
William Cherry Committeeman Princeton Township	116

TABLE OF CONTENTS (continued)

	<u>Page</u>
Thomas Weidner Committeeman Cranbury Township	121

APPENDIX

Statement on SCR-24, S-1913, and S-2046 submitted by the Department of the Public Advocate	1x
Recommendations submitted by Lisa DiGiulio of Mahwah Township	25x

* * * * *

SENATE, No. 1913

STATE OF NEW JERSEY

INTRODUCED JUNE 18, 1984

By Senators GAGLIANO, HAGEDORN, DiFRANCESCO, FORAN,
SAXTON, DUMONT, DORSEY, HURLEY, GARIBALDI,
CONNORS, BUBBA, BASSANO, EWING and BROWN

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT concerning housing, establishing a Commission on Housing
Needs Assessment, and making an appropriation.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. This act shall be known and may cited as the "Housing Needs
2 Assessment Act."

1 2. The Legislature finds and determines the following:

2 a. The New Jersey Supreme Court, through its rulings in *South*
3 *Burlington County NAACP v. Mount Laurel* 67 N. J. 151 (1975)
4 and *South Burlington County NAACP v. Mount Laurel* 92 N. J.
5 158 (1983), has determined that every municipality in a growth
6 area has a constitutional obligation to provide a realistic oppor-
7 tunity for a fair share of its region's present and prospective needs
8 for housing for low and moderate income families.

9 b. In the second Mount Laurel ruling, the Supreme Court stated
10 that the determination of the methods for satisfying this consti-
11 tutional obligation "is better left to the Legislature," that the
12 Court has "always preferred legislative to judicial action in this
13 field," and that the judicial role in upholding the Mount Laurel
14 doctrine "could decrease as a result of legislative and executive
15 action."

16 c. In recognition of the fact that "In some cases, the provision
17 of a realistic opportunity (to construct a fair share of lower income
18 housing) might result in the immediate construction of lower in-

Matter printed in italics thus is new matter.

19 come housing in such quantity as would radically transform the
 20 municipality overnight," the Supreme Court provided trial courts
 21 with "the discretion, under those circumstances, to moderate the
 22 impact of such housing by allowing even the present need to be
 23 phased in over a period of years."

24 d. The Supreme Court has acknowledged that the determination
 25 of fair share "takes the most time, produces the greatest variety
 26 of opinions and engenders doubt as to the meaning and wisdom of
 27 *Mount Laurel*," and requires "resolution of three separate issues:
 28 identifying the relevant region, determining its present and pros-
 29 pective housing needs, and allocating those needs to the munici-
 30 pality or municipalities involved."

31 e. The appropriate procedure for developing and implementing
 32 the determinations, definitions, and standards set forth by the
 33 Supreme Court involves a cooperative and determined effort on the
 34 part of the State and its municipalities which effort shall result
 35 in a determination of the future housing needs for all of the resi-
 36 dents of this State, consistent with environmentally sound, well
 37 planned and balanced community development, and the efficient use
 38 of the resources of the State and its municipalities.

39 f. During the period necessary to undertake a study of future
 40 housing needs, existing court determinations regarding fair share
 41 allocations should be implemented on a phased-in basis, in order
 42 that the allocation can be examined and reassessed in light of the
 43 findings of the cooperative study effort by the State and its mu-
 44 nicipalities.

1 3. As used in this act:

2 a. "Commission" means the Commission on Housing Needs
 3 Assessment created pursuant to this act.

4 b. "Application for development" means the application form
 5 and all accompanying documents required by ordinance for ap-
 6 proval of a subdivision plat, site plan or planned residential de-
 7 velopment, conditional use, zoning variance, or direction of the
 8 issuance of a building permit pursuant to sections 25 and 27 of
 9 P. L. 1975, c. 291 (C. 40:55D-34 and C. 40:55D-36).

10 c. "Balanced housing opportunities" means the availability
 11 within a region, for sale and rent, of an adequate mix of types
 12 of dwelling units to meet the housing needs of persons of whatever
 13 income, age, or family size, who are working or residing, or who
 14 reasonably might seek to work or reside, in the region.

15 d. "Commissioner" means the Commissioner of the Department
 16 of Community Affairs.

17 e. "Municipal regional housing factor" means the number and.
 18 whenever the commission determines necessary and feasible, types
 19 of dwelling units, and practicable housing goals, recommended by
 20 the commission to each municipality pursuant to this act.

21 f. "Developer" means any person, association, corporation or
 22 public agency seeking to construct, reconstruct or rehabilitate, or
 23 seeking to sponsor the construction, reconstruction or rehabilita-
 24 tion, of any building or structure which is to be sold or rented, or
 25 offered for sale or rental, as dwelling units for one or more
 26 persons or family units.

27 g. "Dwelling unit" means any building or structure, or any room,
 28 rooms, apartment or suite thereof, for sale or rent, which is occu-
 29 pied, or intended, arranged or designed to be occupied, for eating.
 30 sleeping and dwelling purposes by one or more persons or by a
 31 family, but shall not include any building or structure defined as a
 32 "hotel" in section 3 of the "Hotel and Multiple Dwelling Act"
 33 (P. L. 1967, c. 76; C. 55:13A-3).

34 h. "Housing element" means the plan prepared by a municipality
 35 pursuant to this act for implementing its municipal regional hous-
 36 ing factor, which shall thereafter constitute the housing element
 37 of its master plan pursuant to section 19 of P. L. 1975, c. 291
 38 (C. 40:55D-28).

39 i. "Housing needs" means the number and types of safe and
 40 sanitary dwelling units necessary to meet the existing and projected
 41 demand for adequate housing from all segments of the population
 42 within convenient access to places of employment and necessary
 43 community facilities.

44 j. "Housing survey" means the comprehensive housing survey
 45 conducted by a municipal planning board in accordance with
 46 this act.

47 k. "Land use regulations" means the master plan, official map
 48 ordinances, zoning ordinance, subdivision ordinance, planned resi-
 49 dential development ordinance, site plan ordinance, or other land
 50 use regulations of a municipality.

51 l. "Local body" means the governing body, the municipal plan-
 52 ning board, or the zoning board of adjustment, as the case may be,
 53 which has the authority for making a given land use decision within
 54 a municipality.

55 m. "Region" means a geographical area of commonality as mea-
 56 sured by such factors as physical features, spheres of economic
 57 activity, market areas, employment centers and movement of goods,
 58 services and people.

59 n. "Types of dwelling units" means the various structural types
 60 or density levels of dwelling units, and the various levels of pur-

61 chase price or rental costs of dwelling units.

1 4. A municipality which is under a court order issued between
2 January 1, 1983 and December 31, 1986, inclusive, to permit or
3 provide for the construction of a number of dwelling units to meet
4 its constitutional obligation to provide a realistic opportunity for
5 a fair share of present and prospective needs for low and moderate
6 income housing, shall not be required to permit or provide for
7 the construction of more than 10% of the units within the two-year
8 period commencing with the effective date of this act or within
9 two years of the date of the order, whichever is later.

1 5. There is established in, but not of, the Department of Com-
2 munity Affairs, a 15-member Commission on Housing Needs
3 Assessment, which shall consist of the Commissioners of the De-
4 partments of Community Affairs, Environmental Protection,
5 Transportation and Labor, or their duly designated representatives,
6 and 11 persons appointed by the Governor with the advice and
7 consent of the Senate, of whom five shall hold an elected municipal
8 office, three shall represent organizations with an interest in housing
9 planning matters, and three shall be citizens of the State. Not
10 more than six of the appointees shall be members of the same
11 political party.

12 The appointed members shall serve for terms of four years, ex-
13 cept that an elected official shall serve only while the official con-
14 tinues to hold the office held at the time of appointment, and except
15 that of the members first appointed, three shall serve for terms of
16 two years, four for terms of three years, and four for terms of
17 four years. All members shall serve until their respective successors
18 are appointed and shall qualify. Any vacancy shall be filled in the
19 same manner as the original appointment, but for the remainder
20 of the unexpired term only.

21 The members of the commission shall serve without compensation
22 but shall be eligible for reimbursement for reasonable expenses
23 incurred in the performance of their duties.

1 6. The commission shall organize as soon as practicable after the
2 appointment of its members and shall elect a chairman and vice
3 chairman from among its appointed members, who shall serve in
4 that capacity for a term of two years. It shall be the responsibility
5 of the Department of Community Affairs and of the Office of
6 Planning in the Department of the Treasury, established pursuant
7 to the "State Planning Act," P. L. , c. (now pending
8 before the Legislature as Senate Bill No. 1464 of 1984) to provide
9 such housekeeping, clerical, technical and professional assistance
10 and services to the commission as the commission may require.

1 7. It shall be the duty of the commission to ascertain the housing
 2 needs of the State for the period ending December 31, 1986 and
 3 every six years thereafter. On June 30, 1987 and every six years
 4 thereafter, the commission shall, upon completion of the process
 5 described in this act, prepare and distribute guidelines defining
 6 the regions of the State, the housing needs of each region, and
 7 suggested methods which have been successful or are considered
 8 potentially successful as a means of providing reasonable oppor-
 9 tunities for the construction of sufficient housing of such type and
 10 character to meet their share of the regional need for low and
 11 moderate income housing.

1 ~~8.~~ The commission shall distribute the first regional housing
 2 guidelines to the clerk of each county and municipality within nine
 3 months after the effective date of this act. The guidelines shall
 4 constitute each region's recommended share of the commission's
 5 assessment of the existing and projected housing needs and prac-
 6 ticable housing goals of the State. The guidelines shall identify
 7 the numerical housing needs, present and projected, of each region
 8 of the State and may suggest staging plans for implementing those
 9 needs through the use of existing and new housing. The guidelines
 10 shall also recommend practicable housing goals for each region
 11 for the prescribed period and shall include all relevant information,
 12 data and methodologies used by the commission to determine the
 13 State's housing needs and goals and to derive the regional housing
 14 guidelines.

1 9. In addition to any other duties and responsibilities prescribed
 2 by this act, the commission shall, in accordance with the provisions
 3 of the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
 4 52:14B-1 et seq.):

5 a. Within 120 days after the effective date of this act, adopt rules,
 6 regulations, standards or guidelines relating to: (1) the setting
 7 forth of regional housing guidelines, and (2) the form and content
 8 of the housing survey.

9 b. Within one year after the effective date of this act, establish
 10 guidelines for municipal housing elements to be prepared in accor-
 11 dance with this act, based upon the provisions of section 19 of
 12 P. L. 1975, c. 291 (C. 40:55D-28).

1 10. It shall be the duty of the commission to:

2 a. Identify and delineate growth areas in the State and determine
 3 their impacts on regional housing needs.

4 b. Identify areas of critical housing needs throughout the State,
 5 as evidenced by the existence of (1) a significant net deficit within
 6 a given region or part thereof between housing needs and the

7 existing availability of sufficient, suitable housing opportunities,
8 including existing as well as replacement housing, for those persons
9 who reside or work, or might reasonably seek to reside or work,
10 in the area, and (2) a high development potential for the area as
11 identified by subsection d. of this section.

12 c. Prepare guidelines for determining feasible and desirable
13 density levels, or the dwelling unit or other developmental capacity,
14 of different types of locations, and recommend levels and staged
15 distributions of long-range growth, as may be consistent with
16 State, regional and, insofar as possible, municipal land use and
17 growth plans and policies, and as would assure more efficient uses
18 of the resources of the State, including but not limited to, Statewide
19 transportation systems, water resources, and sewage treatment
20 facilities.

21 d. Identify and delineate, in accordance with State, regional and,
22 insofar as possible, municipal land use plans and policies, geo-
23 graphical areas with high development potential based upon prox-
24 imity or accessibility to employment and population centers, and
25 the availability of vacant, developable or redevelopable land, and
26 of recreation, school, transportation, parking, water supply, sewage
27 and waste water treatment, and other public facilities and open
28 spaces adequate to meet, consistent with environmental standards
29 and considerations, the projected densities for the areas.

30 e. In accordance with State, regional, county and, insofar as
31 possible, municipal land use plans and policies, identify and estab-
32 lish regional developmental strategies, consistent with sound plan-
33 ning principles, for geographical areas in the State the preservation
34 or controlled development of which is conducive to conserving
35 and strengthening natural, historic, agricultural, aesthetic and
36 social resources and for avoiding State and regional patterns of
37 development which unnecessarily lessen the useful and beneficial
38 differences among municipalities and communities of the State.

39 f. Recommend to the Governor and the Legislature means for
40 better coordinated public or publicly assisted housing programs as
41 well as improved and better coordinated policies and programs
42 of all departments, agencies or other instrumentalities of the State
43 relating thereto to better effectuate the objectives of this act.

44 g. Make available to municipalities, through the Department of
45 Community Affairs and the Office of Planning, information, data
46 and assistance pertaining to the implementation of this act and
47 the goals established hereunder, including the provision of various
48 adopted municipal land use regulations, housing surveys, and hous-
49 ing elements which may serve as models and guides for munici-
50 palities and encourage innovative and flexible land use policies.

51 h. Within six months after the effective date of this act and
 52 annually thereafter, assess and report to the Governor and the
 53 Legislature on the progress and problems associated with the
 54 implementation of the objectives of this act, and from time to time
 55 make recommendations to effectuate the attainment of the housing
 56 goals of the State and the objectives of this act.

1 11. In accordance with the standards and requirements specified
 2 in rules and regulations adopted by the commission, each municipal
 3 planning board shall, within 12 months of the effective date of this
 4 act, complete a comprehensive survey of its housing needs. The
 5 survey shall include a statement of the objectives and standards
 6 upon which the municipality bases its master plan, zoning ordinance
 7 and developmental regulations. The statement may include a
 8 description of those particular environmental, agricultural, historic,
 9 aesthetic and social aspects of the municipality which the municipi-
 10 pality deems worthy of preservation, and a report on what ap-
 11 provals of development applications and variances granted by the
 12 municipality over the immediately preceding five years might have
 13 complied with these objectives and standards and with the municipi-
 14 pality's goals for preservation.

15 The housing survey shall contain a description of:

16 a. The quantity and quality of the current housing stock within
 17 the municipality, including data on the types, distribution, location,
 18 costs, vacancy rates, conversion rates, rehabilitation needs and
 19 replacement rates of existing dwelling units.

20 b. The availability of adequate and suitable land for development
 21 or redevelopment.

22 c. The geographical proximity and accessibility of prospective
 23 housing site locations to public transportation, major employment
 24 centers and high growth areas.

25 d. The availability and capacity of existing and planned com-
 26 munity facilities, including but not limited to water and sewerage
 27 facilities, of the municipality to accommodate various types of new
 28 or rehabilitated dwelling units within a prescribed time interval.

29 e. The relative fiscal capacity of the municipality to undertake
 30 any necessary capital improvements and to provide necessary
 31 public services to any new or rehabilitated housing.

32 The municipal planning board shall transmit its draft of the
 33 housing survey to the governing body of the municipality, which
 34 shall, within 30 days of the receipt thereof, transmit its approved
 35 version of the survey to the commission.

1 12. The commission shall review the municipal housing survey
 2 and shall, within 60 days of the receipt thereof, recommend to

3 the municipality a numerical assignment representing the municipi-
4 pality's regional housing factor. The regional housing factor shall
5 represent the housing impact on the municipality of development
6 trends outside the municipality as well as the number of low and
7 moderate income dwelling units necessary to expand and improve
8 the distribution of balanced housing opportunities within the region
9 and to avoid or abate excessive concentrations of low and moderate
10 income, or subsidized, dwelling units. The regional housing factor
11 shall be based upon the municipal housing survey and the descrip-
12 tions and statements set forth therein.

1 13. A municipality may prepare a housing element to meet its
2 regional housing factor and make appropriate changes, if neces-
3 sary, in its land use regulations.

4 The governing body of the municipality may request the com-
5 mission to review and certify its land use regulations and housing
6 element adopted or prepared pursuant to this act.

1 14. Upon receipt from a municipal governing body of a request
2 for certification, the commission shall within 60 days thereof review
3 the land use regulations and housing element and set forth in
4 writing its determinations to the municipal governing body.

5 The commission shall certify the regulations and housing element
6 if it finds that the commission's recommendation for the municipi-
7 pality would be adequately satisfied, or, if not, that the municipality
8 has provided reasonable statements of the public benefits to be
9 derived by its deviation therefrom.

10 If the commission shall deny certification, it shall in its written
11 determinations set forth its reasons for denial and the changes or
12 amendments in the land use regulations or housing element which
13 it deems necessary for certification. The municipal governing body
14 may make the changes or amendments set forth by the commission
15 and resubmit the regulations and housing element for certification,
16 or it may request a hearing on the original regulations and housing
17 element. If a hearing is requested, the commission shall within 30
18 days of receipt of the request hold a public hearing at which any
19 member of the municipal governing body or planning board may
20 submit additional information pertaining to the regulations or the
21 housing element or to the request for certification. Within 15 days
22 following the conclusion of the hearing, the commission shall pro-
23 vide the municipal governing body with its written determination
24 to certify or deny certification, or of any further changes or amend-
25 ments necessary for certification. If certification is denied, the
26 governing body may at any time thereafter make any changes or
27 amendments set forth by the commission and resubmit the regula-
28 tions and plan for certification.

29 Failure of the commission to act to certify or deny certification
 30 within a time prescribed by this section shall constitute certification
 31 of the regulations and housing element as last submitted, unless
 32 the commission and municipal governing body agree to an extension
 33 of the time.

34 At any time during the certification review process set forth
 35 in this section, the municipal governing body may request, and the
 36 commission may agree to, a suspension of the tolling of the times
 37 specified above. During the period of suspension, the municipality
 38 and the commission may review, exchange and discuss drafts of
 39 amendments or changes in the regulations and housing element.
 40 At the conclusion of the period of suspension, the times shall com-
 41 mence to toll and the municipality may formally submit amend-
 42 ments or changes.

1 15. In any complaint or appeal filed pursuant to this act by a
 2 developer against a municipality having adopted development regu-
 3 lations pursuant to the "Municipal Land Use Law" (P. L. 1975,
 4 c. 291; C. 40:55D-1 et seq.) alleging that the denial or conditional
 5 approval of an application for development would unreasonably
 6 or unduly hamper the attainment of the number and types of
 7 dwelling units contained in the municipality's regional housing
 8 factor, if the municipality has adopted land use regulations and
 9 a housing element plan certified by the commission, the developer
 10 shall have the burden of proving to the satisfaction of a court of
 11 competent jurisdiction that the local agency's decision on the de-
 12 velopment application is inconsistent with the certified land use
 13 regulations or housing element, and that the proposed development
 14 would directly help to meet the unrealized housing needs set forth
 15 in the municipality's regional housing factor.

1 16. If the court finds, in the case of a denial or conditional ap-
 2 proval of a development application by a municipality having
 3 obtained certification pursuant to this act that the decision of the
 4 local body was unreasonable and not consistent with local housing
 5 needs, the court may a. direct the local body to prepare and submit
 6 to the court within 90 days, appropriate land use regulations and
 7 a housing element or b. vacate the decision and direct the local
 8 body to issue a necessary permit or approval to the applicant,
 9 or c. both.

1 17. If the provisions of any section, subsection, paragraph, or
 2 clause of this act shall be judged invalid by a court of competent
 3 jurisdiction, the order or judgment shall affect and invalidate the
 4 remainder of the act and, to this end, no provision of this act is
 5 severable.

- 1 18. There is appropriated to the commission from the General
- 2 Fund the sum of \$250,000.00 to carry out the purposes of this act.
- 1 19. This act shall take effect immediately.

STATEMENT

This bill establishes a procedure for the determination of regional housing guidelines by a State Commission on Housing Needs Assessment and for preparation by municipalities of land use regulations and housing elements for certification by the commission. It also provides that a municipality under a court order issued between January 1, 1983 and December 31, 1986 to permit the construction of dwelling units shall not be required to permit the construction of more than 10% of the units within a two-year period commencing with the effective date of this act or within two years of the court order, whichever is later.

SENATE, No. 2046

STATE OF NEW JERSEY

INTRODUCED JUNE 23, 1984

By Senators LIPMAN, STOCKMAN and LYNCH

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT concerning housing, amending P. L. 1968, c. 49, and making
an appropriation.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. (New section) This act shall be known and may be cited as the
2 "Fair Housing Act."

1 2. (New section) The Legislature finds that:

2 a. The New Jersey Supreme Court, through its rulings in *South*
3 *Burlington County NAACP v. Mount Laurel*, 67 N. J. 151 (1975)
4 and *South Burlington County NAACP v. Mount Laurel*, 92 N. J. 158
5 (1983), has determined that every municipality in a growth area
6 has a constitutional obligation to provide a realistic opportunity
7 for a fair share of its region's present and prospective needs for
8 housing for low and moderate income families.

9 b. In the second Mount Laurel ruling, the Supreme Court stated
10 that the determination of the methods for satisfying this constitu-
11 tional obligation "is better left to the Legislature," that the court
12 has "always preferred legislative to judicial action in their field."
13 and that the judicial role in upholding the Mount Laurel doctrine
14 "could decrease as a result of legislative and executive action";

15 c. The interest of all citizens, including low and moderate income
16 families in need of affordable housing, would be best served by a
17 comprehensive planning and implementation response to this con-
18 stitutional obligation:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

19 d. There are a number of essential ingredients to a compre-
 20 hensive planning and implementation response, including the
 21 establishment of a Statewide fair share housing guidelines and
 22 standards, the determination of fair share at the municipal level
 23 and the preparation of a municipal housing element, State review
 24 of the local fair share study and housing element, and a continuing
 25 source of State funding for low and moderate income housing to
 26 replace the federal housing subsidy programs which have been
 27 almost completely eliminated.

28 e. The State can maximize the number of low and moderate
 29 income units provided in New Jersey by allowing its municipalities
 30 to adopt six-year phasing schedules for meeting their fair share,
 31 so long as the municipalities permit the immediate construction of
 32 a substantial amount of the fair share, and so long as the Legisla-
 33 ture funds a housing subsidy program for each year of the phasing
 34 schedule.

1 3. (New section) As used in this act:

2 a. "Affordable housing" means housing for which a household is
 3 not required to pay more than 28% of its gross household income
 4 for principal, interest, taxes, insurance and homeowners fees or not
 5 more than 30% of its gross household income for rent and utilities.

6 b. "Council" means the Council on Affordable Housing estab-
 7 lished in this act.

8 c. "Low income housing" means housing affordable to, and
 9 occupied by, households with a gross household income equal to
 10 50% or less of the median gross household income for households
 11 of the same size within the region in which the housing is located.

12 d. "Moderate income housing" means housing affordable to, and
 13 occupied by, households with a gross household income equal to
 14 more than 50% but less than 80% of the median gross household
 15 income for households of the same size within the region in which
 16 the housing is located.

17 e. "Region" means the general area which constitutes the housing
 18 market area of which a municipality is a part.

19 f. "Resolution of participation" means a resolution adopted by a
 20 municipality in which the municipality chooses to prepare a fair
 21 share study and housing element in accordance with this act.

22 g. "Inclusionary development" means a residential housing
 23 development in which at least 20% of the housing units are low and
 24 moderate income housing.

1 4. a. (New section) There is established in, but not of, the Depart-
 2 ment of Community Affairs a Council on Affordable Housing to
 3 consist of seven members appointed by the Governor with the

4 advice and consent of the Senate, of whom two shall represent the
5 interests of municipal government, two shall represent the interests
6 of households in need of low and moderate housing and who shall
7 have an expertise in land use practices and housing issues, and
8 three shall represent the public interest, of whom one may be a
9 State official. Not more than four of the seven shall be members of
10 the same political party.

11 b. The members shall serve for terms of six years, except that of
12 the members first appointed, two shall serve for terms of four years,
13 two for terms of five years, and three for terms of six years, and
14 except that any State official shall serve only while the official
15 continues to hold the office held at the time of appointment. All
16 members shall serve until their respective successors are appointed
17 and shall have qualified. Vacancies shall be filled in the same
18 manner as the original appointment, but for the remainder of the
19 unexpired term only.

20 c. The members shall be compensated, except for any State
21 official, at the rate of \$150.00 for each six-hour day, or prorated por-
22 tion thereof for more or less than six hours, spent in attendance at
23 meetings and consultations and all members shall be eligible for
24 reimbursement for necessary expenses incurred in connection with
25 the discharge of their duties.

26 d. The Governor shall designate a member to serve as chairman
27 throughout the member's term of office and until his successor shall
28 have been appointed and qualified.

29 e. Any member may be removed from office for misconduct in
30 office, willful neglect of duty, or other conduct evidencing unfitness
31 for the office, or for incompetence. A proceeding for removal may
32 be instituted by the Attorney General in the Superior Court. A
33 member or employee of the council shall automatically forfeit his
34 office or employment upon conviction of any crime. Any member or
35 employee of the council shall be subject to the duty to appear and
36 testify and to removal from his office or employment in accordance
37 with the provisions of P. L. 1970, c. 72 (C. 2A:81-17.2a et seq.).

1 5. a. (New section) The council may establish, and from time
2 to time alter, such plan of organization as it may deem expedient,
3 and may incur expenses within the limits of funds available to it.

4 b. The council shall elect annually by a majority of its members
5 one of its members, other than the chairman, to serve as vice-
6 chairman for a term of one year and until his successor is elected.
7 The vice-chairman shall carry out all of the responsibilities of the
8 chairman as prescribed in this act during the chairman's absence,
9 disqualification or inability to serve.

10 d. The council shall appoint and fix the salary of an executive
 11 director who shall serve at its pleasure. The council may employ
 12 such other personnel as it deems necessary. All employees of the
 13 commission shall be in the unclassified service of the Civil Service
 14 and shall be deemed confidential employees for the purposes of the
 15 "New Jersey Employer-Employee Relations Act" (P. L. 1941, c.
 16 100; C. 34:13A-1 et seq.). The council may employ legal counsel
 17 who shall represent it in any proceeding to which it is a party, and
 18 who shall render legal advice to the council. The council may
 19 contract for the services of other professional, technical and opera-
 20 tional personnel and consultants as may be necessary to the per-
 21 formance of its duties. Members and employees shall be enrolled
 22 in the Public Employees Retirement System of New Jersey (P. L.
 23 1954, c. 84; C. 43:15A-1 et seq.).

1 6. (New section) It shall be the duty of the council to ascertain
 2 the housing needs of, and formulate a fair share plan for the distri-
 3 bution of, low and moderate income housing units in the various
 4 regions of the State as it shall delineate for the period ending
 5 nine months after the effective date of this act and every six years
 6 thereafter. The plan shall include, but need not be limited to:

7 a. Housing regions, which may be different for purposes of
 8 present and prospective need;

9 b. An analysis of the present and prospective need for low and
 10 moderate income housing in the State and in each region and the
 11 indigenous need;

12 c. Population and household projections; and

13 d. Criteria for allocating present and prospective fair share of
 14 the housing need among the municipalities in each region and
 15 guidelines for municipal adjustments based upon vacant land,
 16 infrastructure considerations or other municipal matters.

1 7. (New section) Within nine months after the effective date of
 2 this act, the council shall, in accordance with the "Administrative
 3 Procedure Act" P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules
 4 and guidelines relating to the municipal obligation to provide a
 5 realistic opportunity for a municipality's fair share of low and
 6 moderate income housing, including such matters as a. the elimina-
 7 tion of excessive restrictions and exactions which operate as
 8 barriers to the construction of low and moderate income housing
 9 and b. affirmative measures which provide a realistic possibility for
 10 the construction of low and moderate income housing. In adopting
 11 these rules and guidelines, the council shall give appropriate weight
 12 to pertinent research center studies, government reports and
 13 decisions of other branches of government.

1 8. (New section) Within three months after the effective date
2 of this act, each municipality which so elects shall, by a duly adopted
3 resolution, notify the council of its participation in the council's
4 fair share housing plan and shall, within six months after the
5 council's adoption of its rules, guidelines and plan, prepare and file
6 with the council a housing element, based on the council's rules,
7 guidelines and plan, and any adopted ordinance revisions which
8 implement the housing element.

1 9. (New section) A municipality's housing element shall be
2 designed to achieve the goal of access to affordable housing to
3 meet present and future housing needs, with particular attention
4 to low and moderate income housing, and shall contain at least:

5 a. An inventory of the municipality's housing stock by age, condi-
6 tion, purchase or rental value, occupancy characteristics, and type,
7 including, but not necessarily limited to, habitable floor area and
8 number of rooms, bedrooms and bathrooms, and including the
9 number of units affordable to low and moderate income households;

10 b. A projection of the municipality's housing stock, including the
11 probable future construction of low and moderate income housing,
12 for the next three, six and twelve years, taking into account, but
13 not necessarily limited to, construction permits issued, approvals of
14 applications for development and probable residential development
15 of lands;

16 c. An analysis of the municipality's demographic characteristics,
17 including, but not necessarily limited to, household size, income
18 level, race, ethnicity and age;

19 d. An analysis of the existing and probable future employment
20 characteristics of the municipality;

21 e. An analysis of demographic and housing projections as pub-
22 lished by the council;

23 f. An analysis of the municipality's present and prospective fair
24 share for low and moderate income housing;

25 g. An analysis of the municipality's capacity to accommodate its
26 present and prospective housing needs, including its fair share for
27 low and moderate income housing;

28 h. An analysis demonstrating that the land use element of the
29 municipality's master plan is suitable for the purpose of accom-
30 modating its present and prospective fair share for low and
31 moderate income housing;

32 i. A determination of how the municipality's present and pros-
33 pective fair share of low and moderate income housing will be met,
34 including, but not necessarily limited to:

35 (1) Affirmative measures and incentive zoning devices designed
36 to ensure construction of low and moderate income housing;

37 (2) Consideration of the lands that are most appropriate for
 38 construction of low and moderate income housing, including a
 39 specific consideration of lands of developers who have expressed a
 40 commitment to provide low and moderate income housing;

41 (3) The minimum densities necessary to assure the economic
 42 viability of the inclusionary developments;

43 (4) Determination of the overzoning necessary to ensure that the
 44 municipality's fair share is achieved;

45 (5) Determination of measures that the municipality will take to
 46 ensure that low and moderate income units remain affordable to
 47 low and moderate income households over a 30-year period;

48 (6) A plan for infrastructure expansion if necessary to ensure
 49 the construction of the municipality's fair share of low and moder-
 50 ate income housing;

51 (7) Any plan the municipality may wish to adopt whereby resi-
 52 dential, industrial or commercial developers are given the right to
 53 higher densities or intensity of uses in exchange for the construction
 54 of a percentage of low and moderate income housing or a pro-rata
 55 payment into a trust fund for low and moderate income housing;
 56 and

57 (8) Any phasing schedule for construction of low and moderate
 58 income housing which the municipality may wish to adopt which is
 59 not more restrictive than the schedule provided in section 22 of this
 60 act.

1 10. (New section) Within 15 business days of the receipt of a
 2 municipality's housing element, the council shall make a determina-
 3 tion as to whether the element is in compliance with the filing
 4 requirements of this act. If the council determines that the filing
 5 requirements have been met, the council shall provide the munici-
 6 pality with a certification of filing. If the council finds otherwise,
 7 it shall notify the municipality of any filing deficiencies. If, within
 8 45 days of the council's notification, the municipality shall refile its
 9 housing element with a correction of the deficiencies to the council's
 10 satisfaction, the council shall within 15 business days of the refiling
 11 issue a certification of filing.

1 11. (New section) A municipality which has received a filing
 2 certification may at any time during the six year period established
 3 in section 6 of this act petition the council for a substantive certifica-
 4 tion of its element and ordinances. The municipality shall publish
 5 notice of its petition in a newspaper of general circulation within
 6 the municipality and region and shall make available to the public
 7 information on the element and ordinances in accordance with such
 8 procedures as the council shall establish. The council shall also

9 establish a procedure for providing public notice of each petition
10 which it receives.

1 12. (New section) Unless an objection to the substantive certifica-
2 tion is filed with the council by any person within 45 days of the
3 publication of the notice of the municipality's petition, the council
4 shall review the petition and shall issue a substantive certification
5 if it shall find that:

6 a. The municipality's fair share methodology is consistent with
7 the rules and criteria adopted by the council;

8 b. Any reductions in the municipality's fair share from the fair
9 share number produced by using the council's criteria which are
10 based on local municipal constraints such as lack of vacant develop-
11 able land or public facilities are necessary and not fundamentally
12 inconsistent with achievement of the region's housing needs; and

13 c. The combination of the elimination of cost generating features
14 and the affirmative measures in the housing element and imple-
15 mentation plan make the construction of the municipality's fair
16 share of low and moderate income housing realistically possible.

17 In conducting its review, the council may meet with the munici-
18 pality and may deny the petition or condition its certification upon
19 changes in the element or ordinances. If, within 60 days of the
20 council's denial or conditional approval, the municipality refiles its
21 petition with changes satisfactory to the council, the council shall
22 issue a substantive certification.

1 13. a. (New section) If an objection to the municipality's petition
2 for substantive certification is filed with the council within the
3 time specified in section 12 of this act or a request for mediation
4 and review is made pursuant to section 14 of this act, the council
5 shall conduct a mediation and review process in which objectors or
6 aggrieved parties shall have the right to present their objections
7 in the form of written submissions or expert reports, and a reason-
8 able opportunity shall be given to the objectors and their experts
9 to be heard, but the review process shall not be considered a con-
10 tested case as defined in the "Administrative Procedure Act," P. L.
11 1968, c. 410 (C. 52:14B-1 et seq.). The mediation and review process
12 shall commence as soon as possible after the filing of the housing
13 element as provided in section 8 of this act.

14 b. In mediation and review processes instituted in accordance
15 with section 14. a. of this act, the council shall attempt to mediate
16 a resolution of the dispute between the developer and the munici-
17 pality, provided that no agreement shall be entered by which a
18 developer provides less than 20% low and moderate income housing
19 in the development. The mediation process shall commence as soon

20 as possible after the time established in section 8 of this act for the
 21 filing of the housing element. In the event that the mediation
 22 between the litigants is successful, the municipality shall have the
 23 option of choosing whether to also seek substantive certification as
 24 provided in section 11 of this act. If mediation is not successful,
 25 the council shall promptly determine whether the municipality is
 26 entitled to substantive certification.

1 14. a. (New section) Any court of competent jurisdiction shall
 2 have discretion to require the parties in any lawsuit challenging a
 3 municipality's zoning ordinances with respect to the opportunity to
 4 construct low or moderate income housing, which lawsuit was in-
 5 stituted either on or before June 1, 1984, or prior to six months
 6 prior to the effective date of this act, to exhaust the mediation and
 7 review procedure established in section 13 of this act. No exhaus-
 8 tion of remedies requirement shall be imposed unless the munici-
 9 pality has filed a timely resolution of participation. In exercising
 10 its discretion, the court shall consider:

- 11 (1) The age of the case;
- 12 (2) The amount of discovery and other pre-trial procedures that
 13 have taken place;
- 14 (3) The likely date of trial;
- 15 (4) The likely date by which administrative mediation and review
 16 can be completed; and
- 17 (5) Whether the transfer is likely to facilitate and expedite the
 18 provision of a realistic opportunity for low and moderate income
 19 housing.

20 b. Any person who has instituted litigation challenging a munici-
 21 pality's zoning ordinances with respect to the opportunity to pro-
 22 vide for low or moderate income housing, which litigation was
 23 instituted after June 1, 1984, or after six months prior to the effec-
 24 tive date of this act, whichever is later, shall file a notice to request
 25 mediation and review with the council within 60 days of the munici-
 26 pality's resolution of participation pursuant to section 8 of this act.
 27 If the municipality filed a resolution of participation prior to the
 28 institution of exclusionary zoning litigation against it, a person who
 29 brings such litigation shall exhaust the mediation and review pro-
 30 ceedings of the council before being entitled to a trial on his
 31 complaint.

1 15. (New section) In any exclusionary zoning case filed against
 2 a municipality which has a substantive certification and in which
 3 there is a requirement to exhaust the mediation and review process
 4 pursuant to section 14 of this act, there shall be a presumption of
 5 validity attaching to the housing element and ordinances imple-

6 menting the housing element. To rebut the presumption of validity,
7 the complainant shall have the burden of proof to demonstrate that
8 the housing element and ordinances implementing the housing
9 element do not provide a realistic opportunity for the provision
10 of low and moderate income housing.

1 16. (New section) If a municipality which has adopted a resolu-
2 tion of participation pursuant to section 8 of this act fails to meet
3 the deadline for submitting the material required for filing certifica-
4 tion, the obligation to exhaust administrative remedies contained
5 in subsection b. of section 14 of this act automatically expires. The
6 obligation also expires if the council rejects the municipality's
7 request for filing or substantive certification or conditions its
8 certification upon changes which are not made within the period
9 established in this act.

1 17. (New section) If the council has not completed its mediation
2 and review process for a municipality within one year of receipt
3 of a request by a party who has instituted litigation, the party may
4 file a motion with a court of competent jurisdiction to be relieved
5 of the duty to exhaust administrative remedies. In reviewing the
6 motion, the court shall consider any information received from the
7 council regarding its expected timetable for completing the review
8 process. If the court denies the motion, it may establish a reason-
9 able deadline for the council's completion of the process and
10 relieve the party of the duty to exhaust if the deadline is not met.

1 18. (New section) The Pinelands Commission established pur-
2 suant to the "New Jersey Pinelands Protection Act" (P. L. 1979,
3 c. 111) and the Hackensack Meadowlands Development Commis-
4 sion established pursuant to the "Hackensack Meadowlands
5 Development Act" (P. L. 1968, c. 404) shall have 60 days after the
6 enactment of this act to elect to administer this act for munici-
7 palities which have at least 25% of their area within the jurisdic-
8 tion of the respective commission. A commission which so elects
9 shall have the same responsibilities as the council with respect to
10 the municipalities within its jurisdiction and shall coordinate its
11 policies with the council, and municipalities which chose to adopt a
12 resolution of participation shall submit their fair share plans and
13 housing elements to their respective commission. The council shall
14 retain jurisdiction if a commission does not elect to administer this
15 act.

1 19. (New section) There is established in the State General Fund
2 an account entitled the "Low and Moderate Income Housing Trust
3 Fund Account." The treasurer shall credit to this account all
4 funds paid to the State Treasurer by each county treasurer pur-

5 suant to P. L. 1968, c. 49 (C. 46:15-8). Funds in the account shall be
 6 maintained by the State Treasurer and may be held in depositories
 7 as the State Treasurer may select and invested and reinvested as
 8 other funds in the custody of the State Treasurer in the manner
 9 provided by law, provided that all revenues from investments shall
 10 be credited to the fund.

1 20. (New section) Funds in the Low and Moderate Income Trust
 2 Fund Account shall be transferred to the council upon appropria-
 3 tion from time to time by the Legislature, and shall be used solely
 4 by the council for awards of assistance loans or grants to or on
 5 behalf of public or private housing projects which will provide
 6 affordable low and moderate income housing in such manner, but
 7 not limited to, as the following:

8 a. Rehabilitation of substandard housing units occupied or to be
 9 occupied by low and moderate income households pursuant to con-
 10 tractual guarantees for at least 20 years following the awarding of
 11 the loan or grant;

12 b. Accessory conversions for housing units occupied or to be
 13 occupied by low and moderate income households pursuant to con-
 14 tractual guarantees for at least 20 years following the awarding of
 15 the loan or grant;

16 c. Conversion of nonresidential space to residential purposes pro-
 17 vided at least 20% of the resulting housing units are occupied by
 18 low and moderate income households pursuant to contractual
 19 guarantees for at least 20 years following the awarding of the
 20 loan or grant;

21 d. Inclusionary developments of which at least 20% of the hous-
 22 ing units will be occupied by low and moderate income households
 23 for at least 20 years pursuant to contractual guarantees; and

24 e. Shelters for the homeless.

25 The council shall ensure that a reasonable percentage of the
 26 loan or grant awards shall be made available to projects in those
 27 municipalities receiving State aid pursuant to P. L. 1978, c. 14 (C.
 28 52:27D-178 et seq.) which have a disproportionately high amount
 29 of low and moderate income residents.

30 The council shall establish rules and regulations governing the
 31 qualifications of applicants, the application procedures, and the
 32 criteria for awarding grants and loans and the standards for
 33 establishing the amount, terms and conditions of each grant or loan.

1 21. (New section) If the Legislature does not appropriate to the
 2 council from the Low and Moderate Income Trust Fund in any one
 3 of the six fiscal years commencing with the fiscal year in which this
 4 act is effective an amount substantially equivalent to the revenues

5 accruing to the fund in that fiscal year, then sections 15 and 22 of
6 this act shall terminate on the last day of that fiscal year.

1 22. (New section) A municipality which has a judgment entered
2 against it after the enactment of this act, or which had a judgment
3 entered against it prior to the enactment of this act and from which
4 an appeal has been filed, shall upon municipal request not be re-
5 quired by any court to phase in the issuance of building permits
6 for low and moderate income housing in inclusionary developments
7 at a rate greater than 25% as soon as possible but no later than
8 one year after entry of the judgment and 15% at 12 month intervals
9 thereafter of the municipality's original fair share of low and
10 moderate income housing.

11 The court shall also implement a phase-in schedule for the market
12 units in the inclusionary development which are not low and
13 moderate income, giving due consideration to the schedule for low
14 and moderate income housing established in this section and the
15 need to maintain the economic viability of the development.

16 In entering the phase-in order, the court shall consider whether
17 it is necessary to enter a phase-in order for the construction of
18 commercial, industrial and residential development in the munici-
19 pality to minimize an imbalance between available housing units and
20 available jobs, or to prevent the sites which are the most appro-
21 priate or the only possible sites for the construction of low and
22 moderate income housing to be used for other purposes.

23 The court may modify the phase-in schedule if it determines that
24 the fair share number is so small that literal compliance with this
25 schedule would make the construction of low and moderate income
26 housing economically or practically unfeasible. A development with
27 50 or fewer low and moderate income units shall not be required to
28 adhere to any phase-in schedule after receiving its building permit.

1 23. (New section) The New Jersey Housing and Mortgage
2 Finance Agency shall adopt rules and regulations to provide that
3 at least 50% of the proceeds of its tax exempt bond issues in the
4 four years following the effective date of this act shall be used to
5 assist in the financing of low and moderate income housing.

1 24. Section 3 of P. L. 1968, c. 49 (C. 46:15-7) is amended to read
2 as follows:

3 3. In addition to the recording fees imposed by P. L. 1965, c. 123,
4 s. 2 (C. 22A:4-4.1) a fee is imposed upon grantors, at the rate of
5 **[\$1.75] \$3.50** for each \$500.00 of consideration or fractional part
6 thereof recited in the deed, which fee shall be collected by the county
7 recording officer at the time the deed is offered for recording.

8 Every deed subject to the additional fee required by this act,
9 which is in fact recorded, shall be conclusively deemed to have

10 been entitled to recording, notwithstanding that the amount of the
 11 consideration shall have been incorrectly stated, or that the correct
 12 amount of such additional fee, if any, shall not have been paid, and
 13 no such defect shall in any way affect or impair the validity of the
 14 title conveyed or render the same unmarketable; but the person
 15 or persons required to pay said additional fee at the time of record-
 16 ing shall be and remain liable to the county recording officer for the
 17 payment of the proper amount thereof.

1 25. Section 4 of P. L. 1968, c. 49 (C. 46:15-8) is amended to read
 2 as follows:

3 4. The proceeds of the fees collected by the county recording
 4 officer, as authorized by this act, shall be accounted for and re-
 5 mitted to the county treasurer. An amount equal to 28.6% of the
 6 proceeds from the first \$1.75 for each \$500.00 of consideration or
 7 fractional part thereof recited in the deed so collected shall be re-
 8 tained by the county treasurer for the use of the county and the
 9 balance shall be paid to the State Treasurer for the use of the
 10 State. Payments shall be made to the State Treasurer on the tenth
 11 day of each month following the month of collection.

1 26. There is appropriated to the Council on Affordable Housing
 2 from the General Fund the sum of \$250,000.00 to effectuate the
 3 purposes of this act.

1 27. This act shall take effect immediately, except that sections
 2 19, 20, 24 and 25 shall take effect on the 30th day following enact-
 3 ment.

STATEMENT

This bill provides a mechanism for implementing the constitu-
 tional obligation to provide a realistic opportunity for low and
 moderate income housing as enunciated in the Mount Laurel
 doctrine. It establishes a Council on Affordable Housing to set fair
 share guidelines for municipalities and to review the housing plans
 and ordinances of those municipalities who elect to participate in
 the council's fair share program. Those municipalities whose plans
 and ordinances are certified by the council are entitled to a presump-
 tion of validity in any exclusionary zoning challenge. The council
 will also act as a mediator between developers and participating
 municipalities in an attempt to reach out-of-court settlements.

The bill also provides for a six-year phase-in of any judgments
 requiring a municipality to issue building permits in inclusionary
 developments.

The bill also establishes a Low and Moderate Income Housing
 Trust Fund with revenues derived from an increase in the realty
 transfer tax from \$1.75 to \$3.50 per \$500.

SENATE CONCURRENT RESOLUTION No. 24

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Senators DORSEY, GAGLIANO, DiFRANCESCO, SAXTON,
HURLEY, FORAN, HAGEDORN, CONNORS, BUBBA, CARDI-
NALE, EWING, BASSANO, DUMONT, ZANE and GARIBALDI

A CONCURRENT RESOLUTION proposing to amend Article VIII of
the Constitution of the State of New Jersey by adding a new
Section VI.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring):*

1 1. The following proposed amendment to the Constitution of
2 the State of New Jersey is agreed to:

PROPOSED AMENDMENT

3 Amend Article VIII by adding a new Section VI to read as
4 follows:

SECTION VI

5 *The right of a municipality to determine through its zoning and*
6 *planning ordinances the extent of housing opportunities to be*
7 *provided to meet the needs of persons of diverse financial means*
8 *shall not be impaired by the Legislature, the Governor, or any*
9 *court, except that each municipality shall provide through those*
10 *ordinances opportunities for affordable housing for all persons*
11 *residing in the municipality and for all persons who will be*
12 *employed in the municipality in continuing positions reasonably*
13 *anticipated to result from zoning or planning determinations made*
14 *by the municipality on or after the adoption of this amendment.*

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election

Matter printed in italics thus is new matter.

4 occurring more than three months after the final agreement and be
5 published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than three
8 months prior to the general election.

1 3. This proposed amendment to the Constitution shall be sub-
2 mitted to the people at the election in the following manner and
3 form:

4 There shall be printed on each official ballot to be used at the
5 general election, the following:

6 a. In every municipality in which voting machines are not used,
7 the following legend shall immediately precede the question:

8 If you favor the proposition printed below make a cross (X),
9 plus, +) or check (V) in the square opposite the word "Yes."

10 If you are opposed thereto make a cross (X), plus (+) or check
11 (V) in the square opposite the word "No."

12 b. In every municipality the following question:

	Yes.	<p>MUNICIPAL RIGHT TO ZONE HOUSING OPPORTUNITIES</p> <p>Shall the amendment to the State Constitution, prohibiting the Legislature, the Governor, and the courts from impairing the right of a municipality to determine through its zoning and planning ordinances the extent of housing opportunities to be provided to meet the needs of persons of diverse financial means, and requiring each municipality to provide through those ordinances opportunities for affordable housing for all persons residing who will be employed in the municipality in continuing positions reasonably anticipated to result from zoning or planning determinations hereafter made by the municipality, be adopted?</p>
	No.	<p>INTERPRETIVE STATEMENT</p> <p>If this constitutional amendment is adopted, the Legislature, the Governor, and the courts will be prohibited from restricting the discretion of a municipality to determine through its zoning and planning ordinances the extent of housing opportunities to be provided to meet the needs of persons of diverse financial means, and each municipality will be required to provide through these ordinances opportunities for affordable housing for its own residents and for those persons who will be employed in the municipality in continuing positions reasonably anticipated to result from zoning or planning determinations hereafter made by the municipality.</p>

STATEMENT

The purpose of this proposed constitutional amendment is expressed in the interpretive statement.

SENATOR WYNONA M. LIPMAN (Chairwoman): We would like to begin this hearing on Mount Laurel. Before I make a brief statement about why we are here, I would like to introduce the Senate State Government Committee and our guests. I will start, on my far right, with Assemblyman Schwartz, who is the sponsor of a Mount Laurel bill in the Assembly, because he has to leave. Assemblyman Schwartz has a brief statement to make. Then we have Jim Carroll, who is a member of the Republican Research Team; Senator Saxton, a member of this Committee; Senator Cardinale, a member of this Committee; and, Joe Capalbo, to whom you address all of your questions about this subject. He is the Committee Aide for the State Government Committee. I am Senator Wynona Lipman, and to my left is Senator Stockman, who is Vice Chairman of the State Government Committee. Senator Codey cannot be with us today. Next is Miss Kathy Crotty, who is a member of the Democratic Senate Staff. You're for everybody, aren't you, Kathy? Next to Kathy is Glenn Moore, who is the Assistant Research Director. These people are going to serve as a resource for us today on this subject.

Now, the Mount Laurel court decisions have mandated changes -- a change in zoning, a change in land-use planning, and a change in our commitment to low- and moderate-income housing. As the court said, "If sound planning of an area allows the rich and the middle class to live there, it must also realistically and practically allow the poor to live there." The court also said that this matter is better left to the Legislature, but there has been relatively no legislative action in this field.

Today we will be discussing legislative action. We will be considering two bills and one resolution which are legislative responses to the Mount Laurel II decision. Both Senate Bill 1913, sponsored by Senator Gagliano-- Senator Gagliano, I didn't see you. There you are. As I said, the Senator is the sponsor of Senate Bill 1913, and we will be hearing from him in just a little while. Senate Bill 2046 is my bill, and is an attempt to provide implementation of the court decision. As you know, I have my opinion as to which one of these bills is better, Senator Gagliano. SCR-24 was introduced by

Senator Dorsey. Senator Dorsey, where are you? The Senator is not in the room at present?

SENATOR GAGLIANO: No, but he is in the building.

SENATOR LIPMAN: All right. SCR-24 proposes a constitutional amendment prohibiting restrictions on municipal zoning ordinances. While I cannot support this resolution, I believe Senator Dorsey has a right to argue his position. So, we are going to hear Senator Dorsey's position. Some of you probably agree with this resolution.

We, the Legislature, must act to resolve this issue, for if we do not act, the courts will act. The issue will not go away. We must not only pass legislation, but we must develop a political consensus and a policy consensus. That is why we are here, to begin the discussion which will lead to a consensus and to a legislative response to the Mount Laurel court decisions.

At this point, I would like the Assembly sponsor, Assemblyman Schwartz, to have a word.

ASSEMBLYMAN DAVID C. SCHWARTZ: Thank you very much, Senator Lipman. I am delighted to be here. First, I would like to indicate the commitment of the Assembly's Housing and Urban Policy Committee, which I chair, to work with your Committee. Time did not permit us to have a joint hearing this morning in terms of scheduling, but I very much appreciate the opportunity for me to be here. Our Committee will either join with you in September, or later in August, to have joint hearings, or we will have our own hearings in September. But, we want to work with you, and I appreciate your offer.

Secondly, I want to commend you, Senators, for doing exactly what Senator Lipman said in her earlier statement, beginning the serious business of fashioning a legislative response. I am honored to be the sponsor in the Assembly of the compromise Mount Laurel bill which you have scheduled for consideration in the Senate.

Finally, I want to say on a substantive note that while all of these bills may have some merit, and certainly I would concur with your indication as to which is the better bill of those you have before you, there still needs to be another bill introduced and I am going to introduce it. It might be useful for you to know about it. It is a

Mount Laurel State-level housing assistance fund to begin to help low- and moderate-income families to buy their first homes. I take the view that planning and zoning are important and that the regulatory actions in your bill and mine are fair and important, but planning and zoning alone will not build houses. We need a new State-level fund which will help people to buy their first homes, and which will help municipalities to meet their Mount Laurel obligations without becoming overcrowded and overbuilt, a self-financing and fiscally-conservative fund which will become self-financing by stimulating new jobs and new tax rateables.

I want to say unambiguously that the Federal government has, in substantial measure, abandoned us in this area. We have lost, by some reckoning, 75% of our rental assistance money in New Jersey which used to come from the Federal government, and we have lost a substantial portion of our Federal mortgage assistance thrust. But, if the Federal government -- and I am not signaling out anyone or placing any blame, that is a fact in my judgment -- seems to have forgotten that home ownership remains a part of the American dream; we in State government have an obligation to remember that. It seems clear to me that we need to help the municipalities, and help the families in New Jersey who were supposed to be helped by Mount Laurel, to buy the houses, the apartments, and the condominiums they want.

I would conclude that regulatory action is important. Your bill, in my judgment, Senator-- Although I am the Assembly sponsor, there is no question that you have really taken the lead with your bill. Regulatory action is important, and I would again commend you for it. But, we are not going to meet our Mount Laurel obligation with planning, zoning, and regulations alone. There needs to be a major new State-level fund created. I will introduce that legislation, and I will look to your support as crucial in passing that bill. I know we have had previous conversations on that. With those bills in place, a regulatory bill under your leadership, and a major new financing effort, I think we can go forward in fashioning the consensus about which you spoke and in housing the people of the State of New Jersey. Thank you.

New Jersey State Library

SENATOR LIPMAN: Very good. Thank you, Assemblyman Schwartz. We are already receiving fan mail on your proposal before it is even written. I hope you are going to stay with us for awhile.

ASSEMBLYMAN SCHWARTZ: I sure will.

SENATOR LIPMAN: In case you do not know him, I would like to introduce Senator Dorsey, sponsor of SCR-24. I introduced you earlier, Senator, but you weren't here. I don't want you to speak right now. The members of the Committee get the first chance. Senator Cardinale?

SENATOR CARDINALE: We are here today because the court has propounded an ideal in the course of its mandate. It is an ideal that I think we all recognize is beyond condemnation by anyone. It is certainly a goal which everyone would like to see achieved. But, as a practical matter, this goal has never been achieved anywhere in all of the history of human society, and it is very unlikely that it ever will be.

Efforts, particularly with government financing -- even in the State of New Jersey -- that have been made toward this end have resulted in no better a situation than we have had in the past. The court was very right when it said that the matter is better left to the Legislature. That is true, because the Legislature does not live in an ivory tower, neither in New Jersey nor on Seventy-Ninth Street in Manhattan.

It is a shame that our Legislature has not asserted the rights of the people of this State, the right to a system of checks and balances and the right to have mandates only by elected officials, who may not be elected at the next election if the people disagree. We do not have initiative and referendum in this State, and our Legislature, unfortunately, has abandoned the rights of the people, even to the extent of not allowing them to vote on these major changes in policy. We have accepted, as a Legislature, that the court has imposed an obligation on us to do something. I don't believe I have ever consented to live under a form of government where a court has the right -- seven people -- to establish policy under which we all must live. Therefore, having expressed all of these thoughts, it is my opinion that the only bill here which makes any kind of sense as a

beginning point is Senator Dorsey's SCR-24. That will give the people the right to make the determination. The people may very well make the determination, if they vote on it, that the court was right, that Senator Lipman's way is a very good way to go, and that we should have State planning. But, I believe that right rests with the people. So, I think that ought to be our first order of business. Thank you.

SENATOR LIPMAN: Thank you, Senator Cardinale. Senator Saxton does not wish to make a statement at this time. How about you, Senator Stockman?

SENATOR STOCKMAN: I had not wished to, nor intended to, but hearing Senator Cardinale, I think in fairness, perhaps there ought to be at least a counterbalance to his comments at the start.

I am here to listen and to learn, but I can't resist taking issue with Senator Cardinale, who takes the opportunity to criticize our Supreme Court. I just want to say that I don't think they live in an ivory tower. I do not think we are going to solve the problem of housing for the poor and the near poor in New Jersey by debating whether our Supreme Court lives in an ivory tower or not. But, putting that behind us, I want to say also that in an ultimate sense I try to believe, and do believe, that I am here not because the Supreme Court of New Jersey decided a particular decision, but I am here because the majority of the people in the Fifteenth Legislative District elected me. In that office I have several responsibilities, but one of them is to try to deal with the question of housing needs. I am here today in that role of trying to deal with this question of housing needs. I am here to listen.

Thank you very much.

SENATOR LIPMAN: Anyone else before we begin? (no response)
All right. We are now about to begin this hearing. I think we better approach it by hearing from Senator Gagliano, sponsor of S-1913, which is the oldest bill.

SENATOR S. THOMAS GAGLIANO: Thank you very much.

SENATOR LIPMAN: I didn't say you were the oldest; I said your bill was the oldest.

SENATOR GAGLIANO: I probably am. Do you want me to sit way down here, Madam Chairman?

SENATOR LIPMAN: I don't want you to sit way down there; I wish you would come up here, but I want you to use a microphone.

SENATOR GAGLIANO: I appreciate the opportunity to be here. Madam Chairman and members of the Senate State Government Committee: I am Senator S. Thomas Gagliano of the Twelfth District. My district includes central Monmouth County. There are 22 municipalities in the district, and a substantial number of them are, or may be, subject to litigation under Mount Laurel II. Parenthetically, in my private life, I am an attorney and I represent the Township of Holmdel. The Township of Holmdel is one of the municipalities which is currently being sued under Mount Laurel II litigation.

I have had an opportunity to review S-2046 and to compare it with my bill, S-1913. This statement will only deal with the major areas of S-2046 which need amending. I will not attempt, at this time, to discuss the many other amendments that are necessary but which are not major and can be addressed at your next hearing on the bill.

Parenthetically, again, I am not going into too much detail with respect to my own bill because I can count and I realize the numbers that the majority party has. I want you to know, Madam Chairman, that I intend to work with you and the members of this Committee, as well as with Assemblyman Schwartz, to try to come up with legislation that will be appropriate.

SENATOR LIPMAN: Thank you, Senator.

SENATOR GAGLIANO: One, the membership of the proposed Council on Affordable Housing is inappropriate. The Council should include at least one mayor of a small- to moderate-sized community, a member of a similar municipal governing body, a county planning board representative, and a representative of the building industry. By the way, Madam Chairman and members, I will be glad to discuss any of these points at any time, whether you want to interrupt or wait until the end.

Two, each municipality which is involved with Mount Laurel II housing issues should be permitted to prepare its own plan, submit the plan to the Council for consideration and approval, obtain a certification that the plan is reasonable, and be able to adopt

ordinances implementing the plan and providing for construction of housing within a reasonable time thereafter. The requirements in the bill, as they are, are too comprehensive, quite onerous, and will only serve to complicate matters, not build housing.

Three, the bill should provide for the staging of development, and the local planning board must be the key agency in the staging process. Staging should apply in all cases, whether the housing is being provided as a result of a court order, a settlement, or a certified plan approved by the Council. Staging should be set at not more than 16-2/3% per year so that the initial process would take six years to complete, with the planning board granting approvals on the basis of such staging. A municipality's "fair share" should be divided into three, six-year staging periods. Thus, Warren Township -- and by the way, that case has just been decided, and I have a copy of the opinion here in this red folder -- would provide its requirement at about 325 units per period to the year 2000. In this way, the actual construction of low- and moderate-income housing will be encouraged in a reasonable planned pattern of growth into areas which can assimilate the growth without adverse effects on the environment or the infrastructure needed to support such growth.

Four, the bill, in its present form, tends to "punish" municipalities which are involved in Mount Laurel II housing issues. The tenor of the language should be changed so that there would be more of a spirit of cooperation than of punishment. The thrust of the legislation should be to remove these issues from the court and place the Council in charge. Municipalities would save substantial legal fees and, at the same time, give their representatives a forum which would include their peers. Upon completion of the procedure, a Certificate of Compliance should mean that the municipality has met its burden of proof and that, absent clear and convincing evidence to the contrary, the municipality can proceed to implement the plan with amended zoning ordinances and be free of costly litigation.

Five, I would suggest that it is inappropriate for the Hackensack Meadowlands Commission and the Pinelands Commission to administer procedures under this legislation at this time. My

reasoning for this is that the Council should first establish guidelines and regulations and, once they are established, the Meadowlands and Pinelands Commissioners could use those as a basis for development in their areas. Otherwise, we could be faced with a situation where substantial and important parts of the State would not be operating under the same rules. As you know, we should do whatever we can to avoid inconsistent rulings. Parenthetically, I know that from time to time Senator Dumont says, "Who says we have to be consistent?" but I think in this instance we should be because both of those areas of the State could come up with different rulings and different patterns. We should really establish guidelines once and for all, and then discuss the idea of the Meadowlands and the Pinelands being involved.

Six, Section 9 should be completely rewritten. Instead of using Section 9 in your bill, Senator, I suggest that Section 11 of S-1913 would give sufficient information to the Council for its deliberations.

Seven, Senate Bill 2046 provides a funding mechanism by substantially increasing the realty transfer fee. The bill provides, in part:

1. Urban communities should benefit from the proceeds of the bill;
2. Older stock housing should gain support by use of rehabilitation;
3. We should support accessory conversions;
4. Conversion of non-residential space to residential; and,
5. Shelters for the homeless.

Although I have no statistics, it is my belief that a substantial part of the realty transfer fee increase would be derived from transfers of real estate in the suburbs. Therefore, what S-2046 is attempting to do is collect money which originates in the suburbs and invest it elsewhere, i.e., in the urban areas. In my opinion, this is an unfair proposal. Certainly, such expenditures should be deleted from the legislation unless substantial housing credits toward housing quotas in the region are given to those municipalities which are

required to comply with Mount Laurel II objectives. In that way, a substantial amount of rehabilitation could take place in urban areas and, at the same time, we would allow suburban municipalities to develop new housing at a more reasonable pace.

Eight, the goal, in general, has been stated to be that an immediate provision for housing will take place. It seems to me that any municipality which has actually made housing starts, including low- and moderate-income housing, should be given housing credits. Where housing is actually under construction based upon amendments to zoning ordinances, there should also be protection from further litigation.

Nine, instead of having "bonus density" as the most highly favored to provide Mount Laurel housing, legislation should give housing credits to the municipalities which have amended their ordinances to provide for low- and moderate-income housing and, at the same time, provide infrastructure or other financial support for housing in the municipality. For example, if a municipality constructs an extension of a water main to a Mount Laurel II development at a cost of, say, \$500,000, then a credit toward the total number of units required should be established and awarded to that town. In this way, actual housing construction could start sooner and the "bonus density" theory of five to one could be substantially reduced.

Ten, in general, the tenor of the legislation should establish a positive approach so that municipalities which do comply and which actually provide housing and infrastructure support for housing will be able to control the densities in a more reasonable manner than on a five to one builders' bonus basis.

Eleven, it is anticipated, by me, that the State Planning Commission will be convened pursuant to Senator Stockman's bill within a short period of time. The preparation of a new guide plan for the State of New Jersey will be one of its responsibilities. The Council provided for in this legislation must be directed to work closely with the State Planning Commission so that the guidelines established by each of them will be consistent and best serve the people of the State of New Jersey. In any event, the State Planning Commission must, in my opinion, shrink the area encompassed by the Development Guide Plan or risk substantial overdevelopment of our State in the years ahead.

While I recognize there may be a need for funding assistance in order to make the basic principles viable, I am not, and I repeat "not," endorsing the proposed increase in the realty transfer fee.

I thank you, and I am here to answer any questions you may have.

SENATOR LIPMAN: Senator, I certainly can't discuss all of your points, but I would like to say that I completely agree with you on point Number Eleven. I think that is an omission in S-2046 that the Council on Affordable Housing should tie in very closely with the planning group which is to be established with Senator Stockman's S-1464. I couldn't agree with you more. I do not want to discuss each point and argue them with you at present; let's just say that I agree somewhat with Assemblyman Schwartz that even the realty transfer fee is not enough to establish low- and moderate-income housing in the areas where this housing should be established. That is one of the mechanisms. I think Assemblyman Schwartz has mentioned some of the other ideas he has about financing this housing.

SENATOR GAGLIANO: I am not familiar with those; maybe he has mentioned them to you.

SENATOR LIPMAN: He just thought of them; he announced them this morning.

SENATOR GAGLIANO: I know, but I don't think he announced the types of funding he wants to support. The only thing that was before me when I reviewed your bill was the increase in the realty transfer fee. I just want to give you this. As I said, I have no statistics, but in terms of the number of recorded documents, and that is deeds and mortgages-- Those documents generally, that is the deeds-- It is the function of a deed to collect the realty transfer fee. I think you should know that the number one county for collecting realty transfer fees is Bergen County; number two is Ocean County; and, number three is Monmouth County. I don't know the numbers after that, but I wanted to point this out to you, which I think proves my point that what this bill does, the way it is designed right now, is take money from the suburbs and put it into the cities, with no credit whatsoever for what would happen to that money in terms of helping to prevent overdevelopment in the suburbs.

SENATOR LIPMAN: Senator Stockman wants to answer you about the suburbs and the cities.

SENATOR STOCKMAN: No, not necessarily, but I want to say this. Senator Gagliano has been a leader in the area of trying to find a resolution. Frankly, I am very impressed with his statement to this Committee this morning. I think a number of the suggestions he makes -- I can't speak for the principal sponsor of the bill but I know she will look carefully at them -- are very meritorious. I, for one, very much appreciate Senator Gagliano's participation. I think he recognizes, and I certainly believe, Senator, that your point Number Seven is probably the crux, if one point is the crux of the struggle we are into in this very difficult question, of whether there is some reasonable way to balance off the question of what Assemblyman Schwartz recognizes, what I recognize, what Senator Lipman recognizes, and what others recognize, which is that it appears pretty strong that there has to be some fiscal mechanisms of support to make this whole thing work if that is going to happen, and if those resources are going to come from particular areas, whether that will, consistent with the Constitution, justify some balance in terms of that housing.

It is a very delicate, a very difficult issue. I think you expressed it very clearly in your point Number Seven. I think that is the one that is really going to be the most challenging to resolve among all the parties and interests. So, I just wanted to make that position known.

SENATOR GAGLIANO: Thank you, Senator Stockman. This may be one of the few times we have agreed.

SENATOR STOCKMAN: I'm not sure how much we really agreed on, but I certainly--

SENATOR GAGLIANO: (interrupting) I think we agree that I brought the point out, and you agreed that it is a point of concern. (laughter)

SENATOR LIPMAN: Senator, I also think we may be in agreement about the two districts you point out in Number Five -- the Pinelands Commission and the Meadowlands Commission. I think there is a difference in interpretation. I was under the impression that the

Council would set guidelines first. I mean, that is how I interpreted it. It is not clear.

SENATOR GAGLIANO: I don't think it reads that way, or at least I didn't read it that way.

SENATOR LIPMAN: It is not clear here, so that is a point we have to straighten out.

SENATOR GAGLIANO: The bill the way it is now, as I read it, gives jurisdiction directly to the Meadowlands and the Pinelands.

SENATOR LIPMAN: After they have the proper guidelines.

SENATOR GAGLIANO: Well, I didn't read it that way.

SENATOR LIPMAN: That is the way I read it. But, we have to make that clear. I don't want to--

SENATOR GAGLIANO: (interrupting) Madam Chairman and members, last night as I was preparing my comments, I came up with this little sketch and, thanks to staff, we resketched it. It reminds me of something kids might do, but I had in my mind -- and I will give you a copy of it -- that the whole procedure could be greatly simplified. What I am saying about your bill and mine, to a certain extent, is that they are too complicated. What I'm saying here (Senator Gagliano holds up sketch he is referring to) is that the municipality or the town creates a proposed housing plan. I mean, there are a lot of us who do not agree with Mount Laurel II; we all understand that. However, that is the law of the land at the moment and we have to live with that law.

SENATOR STOCKMAN: When you say "we," are you including the gentleman to your right?

SENATOR GAGLIANO: The gentleman to my right, Senator Dorsey? He will have to speak for himself, which he does very well.

SENATOR STOCKMAN: All right. I couldn't resist that.

SENATOR GAGLIANO: But, really, there are a lot of people who do not agree with it, obviously, but we have to live with the proposal as it is now and try to make the best of it. Okay? I feel we will try to make the best of it.

Over here, on the left-hand side of the paper (again referring to sketch) the municipality or town creates its housing

plan. Leave that to the municipality in the first instance. Remember, there is something that was never mentioned that I can recall in the Mount Laurel II decision, and that is that the New Jersey Constitution provides that zoning is in the hands of the municipalities, subject only to the Legislature. The courts have sort of forgotten that, but that is beside the point. The town creates a housing plan, that plan is submitted to the Housing Council, and the plan is considered. This is after they have established their guidelines. They review it, they comment on it, and they hold public hearings, or negotiations if necessary. They make amendments, or they remand it to the town if they are not happy with it after all of that.

Once the plan is approved, you have a certified plan. That certified plan includes allocations, housing credits, and whatever else might be done in that municipality. The town adopts ordinances to implement the plan and you have housing. I think we could do all of this in a rather short period of time. I have said on here that it could be done in a total of nine months, the point being that if we, as in your bill, Senator, require these municipalities to put all of the information in their proposed plans that you want, this could literally take a year, and more. Really, what you are doing is setting up that municipality for a law suit. You are just inviting litigation because the town is required to come up with all the statistics which someone can use to go after them with. The towns will not want to do that.

So, I don't think you need all that information. I think some plans may be very simple. There are situations, as I mentioned in my direct testimony, where towns will be able to come up with infrastructure and other moneys, money for other developers, and things like that. Those should all be provided with housing credits, as I have said. That is all I have.

SENATOR LIPMAN: Assemblyman Schwartz?

ASSEMBLYMAN SCHWARTZ: I would like to respond to one major point that Senator Gagliano made regarding the transfer of dollars from the Council on Affordable Housing to any entity, whether it be urban or suburban, or people, low- or moderate-income families, living either in urban or suburban areas. There is nothing in Section 20 or any other

section of your bill, or my bill, that would require the Council to transfer to urban areas any percentage of dollars from the real estate transfer fee, or any other source, greater than that collected in the cities. There is nothing in this bill that, in effect, requires the Council to have a redistribution of income so that more money is flowing to the cities than the cities are entitled to as a function of the collection of revenue. There is nothing in this bill that requires anyone in the suburbs to feel that they are going to be ripped off. There is nothing in this bill of that nature.

The question that Senator Gagliano raises of housing credits, and I commend him for raising it, may be useful to consider or it may not be useful to consider. However, it is not useful to consider it as a function for paying back to the suburbs something that was taken from them, because nothing in this bill requires the Council to give anything to a city in a larger percentage than was collected in revenue.

SENATOR GAGLIANO: But nothing prevents that, Assemblyman Schwartz. Nothing prevents it. The basic setup of that Council, in my opinion, would be tilted toward the urban areas. And, the bill says that the Council should keep in mind -- I can't remember the exact language -- those municipalities which are eligible for urban aid. So, that being the case, and the urban aid municipalities are all listed in Judge Serpentelli's decision -- not all, but most of them, or many of them -- the Legislature is saying, "Give it to the urban communities which are otherwise entitled to urban aid."

ASSEMBLYMAN SCHWARTZ: I don't agree with that interpretation. I think it is just the opposite, if I may say so. In terms of drafting -- I had a little to do with this section -- I think it is just the opposite. There is a recognition in this legislation that real property is, in fact, bought and sold in the cities.

SENATOR GAGLIANO: There is no question about that.

ASSEMBLYMAN SCHWARTZ: There should not be a net outflow from our already impoverished cities to the Mount Laurel communities. I don't think you need to fear -- maybe we ought to tighten up the

language -- that the intent of this legislation is to get a net outflow of dollars from the suburbs to the cities.

I would also point out that the Legislature is considering the Urban Housing Act, Assembly Bill 974, which is ready for final action in the Assembly and which will be coming, I'm sure, to this Committee. This bill pledges some \$20 million for urban housing. So, although this language might need to be tightened up, insofar as it is useful, I want to give you my personal assurance that this bill is not intended to set at war our suburban and our urban communities -- just the opposite. It is intended to make sure that there be neither a net outflow from suburban communities to the cities, nor, for sure, a net outflow from our impoverished cities to the suburban communities.

SENATOR GAGLIANO: Madam Chairman, in my testimony I was reflecting upon my reading of the legislation. That is the way I read it. I am from Monmouth County; I was born there. I represent 22 communities which I would consider suburban communities for the most part, not all of them, and that is the way I read it could come out. There is no limitation that says the Council would have to put a nickel back into the suburbs, and yet it says, "Remember the urban aid communities," and we remember them all the time. Millions and millions of dollars of our State budget go into the urban aid communities, and we all know that. We don't mind that, but I am not going to sit by and have a piece of legislation adopted where we are not protecting the suburbs, and the suburbs are being asked to put up most of the dollars.

SENATOR LIPMAN: Senator, I don't want to get into a discussion right now. That is why I gave it to Senator Stockman about who has the advantage here, urban or suburban. But, I have to remind you that the flow of Federal funds has been cut off to urban areas for housing and they feel that very clearly. Well, it has stopped everywhere; I understand that. It is a small stream now. But, there is nothing I would like to see more than my urban area rehabilitated, let me tell you. I am looking forward to this act from Assemblyman Schwartz which provides money for low- and moderate-income housing in urban areas.

SENATOR GAGLIANO: Madam Chairman, I agree with what you say 100%. I think it is extremely important for this Legislature to address the question of rehabilitation of existing housing stock. One of the problems with Mount Laurel II is -- and you know, it is in your bill -- whether intentionally or not, it is taking the people and the money and moving them out, which I feel will create more problems in terms of coming up with rehabilitation money for the cities.

SENATOR LIPMAN: Who started the argument though, Senator? It was the court, wasn't it, in the Mount Laurel decision?

SENATOR GAGLIANO: There is no question about that. Now we have to make the most of it.

SENATOR LIPMAN: All right.

SENATOR DORSEY: (Senator Dorsey not sitting near microphone, so transcriber unable to hear every word.) I think Senator Stockman should have asked this question of Senator Gagliano, because Senator Gagliano has 22 towns and I think they would like to know whether he now endorses the decision of Mount Laurel.

SENATOR GAGLIANO: Who, Senator Stockman?

SENATOR DORSEY: He should ask you that question.

SENATOR LIPMAN: We are going to hear from Senator John Dorsey now. Senator Dorsey is sort of an authority in this field, since he is a municipal attorney. He is the sponsor of Senate Concurrent Resolution 24. Senator Dorsey?

SENATOR JOHN H. DORSEY: Thank you, Madam Chairman. Thank you for introducing me when I was outside the room today. Thank you for calling my bill for consideration. Thank you for having--

SENATOR LIPMAN: (interrupting) Senator, you have to sit someplace where the hearing reporter can record what you are saying.

SENATOR DORSEY: Madam Chairman, I will not spend a great deal of time discussing your bill or Senator Gagliano's bill in order not to be terribly argumentative and, also, because I think both of those measures are, in essence, legislation seeking to develop a mechanism by which, whatever the obligation is under Mount Laurel II, it will, in fact, be carried out by perhaps a better method than it is being carried out at the moment. At the moment, it is being carried

out totally through litigation such as that brought by Mr. Eisdorfer for the Deputy Public Advocate, which he has pressed so successfully in Morris County, and in which he has beaten me into submission in connection with several towns which I represent.

I think a more important issue, and an issue which was highlighted by something you just said, Madam Chairman, is what should the Mount Laurel II obligation be in each of the municipalities within the State? As you recently said, the argument between urban and suburban has, in essence, been caused by the decision rendered by the Supreme Court, not by anything you or I have done to the disadvantage of our respective districts.

SCR-24 seeks to address the issue of, what will the Mount Laurel II obligation be in the future? I will leave to legislative statute how that obligation will be best carried out in the future. Indeed, if SCR-24 should become law, I, too, may be able to agree with either of the mechanisms proposed by either you or Senator Gagliano.

I want to point out that the Mount Laurel II cases, at least generally, arose out of a very distinct feeling that certain so-called suburban -- I really think in Mount Laurel II it was almost rural municipalities -- were reutilizing their planning and zoning powers as tools to encourage industrial commercial development, doing so for the benefit of tax rateables, and doing so by achieving those benefits while not achieving or satisfying the obligation that should be concurrent in terms of providing housing, particularly for those who would be attracted into their municipalities for work purposes. At this point, I do not entirely disagree with the manner in which those cases first arose. However, it is now a year and a half since Mount Laurel II. Mount Laurel II has, in fact, been further defined in recent decisions, and perhaps the most important one and the most aggravating one in terms of what the effect of the Mount Laurel II obligation will be, is the Warren Township case where Judge Serpentelli wanted the three Mount Laurel II judges to define the manner in which the municipal share -- the region and the allocation -- would be allocated in the future by accepting and, in essence, institutionalizing, at least at the moment unless the appeal by Warren

Township is successful -- and I'm sure the Public Advocate will not permit that to happen -- a method which I believe to be terribly unfair, a method which I do not think achieves anything for your district, Senator Stockman's district, or, in fact, the urban areas. I think he is only going to cause future heartaches in the disassociation of citizens within the so-called suburban areas which are directly affected.

Let's be fair, and let's be honest about this. This decision, the obligation which it creates, and the litigation which is occurring have had no effect at this point in forcing any obligation upon urban areas. No one is bringing those types of suits out of or in connection with urban areas, and all of the litigation has arisen out of or in connection with either suburban or relatively rural areas of the State.

Now, SCR-24 does not seek, as I assume you might think, or Senator Stockman might think since it is sponsored by me, to eliminate the Mount Laurel II obligation in its entirety. The purpose of it is to recognize at first the obligation of the municipality to provide housing opportunities for its so-called indigenous poor. Although some municipalities may not like to hear that, I can say that even in the suburban areas of Morris County, that is an obligation which was recognized even before Mount Laurel II. It was an obligation in which suburban municipalities were attempting to achieve low-income housing, subsidized housing for, particularly, their senior citizens who fall into the category of indigenous poor.

SCR-24 would also recognize the obligation of a municipality to provide so-called low- and moderate-income housing for those affected by zoning decisions which a municipality would make in the future to attract industry, commerce, and jobs. It would provide that if a municipality makes those policy decisions and effectuates them by way of changes in its planning and zoning and by encouraging the development of industry and commerce for that purpose, it must provide housing for those people. What it does not provide, and what it seeks to eliminate in terms of the Mount Laurel II obligation as it is presently being determined, is something that is referred to basically as the "present need."

Now, let me discuss something with you for just a moment to see if you can put into perspective how the allocations, which are so horrendous in terms of most of the municipalities that are presently involved in litigation, are rising. Municipalities cannot argue about the indigenous poor; there is a formula to determine what housing units that projects. Most of the municipalities in the battles over region and allocation have accepted the concept of a commuters' shed. The purpose of the so-called commuters' shed is to create a region which would represent the region in which persons would come to work in a particular municipality, and then to produce from that region the number of housing units that would be deemed necessary by future development.

Those two are, in essence, provided for in SCR-24. The third region is a different kind of region. The third region which has now become institutionalized as a result of the Supreme Court decision, but perhaps even more basically institutionalized because of the efforts of the Public Advocate and Judge Serpentelli's decision, is the creation of what amounts to a totally artificial region. This is a region which is referred to as the region for projecting present need, and a region which is based upon a grouping, developed by DCA years ago, of counties together -- and I don't think that many of us in this room would think that these counties have any great common interest -- into various regions in the State. The one that is most important in the Northwestern section is, I believe, Region 11, which is a composition of seven counties, or maybe it is Region 7, with a composition of eleven counties. Steve Eisdorfer is not going to correct me -- he is just looking down at me -- because he knows which region it is.

Based upon that region, we are having allocations made to these suburban municipalities based upon nothing which they have done -- not based upon their indigenous poor, and not based upon what they are doing now that they are aware there is a Mount Laurel II obligation to provide housing -- but simply based upon what exists, and what exists primarily through no fault of theirs or because of any evil reason on their part in having attempted to prevent housing to occur. For instance, Morris County is lumped into a region which includes the

most densely developed urban areas of the State, including Essex, Hudson, Bergen, Passaic, etc., etc., notwithstanding, for instance, that in the City of Newark, according to a report in The New York Times on Sunday, there is a 34% vacancy rate in units in the Housing Authority, or those owned or operated by the Housing Authority of the City of Newark, and there is \$56 million available for the renovation of those units. The populations in those areas are included in this formula. Hence, we are having allocated to these municipalities a totally artificial number, a number not related to what they have done or have not done in terms of creating jobs and employment in their municipalities, and a number which is, for all practical purposes, being utilized by developers to create a leverage in order to get zoning that they particularly want. I think it is fair to say that, with perhaps few exceptions, none of these developers are, in fact, looking to create Mount Laurel housing. It simply becomes a necessary evil which they are required to provide in order to achieve the zoning density that they want for their own profit motives. Of course, in many instances today and in the future, municipalities will settle with a developer and give him the density or the zoning that he wants, and perhaps it will be much less than he would have gotten had the Mount Laurel II case been litigated to its end, and it may very well provide no Mount Laurel housing units at all.

It seems to me that with the obligation as it presently exists in the law we have really reached the point of absurdity. We have reached the point at which attempts to carry this out in either the courts, or indeed, by legislation are really punitive against these municipalities. The extent of the formulas which have come out from Judge Serpentelli, Carla Lerman, etc. is unfair. Even the Public Advocate, who in the litigation in which he is involved is recognized as the fiduciary of those who are designated as low- and moderate-income persons seeking housing, is, with some significant frequency, entering into settlements with various municipalities at allocations significantly less than those which are allocated by way of the formulas. I think this indicates the extent to which even the Public Advocate would have to acknowledge that there are problems with

these formulas which are being used and which are resulting in the so-called Mount Laurel II obligation.

I think we should point out, as Senator Gagliano touched upon in his presentation, that there should not be any thought that the Mount Laurel II obligation is going to create any housing in the urban areas and, secondly, what it is probably going to do is counterproductive to the policies which we have effected and have tried to carry out, i.e., not depopulating the urban areas, but trying to rehabilitate those areas. Keep in mind that the housing that may occur if the Public Advocate's settlements, the Public Advocate's judgments, and the private developers' judgments are successfully carried out, is not subsidized housing. It is not the kind of housing which one thinks of as subsidized housing in which, under Title 8, a tenant receives a monthly supplement for payment of rent or an individual receives a supplement to pay his mortgage. That doesn't happen. The most that an individual gets who is going to buy a Mount Laurel II housing unit in the suburbs is a reduced price, a reduced size home, and certain reduced amenities. However, he must pay his down payment and he must forever continue to make his mortgage payments monthly without subsidy or his rent payments without subsidy. That means that if this housing, in fact, is designated for and is sought out by members of the urban population -- and under the agreements one is required to advertise such housing in the urban areas -- it will be attracting some of the real backbone, I think, of the urban areas, the middle class, the working middle class which, in effect, can afford housing.

Therefore, it seems to me that part of the Mount Laurel II obligation which is sought to be eliminated by SCR-24 is not only to the advantage of the municipalities, but is also certainly not detrimental to the urban areas. If their problems are to be corrected and adequate housing is to be provided there, it is to be provided by money, not by a Mount Laurel II obligation. Secondly, the Mount Laurel II obligation will do nothing more than continue the so-called suburban sprawl and will, ultimately, require additional infrastructure in the spreading out further and further, a policy which I thought had been abandoned long ago.

I would like to take just two minutes more. I think it is important to note, as Senator Gagliano did, that under our Constitution, before the discovery of the equal protection clause by Chief Justice Wilentz, it was always understood that the zoning power was one to be exercised and regulated by the Legislature. The Legislature has, for at least 50 years in this State, allocated that power and, in essence, a certain amount of local self-determination to local municipalities. This decision seeks to wipe that out. This decision seeks to change what has not only been law, but custom and tradition. I believe it is rather essential in society that people should have some opportunity to make those kinds of determinations and that no municipality in the State should have its zoning and, ultimately, its development and its composition determined by a formula which is plugged into a computer. In essence, every municipality in the State, in some way, becomes stereotyped and developed accordingly.

Although I have no emotional quarrel this morning with the legislation submitted to finalize, formulize, and provide the mechanism for dealing with how the Mount Laurel II obligation is administered, I think there is a great need to set that obligation straight, to have the Legislature exercise its authority to preserve some of our traditional qualities, and not do irreparable harm to the suburban and/or the urban areas. On that basis, I would urge the amendment. Thank you.

SENATOR LIPMAN: Thank you, Senator Dorsey. We very much appreciate your presentation which was well-documented and well thought out. Senator Cardinale?

SENATOR CARDINALE: Senator Dorsey, I wonder if I may impose on you to expand a bit on the section of your testimony dealing with the 34% vacancy rate which is apparently occurring now in publicly-funded, I believe, housing, which has been constructed in urban areas within the region to which you referred. Could you tell us a little bit more about it? In particular, how was it planned? Why is it vacant? Could you advance an opinion as to whether or not that housing if it were placed in a suburban area would still be vacant, or perhaps some of the reasons why it might not be vacant if it were

placed in a suburban area? How would that impact on the entire question?

SENATOR DORSEY: Senator Cardinale, I must confess that my knowledge is based upon what I assume to be a very reliable source, The New York Times. It dealt extensively, in the issue of July 22, with the Housing Authority in the City of Newark. I am prepared to stand corrected by Senator Lipman because I am sure her knowledge is much greater than mine. The article dealt at great length with criticism by Councilman Sharpe James and other Councilmen of the City of Newark relative to a review and investigation of the operations of the Newark Housing Authority by, I believe, Councilmen of the City of Newark and, also, by officials of HUD, who came in and made a physical inspection and an audit, as I understand it, at the request of the Council. The figures were very illuminating to the fact that the Housing Authority-- I can't tell you exactly, but they have thousands of units and 34% of those units are vacant right now. This compares with a vacancy rate of 2% elsewhere in the country. Apparently the Housing Authority of the City of Newark has purposely sought to depeople a number of these buildings, notwithstanding that, according to the article, they have available to them some \$68 million in modernization funds, \$54.7 million of which has never been committed to modernization purposes to do whatever should be done to rehabilitate and utilize those particular facilities.

Now, I have two further points. I am not an expert in the Carla Lerman formula and, therefore, Mr. Eisdorfer will beat me into the ground. But, it is my understanding, and this much I do know, that the population of the City of Newark, as well as the population of the City of Hackensack and the population of the City of Paterson are all included in this artificial region which has been calculated by DCA and which is now being utilized by the courts to determine what the present need is in downtown Oradell or downtown Boonton Township in Morris County. This seems particularly unfair.

You must understand, those of you who are great adherents to the concept of Mount Laurel II, that the people in the City of Newark for whom this housing was created and to which we have committed

billions of dollars over the years, both State and Federal funds, are probably not ever going to be able to take advantage of the so-called low- and moderate-income units to be developed in suburban Bergen, suburban Passaic, and suburban Morris, because I take it that the persons who live in units of the City of Newark Housing Authority are subsidized on a monthly basis in terms of their rent. That doesn't happen in this type of Mount Laurel II housing, even though given the formulas which are used, these people are included as part of the population to be satisfied by way of the Mount Laurel II obligation.

SENATOR CARDINALE: Thank you, Senator Dorsey.

SENATOR LIPMAN: Senator Dorsey, I suppose you would like me to say a word about Newark. I read the same article you read. Although there is an investigation presently being conducted by Federal agents and local councilmen into the housing situation, which is pretty desperate in Newark, I made some phone calls after I read the article and I was told by the Director of the Housing Authority that the funds mentioned were for modernization of apartments. In many cases, apartments had been so badly vandalized that you would have to rehabilitate them before you could modernize them. In the use of Federal funds I understand there is some sort of an inability to transfer from one column to another. It would be gratifying if they could use the modernization funds for rehabilitation funds but, unfortunately, this is considered fraud. So, that cannot be done.

There is considerable difficulty. I don't want to go into it now. I would agree that perhaps formulas are not exactly accurate but, Senator, all I have to say is when I look at my unemployment rate and read that the Newark work region is located in Morristown, I get a little nervous. I have to get my people up there. The region of Morris County is considered the Newark work area. I have a lot of transportation work to do to get them there. I would like them to be able to work anywhere, but a certain amount of Federal funds, for example, are settled in the Newark work area which, in my opinion, is not very near Newark.

Let's not discuss that any further. I just want to find out from members of the Committee if they have any other questions of

Senator Dorsey. Senator, thank you so much for that historical presentation which I know helped a number of us to understand a lot better what is happening in the Mount Laurel I and II decisions. I appreciate the sort of evaluation you have done. Although I do not like your resolution, you know, I do appreciate hearing what you had to say.

SENATOR DORSEY: I want you to appreciate that I did not mean to inject myself into a Newark dispute over their Housing Authority.

SENATOR LIPMAN: I know. Senator, I don't want to do that either.

SENATOR DORSEY: I'll let you run the Newark Housing Authority. If you let me run the suburbs, we'll all be all right.

SENATOR STOCKMAN: May I say something, Madam Chairman?

SENATOR LIPMAN: Surely.

SENATOR STOCKMAN: You know, sometimes things are said jokingly that really shed a lot of light on what we have to struggle with and work at. I think the notion of who is going to run Newark and who is going to run the suburbs is one that I, at least, like to battle with whenever it comes up in so stark and clear a frame. A colleague of mine whom I have great respect for, on the Senate floor not long ago in an outburst, kind of said something to the effect of, "I'm tired of these urban areas. I'm tired of hearing arguments about giving them money. You know, we do too much for them." I don't think it is a matter of some of us running the urban areas and some of us running the suburbs, because I am not about to want to take on the sole responsibility for running my urban territory. If that was an offer that some Senators would like to abandon any responsibility for or rights to Trenton and give them all to me, brother, I ain't taking them. That isn't to say that I don't love it, that I don't live here, and that I don't do my best to represent it, but I don't think this is the direction we can look to if we are really going to deal with this problem.

Beyond that, Senator Dorsey -- and there is no question -- very articulately argues this question of whether we have suddenly seen an assault on a fundamental sacrosanct notion, this zoning concept.

But, it strikes me that zoning has always been-- First of all, it was created by a legislative act. It has always been thought to be a concept that is to be used in the public interest. When you come to the use of something in the public interest, it is a responsibility that all three branches of government must attend to. One of those branches is the court. It was only because of a clear and patent failure to attend to it that the court has gotten to the point that it has. We are dealing with a decision, incidentally, and I know sometimes, again for argument's sake, that people like to personalize. Sometimes, with all due respect-- I'm fond of Senator Dorsey. He is one of the really bright members of the Legislature. He is a colleague of mine in the profession of law. But, sometimes people like to personalize these issues and maybe make this one a Stockman issue. I don't want it; believe me, I don't want it. But, it is like trying to personalize the decision with Judge Wilentz. Let's not overlook the fact that what we are dealing with is a concept that started with a different Chief Justice in Mount Laurel I, and it encompasses not only a Chief Justice, but every other Justice of that court unanimously.

I think we have to be careful not to lay a foot across the landscape of New Jersey in the notion that somehow some crazy, ivory towered, ruthless, tyrannical person -- and I won't identify a name -- has led us to this terrible dilemma. What we are doing is going about the public interest. I think that is important to keep in perspective.

SENATOR DORSEY: Let me just say, Senator Stockman, that I will not accept your attribution to me that Judge Wilentz is ruthless and all those things. (laughter) I want to continue to practice law for awhile, even if Steve Eisdorfer beats me from time to time. I'll speak to you in private about that.

I certainly agree with you, Senator Stockman, that there are three branches of government, that we are independent, and that we have an obligation to function and, certainly, to intermesh. However, I want to point out to you that there is no question that the obligation under Mount Laurel II is much different than the obligation of Mount Laurel I. I am not concerned with who created either one of those obligations. I think, and I agree, that we as a Legislature-- Senator

Gagliano counted the number of times the court mentioned the Legislature. This is the area of the Legislature, and we have the right to address these problems. There is nothing in the law -- and certainly you as a fine lawyer know this -- that means that the decision of the Supreme Court on one day is immutable. The law is ever moving forward and we certainly had, as we know as law students, the classic example during the 1930's during which we had a Supreme Court which was totally unsympathetic to what the Administration was attempting to do. The Congress had to continually redefine and find ways to do what it thought was necessary in the public interest.

I wish to assure you that what I have put forth in SCR-24 is not simply the product of an irrational, right-wing, militant minuteman conservative. I have thought it through; I have had the benefit of a good deal of experience at the hands of the Public Advocate. I think I understand it. I think I also understand that what I have proposed is not simply to benefit the suburban areas, but is done in fairness to both suburban and urban areas. Certainly, as a legislator, I listen to urban legislators as to the needs and as to what they think is important, not that I don't have an obligation to vote and think about those issues. I would ask you, however, as an urban legislator to listen to what those in the suburban areas which are being immediately and directly affected by this--

SENATOR STOCKMAN: (interrupting) Are you trying to cut me off from Princeton?

SENATOR DORSEY: (continuing) situation have to say, and to know that it is we who are in trouble, as you are in trouble in terms of money and needing statewide support.

SENATOR LIPMAN: Thank you very much, Senator Dorsey. At this time, which is a quarter after the noon hour, I would like to welcome the visiting officials who have come to speak. I am a little late in doing this. One in particular is standing in the door on pins and needles. He wants to make his presentation as he is due back in the town of which he is Mayor. Mayor Hornik of Marlboro, would you please come forward?

MAYOR SAUL G. HORNİK: I am Saul Hornik, Mayor of Marlboro Township. I can tell you that it is like coming back from a war zone at the local level, I mean very seriously, being in the trenches between irate citizens and the sudden emergence of the altruistic development and land speculator who wants to fulfill the need of Mount Laurel II and, I guess, minimize his profits to satisfy this social legislation.

My problem, or the problem of the municipality, very frankly, is that we lack a direction. It is a direction based on pressures from the court. At Senator Lipman's desk there is a list of questions that I directed to Mayor Popolo, who is the Chairman of a group of townships which are concerned and which are most directly affected by this legislation, or rather the court decision. Frankly, we have been told many things at the local level, things that would save a township from having to take its obligation, that legislation is going to be passed, to try to delay, and so on and so forth.

Now, I am not going to say whether or not I, as an official for the Township-- I will say that basically I have, at first reading, a very negative opinion of the Mount Laurel decision. Personally, I am not for it because I feel it imposes upon the local community a particular type of shock and a difficult situation in treating what will be eventually able to handle the social impact on the community.

Basically, there are seven questions on this piece of paper. The first question is, is the legislation that is being proposed realistic from the standpoint that somewhere down the line the courts will say that legislation is not apropos, or will it be passed within a certain type of deadline?

Two, what is the effect of the various bills that might exist if they exist on the present formulas that have been developed by the court as a result, for instance, of the Warren Township case? Does the Legislature intend to put in some type of formula so that our planners, who are developing formulas to develop ordinances, will have a realistic ordinance that will protect us when we go into court, or are taken into court after we pass an ordinance because some developer did not get his land changed? That is a very realistic point as far as a local municipality goes. If a municipality passes an ordinance in good

faith based on the Supreme Court decision, there is no doubt in my mind that there are other developers who will sue and take a township to court on the ordinance, saying that they did not feel enough of the need based on the formula. It can be an open-ended thing for us ad infinitum.

Three, if there are lawsuits going on, how will legislation help the towns that are (a) already in the courts, and (b), if the court decision is reached before the legislation is passed? Personally, I think we are dead on water, that if we are in court and there is a court decision, legislation will not help, which goes back to the first question, what is really a realistic time for this to be done?

All right now, on the other side, we are forced to swallow this pill. What type of remedy do we have for ourselves? I don't think the State is going to pour-- I agree with Senator Gagliano's analysis of the real estate tax, and that we are going to need help, because, believe it or not, we are not "rich communities." A community just doesn't suddenly build \$200,000 houses all at once and then you see a whole town there. There are a lot of schoolteachers in our community. There are a lot of people on fixed incomes who will be arbitrarily penalized by increased taxes to provide social services in the way of education, increased police services, etc. We do not want to see what happened out in Levittown in Long Island, where you had an \$80,000 house with \$4,500 taxes on it.

Four, there are ways, in our opinion, that that may be remedied. I think part and parcel, if it is legal to do it by legislation, or suggest it to the Administration part of this government -- the Governor's side -- that formulas should be developed to increase educational State aid to those communities which must take their fair share of low- to moderate-income housing, and which demonstrate that they have to increase educational facilities to meet what are the optimum educational needs of a community to provide better education or continued education. I am not talking about a situation where suddenly you have housing in there and the tax increase on the other residents is so great that the school is constantly voted down,

and you end up with 45 students in a classroom. We are not looking for that in the future. So, you talk about an increase in State aid to us based on a formula of what our obligation is and what the impact will be on the type of construction and hiring we have to do.

Five, can there be some type of program developed by the Department of Finance which will allow communities to go outside the "cap" to increase police services, road department services, and other vital services, when the court has mandated its fair share and that fair share has a negative impact on the existing tax rate to the residents who, in some instances, are on fixed incomes? We do also have retirement communities in Marlboro. The fact of the matter is, if a township has a very decent surplus and its debt limit can be guaranteed by less than that surplus, why not have some kind of mechanism whereby we can increase our "cap?" Maybe the townships that take this and have the ordinances can go to a 10% "cap" increase during the years that this is being built so that they can put on two or three more policemen, or 10 policemen. I can tell you that the cost of putting on a police officer is very expensive these days, and is well justified in many instances.

Six, since the majority of services provided for the citizens within the community come from the taxpayers within that same community, let's be realistic. As an alternative, can there be a formula developed so that the fair share of low- to moderate-income housing can be eased by tax credits allowed to the community in the form of reduced taxes, whether it be a reduced State income tax -- which may be pie in the sky -- a reduced county and State share of land and franchise taxes, or an increased return of Homestead Rebate in these communities?

Seven is a direct issue within Marlboro, because it was proposed by one particular citizen group that a bonding referendum could be legally tested within the State of New Jersey that might circumvent the court decision. Of course, we differed with that based on the Appellate Division on Sparta and, also, Mount Laurel with regard to appeals on zoning under the Faulkner form of government.

In essence, this is the presentation. What we are really looking for is some type of answer. Do we proceed, or do we wait for the legislation, because there are 11 lawsuits pending or in court now in Marlboro Township? One begins to feel like a moving target after awhile. Frankly, you can't walk down the street because citizens come up to you very confused. You have a whole scenario in the way that you begin to eat, breathe, and live this decision. People who were formerly friends are no longer speaking to each other. One side may decide if they read the decision and come up with a formula and then the formula is challenged, that it is only half of the amount, when there is no basis for the challenge.

There is one other point I would like to ask personally about. This is very critical for Marlboro Township, and I'm sure critical to the other communities. I ask this question, and if there is no answer, I ask that legislation be put in immediately to protect those townships that are at least in the process of passing an ordinance based on their present configuration as far as the State Development Guide Plan is concerned, because it will self-destruct in January. In Marlboro Township, we developed a formula where we require, according to our plan, 760 units. The red line runs right through our town. Part of it is moderate growth, and the other part of it is intense growth, or high growth. Naturally, in developing your formula you use those calculations. Now, what happens January 1, when that destructs and when a developer comes along and says, "Hold it. You don't need 760 units. You can no longer count that. Your ordinance is invalid. Now, you need another 400 units." To me, that is unfair to the suburban community.

If you give us something and you have us operate in a box, then keep the guidelines going, or keep the rules the same. For us, we are proceeding down what we feel is the road of responsibility with regard to this act. We may not like the act, but we are proceeding down that road, and we're eating the irate citizens and trying to explain to them in letters, at personal expense and Township expense, to make them understand what is happening here. But, to me, when someone can attack an ordinance that we are putting in at a subsequent

date because the State Development Guide Plan has changed, whether through Senator Stockman's bill or some other type of mechanism-- I think the Legislature has an opportunity now to at least show some good faith to protect the formula that a town may develop, if they have a portion of their town in this moderate growth area which is generally not calculated or put into the formula.

Now, we have our ordinance set. It has been challenged, and we are going to defend it. But the fact remains that after January 1, this destructs and that is left open-ended. It's a game, so we would like you to specifically get on to passing a law immediately that ordinances passed under the guideline, even though that self-destructs in January -- that formulas developed through ordinances hold, even though there will be a separate new set of guidelines set up in the future. You have to give us a break. Thank you.

I would like to make one more comment. We have had our differences with Senator Gagliano. We agreed to disagree, but let it be known that we feel very strongly that on this issue a lot of us are taking something, I believe, personally that we don't want to take personally. There have been violent disagreements on actions and on how to handle it. That is the sad part about it. It is tearing towns apart; it is tearing communities apart. The type of innuendos made are, to me, personally distasteful -- personally distasteful when you try to do something based on the Supreme Court decision. I can tell you the worst type of statements are surfacing. To me, that is the true disservice to the community. That is the real world of what is happening.

SENATOR LIPMAN: All right. Don't move, Mayor. Senator Gagliano wants to speak to you.

SENATOR GAGLIANO: Madam Chairman, Mayor Hornik represents Marlboro Township and that is a part of my district. As he has recited, Marlboro is experiencing the same kind of thing that so many other dozens of municipalities are experiencing. That is the reason I begged the majority party in our house, and in our Legislature, to consider a moratorium so we would have a definite answer with respect to the State Development Guide Plan. Exactly what Mayor Hornik is

talking about now is our problem. Marlboro is ready to adopt an ordinance. They do not know whether it is going to be enough or not enough and, in the meantime, they are spending thousands of dollars in legal fees. A moratorium would have answered that, would have given Senator Stockman's Commission an opportunity to nail down what we were talking about in terms of the future Guide Plan.

I say, again, that we should consider that even if it is only for a short period of time, so that the municipalities are protected from these protracted litigated items and the costs involved and, as the Mayor has indicated, from the ill feelings that are coming about as a result of this. We just can't sit on our hands anymore and watch it happen. It is happening in at least 70 to 75 municipalities that we know of, and it is going to happen some more. We just can't sit around and watch it. So, I agree with everything the Mayor has said, and I will confirm, for those of you who have not been out in the suburbs lately, that we are creating a tremendous problem. The people out there think the Legislature doesn't care.

MAYOR HORNIK: May I add something else? I believe that every community is an independent body. It lives, it breathes, and it doesn't look outside its own borders to see what is going on. Realistically, most of the communities you deal with are nine-to-fivers. They work, they come home. Very few people know what is going on. This is a tremendous shock. Albeit Mount Laurel I didn't work and never achieved what it should have, or what some people perceived it should have, the fact remains that we are left in this Mount Laurel II situation with something which is just too difficult to deal with on a local level.

We need to feel that we can defend ourselves if we pass an ordinance in court, because there is no doubt we will go to court. As I originally said, if three areas are zoned, or if five areas are zoned to meet this obligation, there are developers who are not, very frankly as I said before, very altruistic, but who are interested in themselves. If they get can eight to twelve to an acre and if they can subsidize low- to moderate-income housing which would be inexpensive, with less rooms, with all the HUD type requirements being met, they

would make a killing. The question really is if there is some hope that we could delay this, which there isn't apparently, then at least give us the opportunity to settle our house and then say we can rest in peace for the next seven to ten years. But, from what we see at our end, everything is so open-ended down here that it is just going to go on and on and on. The fact remains -- what Senator Gagliano just brought up and what I brought up -- that with regard to the State Development Guide Plan, on January 1 this might be a new ball game for us. At least give us that, because one planner who is representing a developer said that our planner is incorrect, it's 1,290 units. That's 6,000 units for our town.

I might add something else for your consideration from a legislative standpoint. If a township does not want to go with eight to the acre and it goes twelve to the acre, maybe in those types of guidelines, instead of a five to one ratio -- because it is a more compact area and because there are environmental problems that spread out to a community -- it may be six to two, depending on the types of allocations. No one wants to run from the issue. The Supreme Court said this is the law; we are going to live by the law. But allow us to perform in that way, and please do it as quickly as possible. I would respectfully ask that something be developed immediately with regard to protecting whatever ordinances we are developing in this area with regard to the amounts and the formulas, since it is apparent that there isn't any legislation right now that is going to challenge the formulas that are being developed by court decisions. Stabilizing ordinances passed under the present State guidelines, even if they do destruct, should stand for what existed in the past.

SENATOR LIPMAN: Okay. Senator Stockman?

SENATOR STOCKMAN: Mayor Hornik, I just commented to Senator Lipman that I certainly think your testimony is important. It was very clear, measured, and sensible, and a reminder of the tremendous obligation we in the Legislature have; also, a reminder that we haven't altogether lived up to that.

Of course, I think your testimony is a tremendous statement toward getting the State Planning Commission into place. I would love

to see that bill passed. I would love to see the State Planning Commission get underway and, in fact, give you the kind of protection you are looking for. I think you are absolutely entitled to it. I hope the court will be reasonable and sensible, and I think it will. I think that if the Legislature enacts the State Planning Commission, and if that Planning Commission is selected, quickly put to work, and moves forward in a very serious and sincere way with its job, its responsibility, I think the court will take cognizance of that fact. I don't think the court will quickly rush in to totally scrap, throw into the wastebasket, ignore, or take no account of the State Development Guide Plan and no account of a refinement of that product by a State Planning Commission, and set off with some wild series of new determinations to make what is admittedly a very tough life for the mayors of our municipalities, especially our suburban municipalities in New Jersey, even tougher.

I don't think that will happen. I think the court will consider that. I know you would like -- and I can understand this -- perhaps a legislative statement sort of trying to mandate that. I think the best answer is to quickly get the State Planning Commission bill into place and get into place Senator Lipman's bill, or Senator Lipman's bill refined, or some bill refining what Senator Lipman has suggested in this bill to deal with housing, the sooner the better.

I want to thank you, too, for being here. I can understand the pain you are going through. I think it is also evident though, that municipalities are not independent bodies. It is a little uncomfortable in some ways to say, but they aren't. They are creatures of the State. That is so clear by definition and by law that certainly an attorney would have no trouble understanding it. Perhaps over a period of time in this area that is the problem. Some of them got to the point of thinking they were entities unto themselves, and that is really why we are here trying to struggle with the situation.

MAYOR HORNICK: I was referring to the psychological mentality with regard to that.

SENATOR STOCKMAN: I know, but I do think there is some of that feeling. It has to be a reflection; there has to be a balance of

reflection. I sense your recognizing that and trying to deal with it. I know it is very tough in 1984 with what little we in the Legislature have given you to work with to do that. I want to thank you for being here.

MAYOR HORNIK: At the very least, Senator Stockman, could you extend the destruct of the plan in January until the new Commission is implemented so that the lines of the old Commission remain intact and do not destruct January, 1985. I may not understand the process, but I am talking about some type of mechanism to make it exist, or continue the life of it, until the new Commission is implemented because you have a void. Whenever you have a void, it is open season. You know personally, relying on the courts, very frankly, with all due respect to their judgment, I do not want Marlboro Township which is set to go to court before January and will probably continue past January, to have a situation with regard to Warren Township, especially with the negative type of appeal opportunity under this law.

SENATOR STOCKMAN: I think the answer is to get the State Planning Commission in place and acting, and to get legislation to deal with the issue which has been too long neglected by the Legislature. That is the real answer.

MAYOR HORNIK: So, what is going to change now that will be in time to prevent what is going to happen to us?

SENATOR STOCKMAN: I don't think you can prevent a certain amount of this distress and doubt, but I think we have to come up with an answer. I think that is what we are here today to deal with. I'm not saying your suggestion for a simple moratorium, because that engenders a whole series of constitutional problems.

MAYOR HORNIK: I just want to extend the State guidelines so that whatever we have to swallow we won't have to face someone and say, "You now need 400 more units, or 500 more units," because that area of moderate growth is no longer moderate growth in our opinion, even though 60% of it is mounted.

SENATOR STOCKMAN: It is unfortunate that the Division of State and Regional Planning was wound down and that the Guide Plan has not been dealt with before now by the Administration. However, I think we are moving toward an answer to that problem.

MAYOR HORNIK: One other thing. I would like to be very specific about your increasing the "cap" to about 10% for those communities which have to take this during the period of time that this housing is going in. We will have to increase our staff to service this community that will be coming in, or to service the overall population, because you are talking about potential increases of almost 45% for some of these communities.

SENATOR GAGLIANO: Madam Chairman, it seems to me that what the Mayor is talking about is a two- or three-line bill which would extend the State Development Guide Plan for a period of months, or days, or whatever. It seems to me that we should be able to have such a bill and that it would pass both houses. I don't even understand why there would be a problem with it. I want to go further.

SENATOR LIPMAN: (interrupting) It is the reverse side of a moratorium.

SENATOR GAGLIANO: Pardon?

SENATOR LIPMAN: It is the other side of the coin.

SENATOR GAGLIANO: Well, I want to go further. I want to see a moratorium so that we can save these municipalities hundreds of thousands of dollars. That, to me, is easy enough to do too. But, certainly, the Mayor's request is reasonable.

MAYOR HORNIK: I'll take half a loaf.

SENATOR GAGLIANO: The Mayor's request is reasonable, in that the Legislature speaks and says that the State Development Guide Plan, as it is presently constituted, will be extended to June 30, 1985. I would be glad to cosponsor a bill. Again, knowing the numbers I would put the bill in, but without your concurrence, because I know the bill would come to this Committee, it probably wouldn't go anywhere. I am asking you publicly--

MAYOR HORNIK: (interrupting) As a Democratic Mayor I am asking for this.

SENATOR LIPMAN: We consider all bills in the order of request, Senator. That is my stock answer. (laughter)

SENATOR GAGLIANO: I know your stock answer, but what are you going to do?

SENATOR LIPMAN: Well, I have to think them up, Senator.

SENATOR STOCKMAN: Senator, may I be heard on that?

SENATOR LIPMAN: Surely.

SENATOR STOCKMAN: I'm wondering, frankly, whether this is a clear and unequivocal public endorsement by the Kean Administration of the State Development Guide Plan. If it is, I think it is a step forward. But, without some understanding of that sort, I am really not sure of what we are talking about.

SENATOR GAGLIANO: Senator Stockman, you are continuing in your attitude of distance toward this issue. That is just exactly what you have been doing all along. It is not an endorsement on my part of the State Development Guide Plan. If you will look at my statement it says, under Item 11, "In any event, the State Planning Commission must, in my opinion, shrink the area encompassed by the State Development Guide Plan or risk substantial overdevelopment of our State in the years ahead."

I do not endorse it, but what the Mayor is asking for is a perfectly reasonable request. He is saying that Marlboro and some of the other towns are going through this process of rezoning, but there are 10, 12, 15 developers out there who are going to sue them anyhow, even if they rezone. What he is saying is, "My planner is creating a plan based upon the current State Development Guide Plan. We are going to be sued. We want to be protected if we pass an ordinance based on the existing law as enunciated by Mount Laurel II." It just seems to me a very simple thing to do.

SENATOR STOCKMAN: Senator, are you tying that in with the State Planning Commission, or are you just tying it in with some arbitrarily picked data? I mean, part of my problem is, where are you going with that?

SENATOR GAGLIANO: The date was chosen as an arbitrary matter in the first place. The fact that the State Development Guide Plan will self-destruct January 1, 1985-- All I'm saying, and I think all the Mayor is saying, is have it destruct June 30, 1985 so that mayors like Saul Hornik will be able to get past the point where they are still subject to suit because of a possible change. In other words, his entire town could be considered growth area, rather than a part of

it as it is now under the State Development Guide Plan. If they pass an ordinance which is based upon the current Plan, they are subject to question and litigation because there will be no Plan January 1 and developers can come in and say, "You are a total growth area as far as we are concerned, not half, not a third," or whatever it might be. That happens in lots of communities where the growth plan line, for whatever reason, runs right through the middle of town.

MAYOR HORNIK: You know, we have certain rights also. The fact remains that we recognize the problems in the inner city -- the social and economic problems that exist there. One does not like to believe that the ax will swing the other way and it will be open season on small communities. I think, very fairly so, that we provide a substantial amount of money in the way of taxes to the State of New Jersey which is never returned to the Township of Marlboro but which is allocated to other areas. Maybe there is some type of social justice that has to be developed with regard to increasing certain types of moneys to other areas. No one is arguing that, but don't destroy us in the process. What we are asking, very simply, is-- We're saying, "Okay, we're swallowing this. We are going to take it. We're eating it." There is nowhere we can turn, not even to the Legislature at this particular point because, in my opinion, things are up in the air. The way the suits are coming, there is not enough time. At this particular point, at least give us this crumb. Extend the guidelines' lines for what the Commission has set up, regardless of what it affects or what Senator Gagliano's moratorium is. Give us half a loaf. Extend it maybe to June, or maybe for the full year of 1985, so that you will get what you want eventually. One should not affect the other.

I do not want to get involved in personalities. I do not want to get involved in philosophical fights in this great hall. We are out in the trenches. You know, we are the ones who are eating this. We are blamed for the ordinance. No one is going to one day say, "Hey, it's the Supreme Court." You know, it's this; it's here. We are getting blamed for it. That is the bottom line. I'll tell you, when the break-ins come, and we have to get more police, or things of that nature, where is it going to come from? We're even saying we'll

pay for that. Let us have more on our "cap." Let us go into our surplus if we can. I proposed to the Byrne Administration Department of Finance a long time ago that the Department of Finance should set up some type of formula where if a township had too much surplus, it could set up guidelines based on its debt service and regarding its bonding limitations. If a township had too much, let the surplus dwindle or let it increase its "cap" in relation to providing services.

SENATOR LIPMAN: Mayor Hornik, you brought up a number of issues here, you know, sticky issues, hard-to-solve issues, "cap" issues, and so forth -- education and all. Let me just address the one we are here about. I know it inspires all the others.

You have asked for, and the Senator has suggested, that perhaps we need legislation to give you some guidance. It seems to me that the court is going to use that same set of guidelines in the absence of some sort of planning group which could update the guidelines. The sort of bill that Senator Gagliano is suggesting I would hope that Governor Kean would also suggest, since we have no group there because it has been abolished. Perhaps it would take some pressure off the municipalities. Let me say before we get into any further argument that I'm just answering as far as I can.

MAYOR HORNIK: We're not arguing; we're just making statements, that's all.

SENATOR LIPMAN: Yes, we're making statements and we're listening, but we're also doing a little fighting. I will entertain the suggestion very seriously. Perhaps you have hit one of the main issues we should be looking at in the interim until we get Senator Stockman's State planning group, which I hope will come into existence very soon.

Do any of the other Committee members wish to address this?

SENATOR STOCKMAN: I would like to say that I concur with Senator Lipman and with Senator Gagliano, just so there is no misunderstanding here. This problem which you have touched on, of course, goes back to the dissolution of the State Planning Commission. I know we do not want to get into too much of a tangle about the fact that the Administration did that and that the Administration, in the

early stages of this issue, talked in terms of it being in the nature of a Communist conspiracy and has been very reluctant to move forward with dealing with Mount Laurel. That is all history, and we do not want to get bogged down in that.

I, for one, have no problem with supporting this notion if Governor Kean will publicly make clear that he endorses and will support the passage of the State Planning Commission bill, will promptly sign it, and will actively and quickly move to get it constituted and funded. If we get that kind of a commitment from Governor Kean, I will quickly rush to this bill you are talking about, without any hesitancy at all.

SENATOR GAGLIANO: Why don't we do our job and let the Governor do his?

MAYOR HORNIK: Senator Stockman, listen. I feel we are getting into party politics here. I can tell you that we, in our Township, formed a bipartisan committee. Manalapan had unanimous passing of their ordinance which required 932 units in a settled type of situation. This was passed unanimously by Republicans and Democrats.

I understand and can see that you have a particular philosophy with regard to what you would like to see done. I don't take that away from you. But, in this cross-dialogue about getting the Governor's commitment, we are getting lost. All I am asking for is a simple thing. Regardless of what you are looking for, regardless of what Senator Gagliano is looking for, all we are looking for is, if we do it, let it stand in concrete. Do not have us left open for 10 years of litigation so that if there is an inch of property left over in our Township and someone says, "Well, that is the area that is left that is not to be built on," someone can come in and say, "We are going to sue that on Mount Laurel II." All I'm saying is that the numbers will continually change. I'm saying here that we pay a planner \$25,000 a year and he has come up with figures. He spent a year on this, because we made a decision that we saw no hope in beating this in court because of the way this thing was structured. We're eating the publicity at the local level right now, Senator Stockman.

All we're asking for-- It's not a philosophical thing about your bill or Tom's bill. All we're asking is that if we set up the guidelines, I don't want to hear from a developer that his planner says we need 1,200 units. Hey, what is he talking about? I mean, I look at the map; I see the red line and I suddenly realize, holy mackerel, that is going away on-- Fifty percent of that area is Marlboro State Hospital, which we have no great love for anyway. You know, the residents are moving out.

SENATOR STOCKMAN: Mayor, we understand that, and I think this problem will be solved. To the extent that in this dialogue you seem to interpret my exchange as one of a partisan nature, I am saddened to hear that, but I respect your right to make that judgment.

MAYOR HORNIK: I'm from your party, Senator; I am from your party.

SENATOR STOCKMAN: Well, you can be from my party and nevertheless criticize my behavior. In this setting, in this situation, there is no question. We have to be careful that partisan politics is not what controls. The expression I made to you about my concern about the State Planning Commission bill is not intended to be a partisan one, because the bill is not a partisan bill. It has bipartisan sponsorship and support. It is not intended to be something special in that it is my bill and I want to see it in place, but it is part of a mosaic that has to be moved forward concurrently. I respect where you are in your trench, but my instinct is that I am, on this issue, in a very delicate, if not trench, then over a very delicate hole, shall be say arguably, and we have to be careful about it.

I think Senator Gagliano, Senator Lipman, others on this Committee, and I can work out the problem that you have very articulately placed before us, and I intend to do so.

MAYOR HORNIK: Thank you very much. Then I can count on the fact that there will be some bill -- not to pin you down -- passed before January, 1985 that will allow the present guidelines despite the dissolution of the Commission itself, and that the results of that Commission will continue under those guidelines until a specific date. Let it be open-ended until you feel you can do what you have to do in this mosaic that continues. Thank you again.

SENATOR LIPMAN: Senator Cardinale?

SENATOR CARDINALE: Mayor, I can't let you go without making one or two observations and perhaps asking you a question. I have to start out by saying I sympathize very much with the dilemma in which you find yourself.

MAYOR HORNIK: I am between a rock and a hard place.

SENATOR CARDINALE: I sat in a seat something like yours, went through Mount Laurel I also, and can feel what you are feeling. Those were the good old days when we were working with Mount Laurel I. As to your suggestion with respect to the State Development Guide Plan figures, while they may be very acceptable in your circumstance, and perhaps they might be very acceptable to me were I sitting in your community, I can tell you that there were many communities when those numbers came out that thought that those numbers, of and by themselves as they related to those individual communities, were an abomination.

MAYOR HORNIK: I agree with them. I agree that they were an abomination even for my community. I would have put more land into the moderate growth area. They put Burnt Fly Bog in the high density area, which is a toxic waste dump.

SENATOR CARDINALE: Having won a suit based on the fact that we were a fully-developed community, we faced, in that very same Guide Plan in the same time frame, an increase of one-third again the number of housing units. If anyone can put those two facts together and say that that is a reasonable anything, I defy them. So often when people from local government -- and I experienced it myself -- walk through that middle doorway, they might feel they are entering a rabbit hole and coming into a totally different environment. But, in the course of your statements, you said that you somehow decried the philosophical arguments that go on in these chambers. I think you should become aware, and perhaps you have become aware even in the course of this repartee that has taken place, that those philosophical arguments are not something abstract that just go on here. It is those philosophical arguments which come right down to the situation with which you have to deal right now. It is the resolution of those basic arguments that either solves your problem or makes it worse.

I would just like to ask you one very simple question, having made a great preamble -- a too lengthy preamble -- to my question. You represent a group of people?

MAYOR HORNIK: Yes.

SENATOR CARDINALE: As a mayor you probably have a feel for what those people are thinking, what they are experiencing, what they are feeling. Very simply, would those people you represent -- and I understand it is only one town -- prefer that the court had never made the Mount Laurel II decision, or are they happy that they are living under this particular imposition by the court?

MAYOR HORNIK: Senator, let me describe it to you. There is a petition with 2,000 names on it under the guise of having a local referendum on binding zoning, where people were led to believe that they wouldn't have to take it. That is an expression of the community. That was done in 10 days. You see, whenever you have a certain type of perception, there is naturally a reaction that the life style will change, values might decrease, or there might be higher taxes. I think Mount Laurel II, even though they claim that it took place because of a lack of legislative movement, was also due to some degree to a lack of municipal movement, to be fair, because no one was going to run to the door and open it to this type of legislation. People who move to a town, even though a town is not an independent body, always like to believe in the American concept of home rule. But, the fact remains that there are certain social questions that have to be dealt with on a total basis in the State of New Jersey, as well as in the total country. I think people have the attitude, "Let it be in someone else's back yard."

I believe the people in my community do not want Mount Laurel II. They do not like the decision. I personally feel that the decision is too harsh. I would vote for a petition to go for a binding referendum but, unfortunately, that is illegal. It has no status. Even if it were to pass, it would not be binding on the Supreme Court of the State of New Jersey. Unfortunately, if you ran a popularity contest, Mount Laurel II would go down in flames. It is obvious. However, it is here and I have to face it; so does our Council, and so

does our Planning Board. I believe they acted responsibly in developing an ordinance and putting it in place as soon as possible to protect the Township with regard to where the planner wants to place this type of zoning, as opposed to a builder's remedy. I think the bottom line for us in the communities is, as Senator Lipman said in the article in The Star-Ledger-- In her bill a community will have the option of either going to the Commission or going to court with one arm tied behind its back. I believe we are going to court with two arms tied behind our back right now. I don't think it makes any difference.

So, if I have to live with that, or if we have to live with that, then let us do it. Let us try to educate the community we live in to understand what our only option is. We have a formula that is a computer. I hate to say that we have reached the computer age on this level, but we have. At least let me have the place where I want to put it based on our planner's decision. that is, with access to roads, major highways, and so on and so forth. At least let us have that option, and we will even be sued on that. We will be sued on that because it goes down to the bottom line of economics. You see, you have to understand that the majority of our town, after all of our half-acres and quarter-acres have been used up, is two-acres. There is a developer who owns 100 acres of two-acre lots. He doesn't want to build a house on a two-acre lot; he wants to build a house on a half-acre lot. He could come to us and say, "We'll sue you under Mount Laurel I." "All right, we'll make you half-acres; don't worry about it," we might reply. So, okay, we won't take the case; now we have all half-acres. That also hurts the town because it hurts our social structure realistically speaking.

Now what we have if this thing is supposed to work is, we're taking care of our social obligation under the Mount Laurel II decision, but we don't have to kowtow to the developer who has two acres of land, or 100 acres of two-acres, who says, "Now make me half-acres; make me quarter-acres," because we have to breathe too. We have to catch up. You know, we trip, we fall, we get killed by taxes too. Thank you.

SENATOR CARDINALE: Mayor, there is a thread running through all of your statements. I am not going to ask you another question, but there is a thread running through all of your statements that you accept the theory advanced -- and it is a fact actually -- by Senator Stockman that the municipalities are a creation of State government, particularly the State Legislature. That is a fact that we all have to accept.

MAYOR HORNIK: Listen, if I go to jail because I don't want to conform, you are going to come down to run the government.

SENATOR CARDINALE: But you have taken the path of accepting only half of the story. There is another half of the story. That other half of the story is that all three branches of State government were created by the people whom you represent on a very basic grassroots level. What has amazed me is that people in your position have not really come down here and demanded that we give back to the people the right to make the determination as to which form of zoning we are going to continue to endorse, that which we have had up until now--

MAYOR HORNIK: (interrupting) Senator, I can't let that go by, and I'll tell you why. In 1978, we fought a settlement in our town called Prime Feather Down, which allowed 3,000 units in that were settled under the guise of Mount Laurel I by that form of government. As a result of that, through my campaigning I was elected to a first term. I am now in my second term. You know, one has to deal in the context of reality. I can say if you want to put that bill forward on self-determination at the grassroots level, I am 100% for it. The question I asked in my letter here is, "Is it realistic?" The fact of the matter is, Senator, a developer who is suing us and a judge who is ruling on that, based on the amount of cases and how fast Judge Serpentelli is moving on it, is not going to wait for your legislation on self-determination. What is self-determination going to do for me and my Township in the twelfth hour, when it is up in the air? What is it going to do for me? You know, if I am in a battle, I have to look for my maneuverability. I can't deal on levels of, "We are the ones who gave you the power," and "You are the ones who are going to give us

back the power." I mean, it has been taken away. I personally do not see the remedy coming down on a white charger that is going to get it back for us.

So, I am left with a realistic business decision, a decision for my Township that the Council made, that the Planning Board made, and that those who are knowledgeable have made. Those who are not knowledgeable are beginning to realize when they see all of the documentation and they see across the border what is happening in Holmdel, Colts Neck, and Old Bridge, 2,400 units, and Howell, 2,900 units. Do you want me to read the line? After the court rules on that, you know, please-- I love home rule; I love binding referendum. I think it is the American way; I think it is the right way. It is the way I would want to be because I am in business myself and I went into business for myself because I want to determine my future. I want to do things my way. But right now, when I operate within a given framework, I can't do pie in the sky. I have to deal with what is impending on me. When there is a frontal assault of 1,000 people coming at my trenches and I have "X" amount of bullets, I am not going to say that I have a cannon coming down the road that will be there a year from now, not when they are going to reach me in 30 seconds. I have to fight them.

I agree with you philosophically, but I don't want to be in a position from a political standpoint where I am against binding referendum. I am for binding referendum; I am for home rule. But, I entered the trenches; there is an assault on me, and I can't wait for a cannon to arrive a year from now. I have bullets and I have to use them.

SENATOR CARDINALE: Mayor, I am not suggesting that a cannon is going to be available a year from now, two years from now, or ten years from now, but this legislation by the court took place a year and a half ago. Had people like yourself, particularly people with your own party orientation -- and I do not mean to be political -- told their--

MAYOR HORNIK: (interrupting) Excuse me. A year ago, I was a Republican. (laughter) But, I want to take it out of a political

context, Senator, because, very frankly, there are other people who wish to speak. We are degenerating -- and I use that word -- into a political type of thing. I asked for specific things, one of which is relief to our "cap" if we are not going to get tax rebates from you, so that we can go into our surplus. It is within your power to recommend and to pass that part of the legislation allowing us to have a 10% "cap" in the years we are developing with this type of plan so that we can put on police without increasing our tax burden to unbelievable amounts. Number two, I asked you to pass, very quickly, an extension of the State Planning Board guidelines until something is extended and we are allowed to operate in some form, not in an amoebic type of existence, but in something that is structured. Thank you.

SENATOR LIPMAN: Mayor Hornik, we thank you for your presentation. We know that you took time, when you didn't really have time, to come down to enlighten us. I'm sure we are going to take the issues you have raised under serious consideration. You know, sometimes this Legislature is capable of acting rather swiftly.

MAYOR HORNIK: There are miracles.

SENATOR LIPMAN: Yes. We are elected officials, too. I want to thank you on behalf of the Senate State Government Committee.

MAYOR HORNIK: I just want to thank Senator Gagliano for being here to talk about this.

SENATOR LIPMAN: Since the dining room closes at two o'clock, I think we better break for lunch now. We will return in one hour, at which time we will entertain a statement from Mr. Jack Trafford from the New Jersey State League of Municipalities.

SENATOR GAGLIANO: Madam Chairman, may I ask the Committee to have one witness for about five minutes before you break?

SENATOR LIPMAN: Who is that?

SENATOR GAGLIANO: Mr. Coley from Warren Township.

SENATOR LIPMAN: Mr. Coley, do you have to leave?

JOHN E. COLEY: I represent a school board and we have a meeting this afternoon. If it's lunchtime we're done because I have to leave, and this is important. Marlboro may feel like a moving target, but we feel like a sitting duck.

SENATOR LIPMAN: All right, but is it going to be five minutes?

MR. COLEY: I guarantee that I will be no more than five minutes.

SENATOR LIPMAN: If not, people are going to miss getting something to eat. Come up and sit down, please.

MR. COLEY: I appreciate it, Madam Chairman.

SENATOR LIPMAN: This is Mr. John Coley, who is the attorney for Warren Township. You need more than five minutes.

MR. COLEY: Actually, what I have to say, if I am not questioned on it, will not take more than five minutes. I am not going to go into detail on the 82-page decision and the appendix that goes to page 142.

The Legislature in the area of housing and zoning has been usurped in its power. It is not a judicial function and the Supreme Court stated that fact in the Mount Laurel case. When I tried the case of AMG versus Warren Township before Judge Serpentelli, who is probably one of the best judges that I have appeared before, I think the trial proved the fact that this is not really able to be handled in the judicial atmosphere. It is not an adversarial type of case that can be tried. It cannot be tried on a case-to-case basis. There has to be a broader statewide approach. If it was going to be tried on a case-to-case basis, every municipality in the State would have to be there because every town is going to be bound by the decision. Really, even though Judge Serpentelli's case only applies to his area which he has been assigned by the Supreme Court, it has effects in the whole State, whether the municipalities appeared or they didn't appear. I think that zoning by the courts is basically unfair. If the town is not brought into court by a developer, the town may never have to build any kind of fair share housing. So, it is the luck of the draw. Warren Township got caught, and we're down there. We have to build it now under a court directive. But, what happens to a town right next-door to us that doesn't go to court, like Watchung, or whatever town you want, that hasn't been sued? They have no fair share now. Is that really equal protection under the law? It is not. Warren

Township is stuck. We were singled out by a contractor to go to court. I view that as unfair protection under the law.

The Legislature has the ability to pass laws and have them affect every single municipality. The courts cannot do that. The courts have to pick out towns, and only the towns which go before the court then have any kind of an obligation. So really, it is a legislative function. It has to be handled by the Legislature.

I think it has been proven in my case that the costs of infrastructure are duplicated. Warren Township really has no infrastructure. We do not have the roads; we do not have the sewers; we do not have the water. If you take urban municipalities, they are underutilizing infrastructure. The infrastructure exists. If you really want to build low-cost housing, you utilize what you have. You don't duplicate it, especially at today's costs. I feel that the Legislature can take that into account in a bill. Whether you are going to use Senator Gagliano's bill, the Chairwoman's bill, or any other bill, I think whatever Commission is set up is going to take these cost factors into account, which the courts really can't do because they are dealing with one town. They are dealing with Warren Township in this case. Warren Township has a population of 10,000. It is going to be increased to 25,000 in five years. That is two and a half times. We have 3,200 residential units; it is going to be increased to 7,930 units in five years. That is two and a half times again.

It is unfair. That kind of an increase has never taken place anywhere that I know of, except possibly in a Levittown that went up in Long Island. It is an increase that is devastating. It will destroy Warren Township. Senator Gagliano has discussed phasing. It has taken generations to develop a disparity in housing and the court says, "You will resolve that disparity in five years." That is not fair. That is 950 units a year. That's one-third of the existing housing in Warren Township every year to be constructed for five years. Does anyone realize the magnitude or the effect that will have on Warren Township, on Holmdel, or on Colts Neck? Wherever you are going to have it, it will devastate the town. It will destroy the environment. The tax burden is going to be astronomical.

The Mayor of Marlboro says, "Hey, increase our 'cap.'" What does that do? That increases the taxes in the town. That is no solution. God, don't do that for us. If there is anything you are going to do, don't increase the "cap." Pass a moratorium, extend the State Development Guide Plan's applicability, but, boy, don't increase the "cap," because that is no service at all.

There is a lot of argument about the protection of low-income people through the Mount Laurel cases. You have to think about protecting the middle class, the upper middle class, or whatever class resides in a town. I think there has to be a balance of protection here, equal protection. The courts say, "We want equal protection," but everything done under Mount Laurel is unequal protection. The formula is vastly inflated. I am probably as familiar with the formula as anyone is, and the population data and the employment data are inflated figures. Then, on top of that, they pour in 23% for growth area and vacancy rates. I put in evidence from an expert I have, a statistician, showing the inflation, how the figures are not utilized, and how they mix percentages and ratios and come up with something that has no mathematical meaning at all, and out of that grows a formula. They have an income factor in there, and the court says that a town that has a high median income has a higher obligation. We argued that for two days before Judge Serpente. It has absolutely no effect on the ability of a town to support lower-income housing under Mount Laurel aspects. Just because the people in a town earn more money than the people in the town next-door doesn't mean that the town itself is richer. That is maybe only the people who live in it.

Builders are the only people who make out in Mount Laurel litigation. In Warren Township, you're talking about three to six times the profit that the builders will make on their properties than if they had to develop them as acre-and-a-half developments. Using only maybe six to eight units per acre, it is still three to six times the amount. The thing that disturbs me is you can say, "Well, that is probably an argument you are going to make, but you really don't believe it." I do believe it. I went to law school in Newark; I went to college in South Orange. I know what those cities look like, I was

there. The cities are going to be destroyed by Mount Laurel. They are not going to be rebuilt. There is going to be an exodus of the middle class and the working class from those cities. The tax bases of the cities are going to be destroyed. The housing is not going to be helped. It is not going to be rebuilt. It is going to be built anew in Warren Township, anew in Holmdel, or wherever, but in Newark it is not going to be rebuilt, and in Camden it is not going to be rebuilt. In Senator Stockman's Trenton it is not going to be rebuilt. It is either going to stay the same or it is going to get worse because the actual tax base is leaving.

The Legislature can protect everyone. Equal protection again. You have to protect the cities, along with having the burden put on the townships or the municipalities. Senator Dorsey's bill is what Warren Township would really like to see. If that is impossible in the Senate because of practicality, I think a combination of Senator Gagliano's bill and Madam Chairman's bill-- Something has to be done. I will quote something I said in The Star-Ledger: "You have to bail out the towns." You know, really--

SENATOR LIPMAN: (interrupting) That isn't what you said; I read that too.

MR. COLEY: That is not exactly what I said. That is the way I thought it would be quoted, but it wasn't quoted exactly the way I said it. But, it is true. The Legislature does have to help out the outlying districts, and I think it does have to help out the cities. Warren Township asks you, as Marlboro did just now, to get it done quickly. I feel that I am still viable in Warren Township. We haven't settled a case. We have tried our case. We are in compliance. We have 90 days, which may be extended. If we cannot agree, we will try our compliance portion of the case.

You can do something for us, and I hope you will. I appreciate your time. I really appreciate your cutting your lunch hour a little short to hear me.

SENATOR LIPMAN: I am just sorry we don't have the time to ask you some questions. Does anyone have a burning question to ask?

MR. COLEY: I would be happy to come back anytime at all. I will leave my card with your staff.

SENATOR LIPMAN: Thank you. We are electronically recording your testimony just in case you--

MR. COLEY: (interrupting) I've got a lot more; I had to cut it a little short.

SENATOR LIPMAN: All right. Thank you so much for coming. We appreciate it.

MR. COLEY: Thank you.

(RECESS)

AFTER RECESS

SENATOR LIPMAN: We are ready to reconvene the hearing. Mr. John Trafford, Executive Director of the New Jersey State League of Municipalities.

JOHN TRAFFORD: Thank you, Senator. I am Jack Trafford, Executive Director of the New Jersey State League of Municipalities. I appreciate the opportunity to testify today. The League of Municipalities has a vital interest in the bills under discussion at this hearing because, obviously, they directly bear on zoning and land-use regulations throughout the State. As you know -- it has been stated already this morning -- the power to zone is a power clearly granted to municipalities under the Constitution of the State of New Jersey.

The League believes that the Mount Laurel II decision and the mechanism through which it is currently being implemented by the courts is an infringement on those planning and zoning powers. The League, therefore, is on record as supporting SCR-24 sponsored by Senator Dorsey and others. SCR-24 would clarify and reiterate the right of a municipality to determine, through its zoning and planning ordinances, the extent of housing opportunities to be provided to meet the needs of persons of diverse financial means without impairment by the Legislature, the Governor, or the courts. It also carries the

clearly-stated proviso, however -- as Senator Dorsey pointed out this morning -- that each municipality shall provide, through its own ordinances, for affordable housing opportunities for all persons residing or working in the community. Therefore, we would urge your thoughtful consideration of SCR-24.

An alternative approach, of course, is represented by a number of bills through which the Legislature would create a mechanism for establishing criteria for determining the allocation of each municipality's fair share of the State's low- and moderate-income housing needs. Bills to accomplish this objective have been pending before the Legislature since the mid-1970's, and the New Jersey State League of Municipalities has been on record as supporting several of them over those years.

It is generally recognized that failure by the Legislature to enact one of those bills, or similar measures, was a contributing factor which led to the Mount Laurel II decision in January, 1983 and provided us with the degree of judicial involvement that we now face. Other speakers have documented and will document the potential impact of Mount Laurel II on municipalities around the State, especially the decision that was handed down last week involving Warren Township.

We have before us today two such housing mechanism bills which represent very recent attempts to establish fair share housing allocations. They are Senate Bill 1913 by Senator Gagliano and others, and Senate Bill 2046 by Senator Lipman and others. Senate Bill 1913, which was introduced this spring, would provide a phased-in compliance with Mount Laurel II, taking into account the impact of significant increases in new housing units in communities across the State as a result of the nearly 100 suits which are now pending. Senate Bill 1913 would provide for a 10% ceiling or lid on any court-ordered compliance over a two-year period. It would also provide for the creation of a State Commission on Housing Needs Assessment and for preparation by municipalities of land-use regulations and housing elements for certification by the Commission. The League is also on record as being in support of Senate Bill 1913.

The third bill which is a subject of the hearing today is Senate Bill 2046. Unfortunately, S-2046 in its original version is unacceptable to the League. Among other things, it provides a cumbersome administrative procedure as a requisite to certification which, while costly and time-consuming, affords the municipality little effective respite from subsequent potential court litigation which would add further cost and further delay. Another objection to the original version is that it imposes compliance criteria on municipalities as a requisite to certification which are too comprehensive, too stringent, and too complex. It is entirely too specific, and puts into legislation numerous state-of-the-art considerations that are within the purview of general professional planning and legal practice and should be left to the discretion of the licensed professionals in that practice.

I am happy to report, however, that substantial amendments are being drafted, several of which will address a number of the League's objections. Further meetings of the drafting committee are contemplated and there appears to be a strong possibility that our remaining objections, including those outlined above, may also be addressed. We anticipate that in its revised version, Senate Bill 2046 will be far more acceptable to municipalities.

The League is very desirous of maintaining a dialogue regarding revisions to S-2046 so that a fair, workable piece of legislation can be produced which will: (1) provide municipalities with the guidance they need under Mount Laurel II as to fair share allocations; (2) preserve for the individual municipalities as great an opportunity as possible in determining their own fair share obligation within the context of regional and statewide requirements; and, (3) provide a realistic mechanism supported by some kind of funding which will address the affordable housing needs of this State.

In conclusion, the League is deferring its formal and final position on S-2046 until the current revisions are finalized.

That concludes my formal statement. I would just like to add by way of a postscript, please don't be deceived by the fact that this room is not full of municipal people today. We contacted most of the

communities that at least right now are being affected by pending litigation. We advised them that this was not the final hearing on the subject, and that because of the state of revision that Senate Bill 2046 is apparently in, it would not necessarily be useful for them to come today to try to testify on a bill that is already being revised. We are planning a statewide meeting later in the month for municipal officials to try to coalesce a position on Senate Bill 2046, which hopefully at that time will have considerably more amendments than it now has.

Thank you for the opportunity to testify.

SENATOR LIPMAN: Thank you, Mr. Trafford.

SENATOR SAXTON: May I ask him a question?

SENATOR LIPMAN: Surely, Senator Saxton.

SENATOR SAXTON: Your testimony touches on the three bills, that is the two bills and the resolution that we are considering here today, or that we are hearing testimony on. In a very general way, I believe, in each case-- During the lunch break we had a short conversation with Senator Lipman, who indicated that -- as you suggest -- there will be revisions made to her bill or perhaps even a Senate Committee Substitute. During the remainder of August, one of the things that all the members of the Committee will be doing will be trying to decide what might be acceptable in terms of specifics which might be included in those revisions or in a new bill.

I am curious to know if you have any information at your disposal at this time that you might like to share with us as to what you might like to see that bill look like.

MR. TRAFFORD: Well, Senator, two of the major revisions are the two that I touched on in my remarks. I deliberately did not touch on the others because I participated in the dialogue that has been taking place in the drafting committee. We started out with approximately eight or nine areas of concern. Five or six of those areas of concern are apparently being addressed. I do not think it would be productive in this forum to discuss concerns that apparently are no longer valid, because apparently at least they will be in the amended version that comes before your Committee. Many of them, incidentally, were outlined by Senator Gagliano this morning.

SENATOR LIPMAN: Mr. Trafford, I appreciate your remarks, and I would like to be privy to the amendments you are drawing up when you have them ready. I'm sure you are going to let us know in the same fashion as Senator Gagliano, who promised to go through S-2046 with a red pencil. I am anxious to know, as is my cosponsor here, the other criticisms. For example, I get the feeling from your statement that not only do you consider the procedure too cumbersome for a municipality, but you also seem to have the same criticism as Senator Gagliano that the language of the bill sounds somewhat punitive. Did you mean to imply that also?

MR. TRAFFORD: Let me clarify our concern with regard to what we perceive to be the cumbersome burden associated with the administrative procedure. The intent was to remove, or to reduce as much as possible, litigation at the end of the road. But, in the current draft of your bill what would happen is that the municipality would go through this very laborious, time-consuming administrative process and then hopefully would win certification, which in turn would merely mean that the municipality would enjoy the assumption of validity at such future point as that municipality went into litigation. But, it would still have to go through the whole procedure again if and when it went into litigation.

Now, if we are going to end up in court anyway, with its associated expense, why go through the trouble of this long, involved administrative process? This whole issue may be academic because, again, that is one of the areas that is being explored. Some of the lawyers on the committee are trying to reconcile this in terms of due process, but it may well be that the committee will recommend a procedure whereby if you go through this rather admittedly cumbersome administrative procedure, what the municipality would get after certification would be something more than just the assumption of validity, that it would get proposed, and the only way in which it could be litigated or challenged would be on an error.

I am not a lawyer, but there are several lawyers on the committee who are grappling with this. There was some feeling that it would do violence to due process. But, it may be that something can be

worked out along those lines, in which case we would change our position, our opposition even, on that point.

SENATOR LIPMAN: I see. Were you present this morning?

MR. TRAFFORD: Yes, I was.

SENATOR LIPMAN: Did you hear the testimony of Mayor Hornik?

MR. TRAFFORD: I did.

SENATOR LIPMAN: You did. Could you give us an opinion now on the Mayor's request? Well, he asked a number of things, but the main issue was a request for some kind of stable guidelines by which municipalities could make their ordinances and could proceed to act in the absence of the State planning group. Would you care to give us your opinion on that?

MR. TRAFFORD: Well, I don't think I can give you a simple response. Let me review the issues as I am aware of them. Some lawyers have taken the position at meetings in which I have participated that it really isn't going to be such a calamity in January, 1985 because the courts will still -- even though the Guide Plan has no real legal foundation -- in their judgment look toward it for guidance, particularly if they are mindful of the fact that the Legislature has now enacted legislation which would provide for the continuation of some kind of a plan albeit called by a different name. That is one theory that has been proposed. Whether that is correct or not I do not know.

I think the Mayor is certainly correct, however, if in fact that is not the case. I think the Mayor is certainly correct; his concern is very valid. We would agree with that 100%.

There is another concern we have which gets into another area which has yet to be resolved, and that is, what happens to those municipalities for which their Mount Laurel allocation is now past history and is an accomplished fact? They have either settled on the basis of a consent agreement, as many municipalities have done in Morris County, or else they have just been handed a judgment, as was Warren Township in Somerset County. What happens down the road if, in fact, some allocation bill goes into effect, regions are established, and numbers are in some way identified and it turns out that that would

alter their circumstances? What happens to them? In other words, they were kind of victimized by this time warp, if you will, wherein they were under the gun and they reacted in the courts. Or, they were taken into court and given a judgment, given a settlement, and then two years down the road we move into a new era which is the era of administrative review and so forth. What happens to their situation? Now, legally there seems to be little doubt. "That's too bad; that's unfortunate, but this was a legitimate legal proceeding at the time. It was settled and the parties have their rights." In the Committee, we are exploring the possibility that these communities, although they would have no legal right, would be able to follow a procedure whereby they could petition the court for the option to review or reevaluate the court decision in light of the figures, or the allocations, that came down as a result of the legislation. Again, that is all speculation and it has yet to be decided.

SENATOR SAXTON: Madam Chairman?

SENATOR LIPMAN: Senator Saxton.

SENATOR SAXTON: Mr. Trafford, you mentioned that you thought some lawyers you had talked to on the committee assumed, or were operating under the assumption that maybe the courts would assume that the guidelines pursuant to the statewide Guide Plan would continue to be considered to be in effect.

MR. TRAFFORD: For a reasonable period of time, a few months.

SENATOR SAXTON: All right. Now, if that is an assumption that some lawyers are making, it seems reasonable to me to think that an assumption could be made by some other lawyers that maybe that wouldn't happen. And if it is, in fact, a desirable position for municipalities to be in to have those guidelines in place, wouldn't it make sense for the Legislature to pass the bill extending those guidelines so that we wouldn't have to worry about what the court is going to decide relative to them?

MR. TRAFFORD: That seems to make sense. I think the League would support that.

SENATOR LIPMAN: Senator Stockman, did you have a question?

SENATOR STOCKMAN: No, thank you.

SENATOR LIPMAN: Senator Cardinale?

SENATOR CARDINALE: No questions.

SENATOR LIPMAN: All right. Thank you, Mr. Trafford. You are going to let us know as soon as you can about the amendments, aren't you?

MR. TRAFFORD: Yes.

SENATOR LIPMAN: I would be very happy to have another hearing near the end of August. I was just trying to ascertain from Senator Stockman, and I have asked my colleagues over here, if August 30 is a good date. Did you say yes, Senator Stockman?

SENATOR STOCKMAN: Yes. I will certainly do my best to be here. It's okay as far as I know.

SENATOR LIPMAN: I think they have all agreed, so I guess we can look forward to a hearing on or about August 30.

MR. TRAFFORD: That would be a good date for us. It would follow the statewide meeting we contemplate on August 28.

Senator, if I may before I leave, I would like to correct what might be an unfortunate and mistaken impression and that is this: On two occasions, you referred to our amendments, our committee, and so forth. That is very flattering, but, and this is very important for the record, this committee is not a League committee.

SENATOR LIPMAN: Oh, it's not?

MR. TRAFFORD: In fact, depending on the direction in which the dialogue is going, there are times when I won't even admit that I am a member of it. Sometimes it is our committee and sometimes it is their committee, and I am just there as an observer. We really have no particular influence other than our role of being one of eight or ten members. I just wanted to clarify that for the record. It is rather a contiguous party; it reflects people from a number of different perspectives, all of which bear on this issue. It is in no way a municipal committee or a committee of the League of Municipalities.

SENATOR LIPMAN: I understand; just some members of the League of Municipalities are participating.

MR. TRAFFORD: I am one of those.

SENATOR LIPMAN: Yes, you are one of them.

MR. TRAFFORD: But, I am merely a member and at times I don't even consider myself a member.

SENATOR LIPMAN: It must be a hot session, Mr. Trafford.
(laughter) So, I stand corrected. It is an ad hoc committee.

MR. TRAFFORD: That would be far more accurate.

SENATOR LIPMAN: Which will be nameless at present, but it is expert I suppose.

MR. TRAFFORD: I think they are most certainly very knowledgeable people.

SENATOR LIPMAN: Well versed in land-use law?

MR. TRAFFORD: Right.

SENATOR LIPMAN: And, directly representing constituencies which are affected by this legislation. Would you say that?

MR. TRAFFORD: If I may, the membership, at the expense of leaving someone out, consists of the Executive Director of the Regional Plan Association, Kathy Rae. It is chaired by Harry Pozyski, who represents the New Jersey State Bar Association, and who is also a municipal official. I am a member. The Public Advocate's office is very ably represented by Ken Meiser. Gene Schneider and Amy Piro who represent the Administration serve on the committee; Peter Buchsbaum serves on the committee. We have a representative of the New Jersey Builders Association and several other people. I am sorry if I have overlooked anyone.

SENATOR LIPMAN: Thank you very much. We enjoyed finding out about the committee.

SENATOR SAXTON: At some point, do you expect to have specific recommendations from the committee?

MR. TRAFFORD: Oh, absolutely, as soon as possible. The committee has met four or five times, three or four hours each time. They have deliberated exhaustively and our hope is that in one, or at the most in two more meetings, the committee will have completed its deliberations.

SENATOR SAXTON: I'm sure you plan to present them to us in writing.

MR. TRAFFORD: They do. Again, I don't. The chair of the committee, Harry Pozyski, will, yes.

SENATOR SAXTON: When they present them, would they be kind enough to include a list of their names and positions and where they come from?

MR. TRAFFORD: I'm sure they would.

SENATOR LIPMAN: Mr. Trafford, are you going to present the recommendations of this Committee to your statewide meeting on the twenty-eighth?

MR. TRAFFORD: That is the purpose of the meeting, Senator.

SENATOR LIPMAN: That is the purpose of the meeting, all right. Until then you would not like to commit the League to anything, right?

MR. TRAFFORD: Well, as I said, I have a laundry list of eight or ten concerns that we raised, but five or six of them have been addressed.

SENATOR LIPMAN: All right.

MR. TRAFFORD: I think it would only confuse the dialogue.

SENATOR LIPMAN: Fair enough. I think I have harassed you long enough. Thank you so much for coming to present your testimony. We will look forward to hearing your amendments when we return on August 30.

MR. TRAFFORD: Thank you.

SENATOR LIPMAN: Mr. Steve Eisdorfer, Department of the Public Advocate.

STEPHEN M. EISDORFER: Senator Lipman and members of the Committee, I want to thank you for permitting me to testify on behalf of the Department of the Public Advocate. As Senator Dorsey indicated, I come somewhat fresh from trial negotiations in Morris County. You must excuse me if I have not fully shifted gears to the legislative process.

We are now in the ninth year after the Supreme Court's decision on Mount Laurel. I think it is fair to say that at this point, and for the first time, we are beginning to see real outcomes and real consequences from that decision. Those real consequences are coming in two forms. In one form, we are beginning to see housing constructed. We are beginning to see housing opportunities for low-

and moderate-income people actually being created, and I want to say a few things about that.

The second form is, we are beginning to see action from the Legislature. For this we are most grateful to the members of this Committee. We are most anxious to support legislative action that will begin to address housing problems in New Jersey, and I will have more to say about that too.

Let me just comment on what kinds of results we are seeing from the Mount Laurel decisions in terms of housing. For the first time, we actually have housing under construction in Bedminster Township in a development called "The Hills," which is the result of a 10-year piece of litigation. There are now 260 units.

SENATOR LIPMAN: Mr. Eisdorfer, excuse me for interrupting you, but since you are going to tell us about what is happening with the courts, Senator Stockman has a very specific question that he would like you to answer.

MR. EISDORFER: I would be happy to, if I can.

SENATOR STOCKMAN: No, I--

SENATOR LIPMAN: (interrupting) Oh, you don't?

SENATOR STOCKMAN: No. I had suggested that perhaps the testimony concerning the Dorsey bill and the constitutional questions could be gone beyond, although since there is a formal statement I do not want to tread on the other Committee members. They may feel we should hear further testimony on those subjects, as opposed to the Advocate's position with regard to Senator Lipman's bill. I don't know. I was really trying to save some time. I will abide by the Chairwoman's judgment.

SENATOR LIPMAN: Do you have a suggestion, gentlemen, about what you would especially like to hear from Mr. Eisdorfer?

MR. EISDORFER: I would be happy to accommodate you in whatever way I can.

SENATOR LIPMAN: I know; that is why I stopped you. I'm sure you would be.

SENATOR CARDINALE: I'm sure that the Public Advocate would like to accommodate all of the public, and we are part of that. We

just received your formal statement. If you do not go through all of it, I do not think we will be familiar enough with it to ask any kinds of questions that might be pertinent to any aspects of it. However, Senator Stockman began to address an area that we will probably all have questions on and you might want to answer his concerns because I am sure I will have the same ones.

SENATOR LIPMAN: Mr. Eisdorfer, just continue as you were. There was some special interest in the formulas which the court is using and so forth. That is why I stopped you so that if you were not going to cover that aspect, you would.

MR. EISDORFER: Let me suggest, particularly to Senator Stockman, or whomever else, that at any point you feel I am not addressing the things you are interested in, just tell me, and I will try to do what I can within my very serious limits.

The fact is that housing is now being constructed. We have 260 units under construction in Bedminster. Those are really affordable units. We have units that are going to be settling at \$25,000. Interestingly enough, they are going to be next to units that are going to be selling for \$250,000. The ground has been broken and they are under construction. We anticipate that they will be ready for occupancy within the year.

We have 92 units under construction in Mount Laurel Township. To put this in perspective, this is in some sense the very opening tip of the iceberg. We have recently entered into settlements with 12 municipalities in Morris Township in Morris County, including Hanover Township, represented by Senator Dorsey, for a total of 7,078 units, of which approximately 5,300 will be new construction over the next six years. The types of conditions we are talking about would provide housing affordable to people essentially at prices equivalent to what federally-subsidized housing would be, that is, housing that would assure that people could afford paying no more than 25% of their income for housing. So, it is actually happening, and that is a change.

The second thing I want to address myself to is the various pieces of legislation. I indicated that we are opposed to Senate

Concurrent Resolution 24 and to Senate Bill 1913. We believe that both of these bills -- despite their subtlety and their careful drafting and craftsmanship -- are really just, in effect, massive resistance. We do not believe they are responsive to the legitimate concerns expressed in Mount Laurel, to the legitimate housing needs of low- and moderate-income people, nor to the legitimate demands that low-income people have the same opportunity to choose where they live that affluent people have and, in particular, the same opportunity to choose to live where the jobs are, that more well-to-do people have.

We support Senate Bill 2046 as a framework for implementation and vindication of those rights. We have been very happy and privileged to be working with the ad hoc drafting committee and, while we think it is inevitable that that committee is going to come up with amendments, refinements, and fine tuning, we believe that it is a good process. We think the bill is a good framework. We believe it is a bill that this Committee should report out favorably.

Now, let me comment on a number of areas on the draft you have before you where we have concerns, just to describe to you the kinds of concerns we have. One area that has been talked about a good deal is the area of phasing, that is, once the municipality's housing obligation is established, how fast does it have to act to fulfill that housing obligation or to permit private developers to do their thing to fulfill that housing obligation? In Section 22 of S-2046, a particular phasing schedule is proposed, along with some general criteria for evaluating phasing schedules. At this point, we are doubtful that there is any one formula that is going to make sense, any one set of percentages. We certainly do not think that a sixth per year, as was proposed by one witness this morning, is going to turn out to be appropriate everywhere. We are very doubtful that the formula suggested in Section 22, which is 25% the first year and then 15% in each subsequent year, is likely to work in all places. In some municipalities, that is clearly going to be too much the first year. In some municipalities, that is much less than they can and should absorb. I would just cite the example of Hanover Township, where the agreement we have entered into calls for 50% to be permitted within the first two years and 100% within the first four years.

We suggest that the bill should properly have guidelines and criteria for the court and for the Affordable Housing Council as to how much to approach phasing, but we are very doubtful that any particular formula is going to work throughout the State, or should be imposed throughout the State.

In the area of fair share, we had an extraordinary process take place in New Jersey under the auspices of Judge Serpentelli. He got some 20 planners together representing all conceivable interests -- representing municipalities, representing developers, representing civil rights' organizations -- got them into a room and, in effect, locked the door on them. He said to them, "I want you 20 planners to use your best efforts, exercise your best professional judgment, and insofar as you can, put aside your concerns about whom you are advocating for, and come up with a consensus." As a lawyer, I know that if you put 20 lawyers in a room, nothing would happen. I think it is a credit to the planners and housing experts who were in that room that after three days they, in fact, emerged with a consensus. The consensus is embodied in a report under the name of the Chairwoman of that committee, Carla Lerman, who is the Director of the Bergen County Housing Authority, and it was, last week, endorsed by Judge Serpentelli at the Warren Township decision. We think it was a remarkable accomplishment. It involves compromises. It is not the plan we would have drafted if we had been drafting it, but we think it represents a reasonable approach.

We question whether the Affordable Housing Council under this bill should reinvent the wheel. We would suggest that the Affordable Housing Council have direction to specifically look at the work that has been done by this group as reflected in the court decisions that are now emerging. I think, so far as possible, they should build on that rather than start from scratch. Our concern in some large measure is a concern not to add additional months of delay to the process. One might well imagine that this Council, well-intentioned and well-staffed as it may be, and punctiliously hearing all points of view, might well take nine months or a year to come up with a piece of work that is not so different from what these 20 planners came up with. We would

suggest that legislation more specifically direct them to build on work that has already been done, rather than starting from scratch.

A third area is an area that has been talked about very much already today. That is the area of housing subsidies, how they should be obtained, and how they should be used. The area is addressed in Section 20 of Senate Bill 2046. It is important if you are thinking about housing subsidies to remember a little bit of history. When the first Mount Laurel cases were filed, the issue was not money. The issue was exclusion because, in fact, what brought on the original Mount Laurel case was that there was a group that had a HUD subsidy which was barred from building that subsidized housing in Mount Laurel Township. The moral one has to draw from that story is that the problem of exclusion, of people being denied the right to live where they choose, to have the choice that other people in the State are permitted to have because of their incomes, is one that is independent of subsidies. We have to address the issue of exclusion whether or not we address the issue of how housing can be financed. Even after we have enough money, God willing, we will still have to deal with the issue of exclusion. However, money has now become part of the problem. What has happened in the past 10 years is that there is a lot less money to go around. The Federal subsidies that were available in 1975 are not going to be available in 1985.

So, now if we intend to make housing opportunity a real opportunity and not merely a theoretical one, we have to address the issue of money. We believe that the proposal to raise money through an increase in the real estate transfer fee is a reasonable one. We think that a substantial portion of this money will have to go, and should go, to urban areas, because regardless of Mount Laurel and what kinds of fair share plans are going to be put together, it is clear that a substantial portion of need is going to have to be met in the cities, and should be met in the cities.

We have two bills which propose to use this money. We have Senate Bill 2046 and Assemblyman Schwartz's bill, Assembly Bill 974. It is our view that those two bills are going to have to be, and ought to be, reconciled in a way that appropriately allocates funds from

whatever source between dealing with housing in urban areas and dealing with housing in suburban areas. We have offered to work with Assemblyman Schwartz, and we offer to work with this Committee, to try to come up with a means of partitioning that money. I would only comment that the language that is now set out in Section 20 of S-2046, which simply calls for "a reasonable percentage" of money to be allocated to urban aid municipalities, is too vague and uncertain. It is language that can only result in urban areas and suburban areas being pitted against each other in a fight over the money.

One point that is not addressed in S-2046, but which we think ought to be addressed, is the issue of implementation that has begun to emerge. The Supreme Court has suggested, and it is our experience in practice, that if we are going to create affordable housing, we have to take steps to assure that it remains affordable. In the kinds of agreements we are negotiating, we are writing in provisions designed to keep housing affordable for a period of 30 years through resale price controls, rental controls, and the like. As municipalities begin to cope with the need to create a market of affordable housing, it is clear that some kinds of administrative structures need to be set up. A number of municipalities, Bedminster for one, Lincoln Park for another, are proposing to set up nonprofit corporations. It seems to us more efficient to try to do this on a centralized basis rather than having 80 or 100 little nonprofit corporations administering these controls -- to have some kind of a joint organization. We would suggest that language of this sort authorizing that kind of a joint organization, perhaps under the control of DCA, be incorporated into the bill.

In short, we oppose Senate Concurrent Resolution 24. We oppose Senate Bill 1913. We support and look forward to seeing more refined versions of Senate Bill 2046. I thank you for your attention.

SENATOR LIPMAN: Thank you very much. Senator Stockman wants to ask you some questions, but may I say that I appreciate your remarks about Senate Bill 2046. I will take them under advisement carefully.

MR. EISDORFER: Thank you very much.

SENATOR STOCKMAN: Mr. Eisdorfer, I share Senator Lipman's comments about your support for S-2046, for your input into it, and for the role that the Public Advocate has generally taken in this whole subject. For me, the most difficult and troublesome issue that seems to be coming to the fore, and which I would very much like to have a little dialogue with you on, is an issue that I think Senator Gagliano really brought out in Point Seven of his, I thought, rather measured and obviously sincere arguments about how to improve this bill. I think you heard his comments and I won't necessarily repeat them here, but they go to this question-- Well, he approached it on the theory that by the realty transfer tax we are effectively really taking more money out of the suburbs -- if we have to get into that -- and delivering it to the urban areas. While I know the argument can be made back that the bill doesn't mandate that per se, I think it is likely under the spirit of the bill, if not the letter, to happen. To me that is not troublesome. I think there is an understandable justification for that if, in fact, it goes that way.

He goes on to suggest that this should be deleted from the legislation unless substantial housing credits toward housing quotas in the region are given to those municipalities which are required to comply with Mount Laurel objectives. In that way, a substantial amount of rehabilitation could take place in urban areas and, at the same time, we would allow suburban municipalities to develop new housing at a more reasonable pace.

It is a question of those people who are starting to say that the builder's remedy and the implications of it, from a planning point of view, perhaps go too far. Let us subsidize what we are trying to accomplish through revenues, and let those revenues come from suburban areas and be used, in part, to rehabilitate deteriorating but basically sound-quality housing stock in urban areas, and do two things: reduce the pressure on them at perhaps overexcessive or quick development, and restore the cities. To not do it is to invite further deterioration to the cities and an erosion of some of the more stable populations of the cities.

Is the Public Advocate unalterably opposed to some type of an approach of that sort?

MR. EISDORFER: Senator, that is a complicated question, and I am afraid I am going to have to give you a complicated answer, if you will permit me. As I suggested a few moments ago, the issues in Mount Laurel and the implementation of Mount Laurel really involve several different kinds of things. One kind of thing is simply the problem that we do not have enough housing that is safe, decent, and affordable to meet the needs of 40% of our citizenry that are in the low- and moderate-income categories. That is, in large measure, a problem of money. Certainly, wherever we can meet those needs, and wherever we can find money to meet those needs, we should. However, there is another strand to Mount Laurel, and that is the strand that people should have a housing choice. People, because they are poor, should not be systematically denied a housing choice that historically over the past 30 years the more affluent have had, that is, the choice to live in the city or in the suburbs. We do not believe that in the name of providing more money people should continue to be denied that choice. We do not believe that is an acceptable, appropriate, or constitutional trade-off.

Now, we are very eager to see suburban municipalities undertake to use public moneys generated within their borders to deal with the housing needs within their borders. We have now, in a number of instances, seen suburban municipalities set up rehabilitation programs to use publicly-owned property to, in effect, subsidize housing construction without using the builder's remedy. We think those are very desirable things to do.

I would agree with you that the builder's remedy or, to be more precise, the idea of 20% set-asides for building an upper- or middle-income unit for every low- or moderate-income unit, is an exceedingly inefficient way of doing it. Any devices we can find that create a housing choice and avoid the necessity for building four units of housing for every one we are really interested in, should be encouraged.

SENATOR STOCKMAN: Mr. Eisdorfer, if a sincere effort, legislatively, were undertaken to fashion some legislation that would move in the direction I have tried to explore with you -- if in one

sense, there was a real protection of this freedom of choice and the important constitutional issue or issues that are wrapped up in Mount Laurel would be protected in that, any such legislation would have to pass the test of judicial scrutiny.

Do you think there ought to be some effort at allowing municipalities to deal with this issue on a more regional basis so as to catch and capture some of these housing stocks in more urban areas, because these poorer urban areas inevitably seem to be within reach? They are pretty well placed when you think about it -- Newark, Trenton, Camden, and a few other places. Should this be locked into each municipality and each municipality's obligation on this issue, as opposed to a combination of the region?

MR. EISDORFER: Senator, in 1975, the Supreme Court bemoaned the fact that no one was coming up with regional solutions. The court said, sadly, that we had to deal with municipalities one by one because that is the only way we see them. We would certainly support efforts at regional solutions. We would welcome those subject to the same concerns I have just described to you, so long as they, in fact, are responsive both to the objective of producing more affordable housing and preserving our existing housing stock and, also, facilitating and vindicating the right of people to choose where they live.

SENATOR STOCKMAN: It is going to take a high degree of leadership and courage, I guess, to really come up to this issue and deal with it wisely. As you mentioned, you can pick a number of phrases that seem to really hit at fundamental fairness and justice when you are dealing here. You used the phrase, in the name of more money to trade off, for instance, constitutional rights. That sounds real bad. I sure do not want to be tagged with that, and I'm sure every other member of this Committee and everyone who is involved in the struggle of trying to find a sensible answer feels the same way. But, more and more it seems to be a question of degree and, certainly as you point out, a question of revenues. I remember way back getting into this issue more and more and I will very frankly suggest publicly that one of my thoughts was this. It is kind of simplistic, but it may touch on the issue we are debating or discussing here now. I said

to myself, "In a general sense, it seems to me that the people who have reacted most strongly, most hostilely, and most negatively to Mount Laurel II tend to be the people who are least enthused, least turned on by, or least concerned about the plight of some of our older, deteriorating urban communities." In that frame of mind it struck me that perhaps here and now at the very least is some leverage that a court has given us where in return for being sure that this decision does not abuse them or go overboard in those suburbs, perhaps we can get some resources for the urban areas.

In one sense that can be a dangerous way to look at things, I guess, but it struck me. It may be the way that history will have to write the outcome of this struggle we are in now.

I appreciate your statement. I appreciate, as I said, the tremendous work that Joe Rodriguez and your Department have done on this. I thank you for appearing before our Committee today.

MR. EISDORFER: Thank you.

SENATOR LIPMAN: Senator Saxton?

SENATOR SAXTON: Mr. Eisdorfer, I am very interested in the testimony you have given and I think I can see your position quite clearly, a position I have known for quite some time. I know you were here this morning and you heard some concerns expressed by people who live in or who represent communities that are the subject of Mount Laurel II. As I read through the testimony here with you while you were paraphrasing from it, I noticed quite clearly that you are a very strong advocate of what appears to be the approach that has been used and you support the decisions of the court relative to the builder's remedy. You do not seem to be all that concerned about what may happen out in those communities. Maybe that is an unfair statement on my part, but I can see your point of view as an advocate of getting this job done, of getting low- and moderate-income housing built.

I do not see any concern in your testimony, however, as to what the consequences might be for the municipalities which are directly concerned and responsible for implementing these kinds of changes. Would you care to comment on that?

MR. EISDORFER: Yes please, Senator. I suppose I have two thoughts. One is, it seems to me that any remedial legislation that this Committee generates and that the Legislature considers, has to meet the test of realism. It actually has to be workable. You know, we are certainly concerned that whatever comes out of this room be something that, in the phrase of Mayor Hornik this morning, "Works in the trenches."

In dealing with municipalities, it has been our position to say, "Okay, what is actually going to work here?" To cite an example that was remarked upon in the written testimony, Roxbury Township made a very persuasive case to us, though it may or may not have persuaded the court, that they had profound constraints imposed upon them by the Department of Environmental Protection, which was going to limit the total amount of central sewerage they were going to be able to do. They persuaded us that in terms of realism, that put a limit on the number and timing of low-income units that could be provided. We were responsive to that in terms of the kind of settlement we negotiated with them.

It seems to me that the early consensus of the 20 planners was also specifically responsive to that. The way that report was cast was, "Here is a formula. It is a formula based on data that is generally available. It is reproducible. Any planner sitting in his office can use it as a way of determining what his municipality's obligation is going to be, but we understand that once we have this number, there then has to be an opportunity to adjust it, to refine it, in light of the particular circumstances of that municipality." We think that is an appropriate approach in whatever form this happens, whether it happens in court or, hopefully, whether it happens before some administrative agency as a result of legislation passed by this Legislature that that kind of individual tailoring takes place.

I have a second thought which is perhaps tactless. If it is tactless, I beg your apology in advance. This is the cry we are hearing now in the ninth year after Mount Laurel, "Me oh my, how can we possibly do it?" This was not what people were saying nine years ago, or anytime in between. It seems to me that municipalities which

recognized their obligations in 1975 and engaged in rational planning will not find themselves in need of making such pleas now. It is my feeling that municipalities which began rational planning a year and a half ago, rather than waiting to be sued, might well be in a better position than those who waited to be sued. It is my feeling that municipalities which begin rational planning right now, rather than waiting for decrees to enter or, indeed, for legislation to pass, will be in a better position two years from now than those who say, "Let's wait." If that is tactless, I apologize.

SENATOR SAXTON: What are your suggestions for municipalities which over a four- or five-year period would perhaps double the number of housing units within their borders?

MR. EISDORFER: Well, that is a phenomenon that is not unknown in New Jersey. There are many municipalities which have voluntarily chosen to do that. I can't testify as to Marlboro or Warren, from whom we heard this morning, but there are certainly municipalities now which at the same time they plea, say, "We are not capable of doing this under a court order," or are zoned in a way that invites that to happen without a court order. Rapid expansion at the fringe of development is the norm rather than the exception in New Jersey.

SENATOR SAXTON: You may very well be right on that. I can think of an instance in Burlington County where that happened. It happened to be a town which was formerly called Willingboro, which was then called Levittown because the builder decided it would be better called Levittown. Then, some years later, the name was returned to Willingboro. Over a 10-year period, I suppose the population doubled, tripled, and quadrupled over and over. The tone of your answer, however, leads me to believe that you think that might be kind of the norm, that that might happen on occasion, when in fact you and I both know it is not.

MR. EISDORFER: Well, it happened in two decades in a row in Hanover Township. It happened in Denville Township. It happened in Montville Township. My guess is it probably happened between 1960 and 1970, and 1950 and 1960, and it probably happened in between a third and a half of the municipalities in Morris County.

SENATOR SAXTON: We could debate that question, and I could tell you that in District Eight I have 27 towns and I don't think it happened in any of them.

MR. EISDORFER: That may well be.

SENATOR SAXTON: We could carry this on for a long time.

MR. EISDORFER: Sure.

SENATOR SAXTON: But the point is, there is a municipality in my district, if I may be a little parochial for a moment, which has had an increase of 2,000 units -- they are probably now to a total of perhaps 8,000 units -- over the past 10 years. In this situation, that municipality, without any planning up until this point to create sewer capacity, to increase their police force, or to build another school, if you will, would now be forced to build 5,000 or 6,000 units. How does that community deal with that? Do you advocate that the State should provide some financial aid to that community, or do you suggest we just let the municipal property taxes go up to \$4,000 or \$5,000 per house? How do you deal with that problem? That is a practical problem that we, as a gentleman said this morning, have to deal with in the trenches. It is nice to say, "Yes, we need more affordable housing," and it is great that the courts have issued the Mount Laurel II decision, but how do you do it?

MR. EISDORFER: Senator, that is an exceedingly complex question.

SENATOR SAXTON: It is an exceedingly complex problem.

MR. EISDORFER: In some sense it is a question that can only be answered on a municipality-by-municipality basis. One of the thoughts that I think lies behind the question is -- and if I don't find its reading stop me and I will go someplace else -- it does not seem to me, and it does not seem to us as a Department, that the absence of infrastructure is a permanent justification for municipalities not meeting their fair share of the housing need. However, that is something that may well go to the appropriate timing. It may well be appropriate to phase in a municipality's obligation over some period of time, so that it does not get ahead of the municipality's ability to provide infrastructure and to provide the

kinds of services that must accompany any increase in population. If that is the kind of concern you are pressing, it is one we certainly share and agree with.

SENATOR CARDINALE: Mr. Eisdorfer, I am troubled by a failure to understand, I suppose, the basic position that you take with respect to SCR-24. Throughout the course of your testimony, you indicated that you support housing choice for people of all income levels. Whether they live in suburban or urban areas, I suppose you wouldn't differentiate in terms of supporting a housing choice for them. But, at the same time, it seems to me -- correct me if I am wrong -- that your Department takes the position that choices as to housing policy should be denied to all of the people of the State, because what SCR-24 does is not establish a policy, but rather gives the choice to the people of the State to establish that policy by a public vote.

Since the title of your office at least is Public Advocate, I find it difficult to reconcile your position. Forgive me if this is a basic question and perhaps one bordering on our essential philosophies, but I cannot resolve it in my own mind. Perhaps you can help me by telling me why the Public Advocate would deny the people the right to vote on this policy. Specifically, are you afraid that the people might not agree with the policy that you espouse?

MR. EISDORFER: Senator, it's motherhood, the American flag, and apple pie to be in favor of everybody voting on everything. If you are asking me, shouldn't the popular will prevail, how can I say no? But, of course, the story is more complicated than that. SCR-24 is a proposal that purports on its face to be one that endorses housing choice and lends itself to being supported in those terms. We believe that it does not. We believe, in fact, that the effect of adopting this constitutional amendment would be to deny the choice that the affluent have had over the poor for the past 30 years. We think that offering this as a referendum is framing the question to the public in a way that is bound to be deceptive. It may well be that there is a whole array of questions that cannot be put in the space of 50 words or less when the popular will is solicited. I don't know. But, regardless of whether that is true or not, it does not seem to us that SCR-24 is a proposal that fairly solicits the popular judgment.

SENATOR CARDINALE: Mr. Eisdorfer, what you have done in answer to my question is merely restate the position that you have taken. You have said that you do not feel that it is an adequate public policy, if I may shorten your statement a bit. However--

MR. EISDORFER: (interrupting) Senator, I don't think that is what I said, but please go ahead.

SENATOR CARDINALE: Well, in a few more words than that, I believe it is what you said, that you believe SCR-24 embodies a public policy which you do not feel meets your criteria for what would be a good public policy for the State of New Jersey to follow. I understand that that is the position of the Public Advocate. I have no problem accepting the fact that you believe that. I happen to believe that a majority of the people that I represent, at least, do not share your view. I am not suggesting that every issue be voted on by the people, but I am suggesting that this is a basic policy of State government. One practice has occurred throughout all of the history of the State of New Jersey, and now a radical departure is taking place. So, it is not in the circumstance of asking the public to vote on each and every single issue. As a responsible public official, which I take you to be -- you seem to be very serious and very knowledgeable about this topic -- why do you refuse to support something which says, "Let's test how the public would like to be governed on this issue"? They might agree with you; they might disagree with you. But, why don't you support their right of choice, when you do support choice in another area?

MR. EISDORFER: Senator, I think you have substantially mischaracterized my position. I am not sure I can restate it better than the way I stated it before. You know, I will repeat myself if you wish, but I am not sure I can add anything to the way I said it the first time.

SENATOR CARDINALE: In what way have I mischaracterized your position? Do you support SCR-24?

MR. EISDORFER: No, we oppose SCR-24.

SENATOR CARDINALE: You oppose SCR-24. Do you believe that SCR-24 is a good policy for the State of New Jersey or a bad policy for the State of New Jersey?

New Jersey State Library

SENATOR STOCKMAN: Madam Chairman, may I be heard?

SENATOR LIPMAN: Yes, you may.

SENATOR STOCKMAN: May I suggest that we are here to get some insight into these three bills. I think it is patently evident that the Public Advocate has been on record as opposing this legislation for months and months. I think the witness has expressed himself. I know how deeply Senator Cardinale feels about this issue, but on the question of whether we are really getting something that we can use further, I think we are starting to get to a point, Gerry, where-- In defense of the witness, I think maybe--

SENATOR CARDINALE: Gerry, with all due respect to your desire to respect the witness, and with all due respect to the witness, you know, I think you lawyers talk about positions. When you have a witness testifying in court, you use the phrase, "going to the credibility of a witness." Now, we are not going to the credibility of this person as an individual -- I don't mean to personalize it in this fashion -- but to the credibility of the position. This is a public official. We pay his salary. We pay the salaries for that whole Department, and I think we are entitled, among other things, when they come before us, to get an impression of whether they are doing the job of the people or whether they are doing the job of something else, whether they are serving their own individual personal philosophies or collective philosophies, or they are serving the philosophy of the people.

Now, I realize the hour is getting late, but we have allowed an awful lot of questioning and an awful lot of repartee among many of the people who have appeared before us, yourself included. This is the basic heart of the disagreement that many people have. There were many areas of disagreement, but this is the basic heart of the disagreement that many people have on this entire subject. There are many people who for years-- Ever since I have been in the Legislature, there have been some of us who have thought the Public Advocate's office ought to be abolished. There have been bills introduced to do that for this very basic reason. Now, I am not suggesting that here today, but I am suggesting--

SENATOR STOCKMAN: (interrupting) The witness is lucky.

SENATOR CARDINALE: (continuing) that there is what appears to me to be a basic hypocrisy in the position being taken by the Public Advocate when the Public Advocate says, "I support housing choice for all people whether they live in the suburbs or in the cities. Whether they are of high income, low income, or moderate income, they should all have housing choice." That is a very fine position and I am not saying it is necessarily wrong. The method chosen by the court to implement that position is the Mount Laurel II decision. You support Mount Laurel II. Why do you refuse to give the people an alternative choice, a different housing policy that many believe will ultimately also provide housing choice to all of the people of this State?

SENATOR LIPMAN: Senator, I have to interrupt you here to remind you that you are speaking to one of the staff of the Public Advocate's office. The question could be more properly addressed to the Public Advocate himself, number one, and, number two, if the basis for the existence of the Public Advocate's office is to be the defender of the people, I think they have a choice as to what side they will take, whether they will take the court's side or the public's side in this instance. They also have the role of causing all State agencies to comply to regulations, investigating these agencies if they do not comply, and recommending better procedures.

I think you are going to the very heart of the reason why they were created. It isn't so much to agree with legislators. I think we have our privileges too, and if we do not agree with the side that the Advocate is on, then we have to make that clear, as you are making it clear. Mr. Eisdorfer, if it makes you feel any better since Senator Cardinale thinks your Department should be abolished, I have a bill which would keep you intact for five years, for at least five years more. All right? That is what democracy is all about; however, I think the Department of the Public Advocate is different than the rest of the State agencies. The Public Advocate is proceeding to do what his role is and perhaps we should get Commissioner Rodriguez in, Senator Cardinale, and not put Mr. Eisdorfer on the rack.

SENATOR CARDINALE: Well, Madam Chairman, if Commissioner Rodriguez would be at our next Committee meeting to answer that

question himself, I would very happily -- because I am beginning to share your view that this witness is not really in a position to answer that question -- cease the questioning of this particular witness at this time and let the hearing go on.

SENATOR LIPMAN: All right, thank you, Senator Cardinale. Thank you, Mr. Eisdorfer, for your statement. Since there are no other questions, thank you, again, for coming today.

MR. EISDORFER: Thank you, Senator Lipman.

SENATOR LIPMAN: We will proceed with Ms. Kathleen Rae of the Regional Plan Association.

KATHLEEN W. RAE: Thank you, Madam Chairman. First of all I want to say that even though I have a stack of papers here, these are multiple copies of my testimony. I don't want to frighten you and make you think I am going to keep you here for three hours. Since I do have a prepared statement, and since so many other people have spoken so far today and have covered a number of very good points, perhaps I will just concentrate on covering some things that perhaps have not yet been covered.

I am Kathleen W. Rae, Director of the New Jersey Committee of Regional Plan Association. I am pleased to have this opportunity today to testify in support of S-2046.

First, let me say just a few words about my organization. Regional Plan is a nonprofit civic organization whose principal purpose since its inception more than 50 years ago has been to promote public and private policies and actions throughout the tri-state metropolitan region that improve the quality of life for all the region's residents. Early in the Association's history, our central concern was planning for the region's projected population explosion -- which, in the 1920's, was expected to grow from 11 million to 20 million by the year 1965, and it did do so -- with a general overall plan for future land-use development that addressed regional housing, transportation, education, and recreation needs. Regional Plan was one of the first civic organizations to actively encourage the creation of local planning boards, and the use of municipal master plans and zoning ordinances as tools in shaping the region's growth with settlement patterns which combined efficiency and amenity.

We still believe in the importance of local planning and zoning. At the same time, however, we recognize that fragmentation of government can lead to, and has often produced, local policies that work to the detriment of the region as a whole. In 1968, we noted that present zoning policies were the major block to a free housing market and the main cause of the unnecessary spread of the region. We recommended that housing supply should be allowed to meet housing demand in type and density, that more opportunity should be provided for low- and moderate-income households to find satisfactory housing proximate to job opportunities, and that intervention by State government to ensure that regional housing needs were met was appropriate.

Three years ago, the New Jersey Committee of Regional Plan examined the growing problem of housing affordability in New Jersey and recommended State actions to coordinate local land use, to provide a regional balance to local home rule, and to foster inclusionary housing programs with the incentives necessary to make them happen.

Speaking to S-2046, we believe that in general the framework that is evolving in this bill provides a reasonable and workable means for implementing the Mount Laurel constitutional obligation to provide realistic opportunities for low- and moderate-income housing. I also believe that this legislation -- as so often has been the case with other significant legislation in New Jersey -- will serve as a model for other states seeking to address their fair share problems.

While recognizing that the bill is undergoing numerous suggestions for amendments, I would like to just make a few very general comments regarding the general strengths and weaknesses of the bill in its present form.

Certainly, the Council on Affordable Housing and the certification process that it will administer under this legislation can be a very workable means to carry out the Mount Laurel mandate. There have been a number of suggestions made today on how that process might be further streamlined or how it might be made even more workable than it was when it was originally introduced. I think that the significant point about the Council and the certification process is

that they provide for the mediation of disputes. This administrative mechanism offers the opportunity for a sound process that avoids the seemingly endless and costly litigation that has been the rule rather than the exception to the Mount Laurel issue since its inception more than a decade ago. I think that this is advantageous, obviously from the State's perspective, and certainly from the municipal standpoint where litigation is both costly and upsetting.

The housing bill is an important companion to Senator Stockman's bill, S-1464, and, as was mentioned earlier I believe by Senator Gagliano, it is essential that this legislation explicitly reference the State Planning Commission as a resource to the Council and call for the Council's fair share plan to be consistent with the growth and conservation policies enunciated by the Commission and reflected in the State Development and Redevelopment Plan.

The proposed subsidy program is another element of this bill which is very essential to the success of a fair share housing implementation program in New Jersey. As was mentioned earlier by others, with the cutback in Federal support for low- and moderate-income housing needs in the State, a new State funding initiative is critical. Local governments, prompted in the past by their own fiscal considerations to "zone out" residential development, can scarcely be expected to provide the funding support necessary. Moreover, the lack of affordable housing in New Jersey is a statewide problem that demands a statewide response. Local creativity in designing and implementing new programs should be encouraged, but equity demands that the State provide a substantial share of the public dollars to support this effort.

One concern which has been expressed from two different vantage points -- I would like to speak to just one of those -- concerns the fear that the Mount Laurel decision and the fair share housing plan which the State, through this legislation, might set up and implement will contribute to the further decline of New Jersey's older cities by drawing resources, both human and fiscal, away from the cities to the suburbs. I think this concern is a legitimate sentiment, but I think that this legislation can provide a situation in which it

will have little substance in fact. The bill requires that a significant amount of the funds to be used through the subsidy program be designated to urban aid municipalities. It also lists a number of specific purposes that are designated for funding. Among these are rehabilitation, adaptive reuse, and housing for the homeless. All of these are substantially urban housing needs and, indeed, the subsidy program should provide a reasonable share of the funds to meet those very desperate housing needs which are concentrated in our urban areas.

There is one last point I would like to make which has not been mentioned by any of the other speakers so far, and I think it is a very important one. That is the question of the appropriation which this bill presently contains. The bill appropriates \$250,000 for the operation of the Council in its first year. While the legislation is attempting to create a process which is not bureaucratically unwieldy and can be streamlined and operated efficiently and effectively, I fear that this appropriation may not be sufficient to enable the Council to do its job effectively and efficiently. It is imperative that the Council, once established, expeditiously prepare a fair share plan for the State and respond to the municipal certification compliance as well. The \$250,000 annually that is presently included in this bill, particularly in the critical first few years of the Council's operation, is surely not enough to carry out the responsibilities with which the Council will be charged. So, I would certainly encourage you to consider funding levels well in excess of the \$250,000, at least initially in the first, say, two years of the Council's operation.

Senator, I would like to commend you for this initiative and I would like to pledge the continued support and assistance of my organization in moving ahead with S-2046. I think that Mount Laurel has been a volatile and controversial issue in our State for many years. With the passage of new legislation, I think it need not be so in the future. Clearly, advancing New Jersey's economic and social vitality depends on our capacity to provide adequate housing that is affordable, as well as proximate to services and jobs in our State, to our diverse population, a population which is both rich and poor, young and old, singles and families, indeed, all the residents of New Jersey. Thank you.

SENATOR LIPMAN: Thank you very much, Ms. Rae. I would just like to speak to the \$250,000 and explain that that is the usual appropriation suggested by the Revenue and Finance Committee's Joint Appropriation Fund to set up a new agency. That is the usual sum. I'm sure it may require more when the Council gets going, when we pass this legislation. I'm saying when because I'm sure we have to do something. That is just the usual figure that is put in when starting out, but we may have to take into consideration that the pace may be a little more accelerated. Thank you very much for the suggestion. Senator Stockman?

SENATOR STOCKMAN: Ms. Rae, you were here, I think, when I put some questions to the Public Advocate's representative, Mr. Eisdorfer. You really responded in a limited, but a direct way in Paragraph 4 to this concern about our older cities. I would like to ask you if you could elaborate a little on that in light of my exchanges with Mr. Eisdorfer. Are you and/or your organization unalterably opposed to some concept of an expanded area of response to Mount Laurel II, a regional response, whereby a community could, through contributing resources to rehabilitation in another community, satisfy a portion of its Mount Laurel obligation? Is that a fundamental error to you and something to be absolutely resisted, or is it a matter of degree?

MS. RAE: Not at all, Senator. As you know, I have been serving with the ad hoc committee in an individual capacity in the drafting of this legislation, as well as in considering a number of amendments to it. I think that that is an issue to be taken up by both the ad hoc committee and by the members of the committee.

SENATOR STOCKMAN: So, it is still a live issue?

MS. RAE: I think it is a live issue. Certainly, in looking at regional housing needs, municipal boundaries, you know, they are an artificial creation and we have to be as creative as necessary to obtain a balance between urban and suburban housing needs and housing issues. So, I think there is a lot of room to look at the various trade-offs that might be involved and to find a creative way to deal with the very issue you have raised.

SENATOR STOCKMAN: It is a very sensitive issue -- I think you would agree with me -- and one where some people, particularly some people in urban areas who have felt a certain prejudice and certain frustrations for a long time, can react very strongly if they misinterpret what we are talking about. However, I gather that you personally and your organization are not-- I think you have expressed yourself. It is an area that has to be continued to be considered.

MS. RAE: Well, also from a practical point of view, sir, as well. Much of our available stock in terms of affordability in this State is in our existing housing. It is ultimately cheaper in many ways to rehabilitate, to improve existing housing stock, than it is to create new construction. So, in looking at the resources available and how they are to be spent, we can't ignore the issues you have raised.

SENATOR STOCKMAN: But at least in theory, one could say do all of that in those urban areas where that stock is available, but that should have nothing to do with the obligations of suburban town "X" some distance away.

MS. RAE: I'm not so sure really that you necessarily have to look at it that way. We have to go back to the basic question of housing--

SENATOR STOCKMAN: (interrupting) I'm not either, incidentally.

MS. RAE: (continuing) needs and, as the Public Advocate has said, there are two separate issues of concern here. One is the practical need of the people in New Jersey for housing that is adequate, that is standard, that they can afford -- the 40% that he mentioned who really fall into the low- and moderate-income category. Beyond that, there is also that balance of housing diversity amongst communities.

SENATOR STOCKMAN: Thank you.

SENATOR LIPMAN: Senator Saxton?

SENATOR SAXTON: I'm not sure whether this question is germane or not--

MS. RAE: (interrupting) Try it.

SENATOR SAXTON: (continuing) but it is something you made me think of, so let me ask it anyway. We are really talking about some far-reaching social legislation which may in the long term end up being very desirable, or maybe the fears of some are well-founded and it may not be desirable. This raises questions about other social implications that I am curious about your reaction to, because you have obviously spent a great deal of time working with and thinking about this subject.

In a town, say a town 20 or 30 miles from the city, where people are accustomed to having lived perhaps all their lives and now have an opportunity to move out to a suburban town with certainly a different atmosphere, different types of transportation, different facilities available than what might be available in an urban setting, different doctors' setups, different clinic type setups, how to get to the dentist, how to get necessities -- how do you visualize the circumstances where a family would change from what they have always been accustomed to, to a completely new setting? In a social sense, does that create any problem for people on a large scale, or is that something you feel can be dealt with and adjustment made fairly easily?

MS. RAE: I do not have the sense that we are looking at massive relocations of population. We have had continuing trends in New Jersey over the last 30 years that have tended to disperse our population from existing centers into those growth bridges of new development. From the standpoint of my organization, we believe that from a planning perspective there is a need for more compact development in New Jersey, whether it is in cities or whether it is in the suburbs. We have tended to be very intensively consumptive of land, so that going out to a new community perhaps, or a more rural community, doesn't necessarily mean that there can't be a center there that provides the kinds of services that you talked about.

I think there is another thing I would like to mention which your comment--

SENATOR SAXTON: May I follow up on that?

MS. RAE: Yes, sure.

SENATOR SAXTON: The fact is that in the communities that come to my mind, those centers do not exist. If we are talking now about a community which goes into the fair share program and solves the situation by way of the builder's remedy, say, over a five-year period with 5,000 units, and 20% of those are for low- and moderate-income folks in a community that is established where there is currently no such center, is it economically viable at that point for those services to want to locate there?

MS. RAE: Well, certainly to the extent that there is a population to support services, whether it is grocery stores, shops, or whatever, there is a tendency for those services to locate where there is a demand for them. From a personal or a practical point of view, I am not really sure that a municipality faced with the design of an environment that supports those sorts of services creates some accessibility to them for people and can follow a pattern which may be somewhat different than the prevailing pattern we have seen in New Jersey in terms of suburban tract developments. There is certainly every reason to believe that any new construction could be more oriented not just for the sake of the 20% of low- and moderate-income households, but, also, for any household living in that new housing to make services and facilities more accessible.

As a planner, I can certainly promote that kind of a land-use pattern, be it in a suburb, or wherever, over a tendency to sort of disperse our housing on rather large lots in such a way that people find those things inaccessible, and to the extent that some people prefer that they should have that option. But certainly we have seen in New Jersey that that has been a prevailing pattern because of local zoning, that the option for more center development has tended not to exist in this State for the last 25 or 30 years in terms of new growth.

The other point I wanted to make was just to mention to you that although we are looking-- You know, there is an interesting anomaly in New Jersey if we look at a lot of our suburbs and that is -- because I know you were referring to the kind of growth you have seen in some of the Burlington County communities -- we have suburbs in New Jersey, not just older suburbs, but relatively newer suburbs, which

have actually seen their populations decline in the last decade. What we have seen is a change in demographics. We have smaller household size per unit of housing that already exists, so that for many communities it may well be that increasing the housing choice in the community may not really necessarily strain their capacity to accommodate more population. That is an interesting anomaly which is to be considered and to be looked at certainly.

SENATOR SAXTON: From the urban centers, the suggestion has been made by some -- in fact, by many people -- that people who would be interested and, in fact, able to buy a low-cost or a moderate-cost house in the suburbs would not necessarily be the real urban poor that many of us have cooperated with urban legislators and shown concern for through our votes in the Legislature, through appropriations, and so on. In fact, the middle class urban population would be the population that would be most likely to be able and to want to take advantage of that opportunity that might be afforded now somewhere other than in an urban center. Do you react to that question one way or the other?

MS. RAE: Yes, I think to the extent that a broader diversity of choice allows households of all incomes, urban and suburban, more opportunities to locate themselves close to jobs, and so forth and so on. I think there are benefits to be derived from that. I think the problem for the cities is-- You mentioned the problem of the urban poor, but clearly the Mount Laurel population in our State is a much larger population. The urban poor is a component of that, but it is not the only component of that. Certainly, there is a need for a greater diversity of housing within the cities. I have often facetiously thought that the cities needed fair share housing plans as well, but they need fair share housing plans for middle- and upper-income households because they have borne the weight for so long of a poor population with higher demands for public services and a smaller capacity to provide those.

I am not really sure that the point you raised, which was that somehow Mount Laurel is going to remove from the cities some base of stability that they have, needs be the case, or one that would negate the benefits of Mount Laurel. I think these things can be dealt

with and planned for in ways where this does not have to happen. Frankly, I am not sure that it would happen in any case. That is an opinion.

SENATOR LIPMAN: Thank you so much for coming. We appreciate it and I assure you we will take your remarks under consideration.

MS. RAE: Thank you.

SENATOR LIPMAN: Mr. Robert Ferguson, from the New Jersey Association of Realtors. Is he still here? (response from the audience) Oh, are you replacing him? (affirmative response) All right.

SUE KOVAN: My name is Sue Kovan. Bob Ferguson could not be here right now. I am one of the other lobbyists for the New Jersey Association of Realtors. I have a short prepared statement. Basically I am just going to paraphrase the statement that Bob would have made if he were still here. I am going to address myself just to Senate Bill 2046.

NJAR is a trade association whose membership is comprised of real estate licensees who are involved in all aspects of real estate sales, management, appraising, and counseling, with the majority of the membership specializing in residential sales in every community in the State. I give you this background to establish the New Jersey Association of Realtors' housing credentials.

I certainly appreciate the opportunity to appear before the Committee today to discuss Senate Bill 2046.

NJAR concurs with the New Jersey Supreme Court statement that legislative action rather than judicial fiat is preferable when dealing with the sensitive issues which S-2046 seeks to address, namely, the intelligent implementation of the Mount Laurel decisions.

At some point, NJAR would like to urge the sponsor to secure a fiscal note in order that everyone is made aware of the cost of the enactment of S-2046. We believe it will be quite costly.

In Section 4.a., where the Council on Affordable Housing is created and the membership of the Council is spelled out, our Association would urge that the membership of the Council be enlarged or redefined to permit appointment of individuals who have practical experience in housing. All too often in our State those who know how

to provide housing, not by theory, but by practice, are excluded from the decision-making process.

The New Jersey Association of Realtors is also opposed to Section 23, which would mandate that the New Jersey Housing and Mortgage Finance Agency earmark 50% of the proceeds of their tax exempt bond issues for the next four years to assist in the financing of low- and moderate-income housing. The Association feels that this newly-created agency, which was a merger of the Mortgage Finance Agency and the Housing Finance Agency, should not be restricted or dictated to on how the New Jersey Housing and Mortgage Finance Agency will meet the mission of the Agency. The past performance of these two agencies which have merged is one of sensitivity to New Jersey's housing needs, and we feel it is unwise to tie their hands in any way, as is proposed in Section 23.

We would also like the record to indicate that we are strongly opposed to the proposed doubling of the realty transfer tax from \$1.75 per \$500.00 of consideration to \$3.50 to finance the purposes of S-2046, no matter how worthy a purpose the bill promotes. We do agree that this is a very worthy purpose.

The realty transfer tax, which replaced the Federal Documentary Stamp Tax Act in 1965, was created as a means of providing those involved in real estate property tax assessment processes with meaningful data which previously was available as a result of the Federal Act.

NJAR feels it is wrong to burden the buyers and sellers of real property with the cost of a social program mandated by the New Jersey Supreme Court.

The cost of implementing the Fair Share Act should be borne by all citizens in the State through the general appropriations process, and not as advocated by S-2046. We can only foresee that the realty transfer tax rate will increase and increase as the full impact of S-2046 takes effect. The program advocated by S-2046 is an expensive one and will become more so in the years ahead.

Why should someone who may have less income than those you seek to help under S-2046 be required to pay double the existing tax because he or she happens to own and then sell a home?

We are also concerned with what will happen to the realty transfer tax rate if the real estate industry suffers another recession because of high interest rates, and less money is raised than the projected \$27 million.

Will the bureaucracy created under S-2046 be reduced? Will the projects be reduced? Or, will the sponsors of this bill be asking for another increase in the rate to offset falling revenue, which we feel is probably most likely? As a matter of fact, Assemblyman Schwartz's companion bill has already increased the realty transfer tax to \$4.00 for \$500.00.

NJAR cannot support Senate Bill 2046 if the funding is to be generated through an increase in the realty transfer tax. Thank you very much.

SENATOR LIPMAN: I sort of suspected what you were going to say before you said it. I just want to know, with regard to your remarks about the make-up of the Council on Affordable Housing, did I hear a sort of suggestion that there should be a realtor on this Council?

MS. KOVAN: Well, we suggest that someone with practical experience in providing housing should be on the Council. It would be up to the sponsor of the bill to decide whether it should be a realtor, a builder, or both.

SENATOR LIPMAN: We have already thought about a builder or a developer.

SENATOR SAXTON: Madam Chairman?

SENATOR LIPMAN: Wait just one minute; I want to ask another question. Did you also notice that we almost named the head of the new super agency as the head of the Council on Affordable Housing in this bill, S-2046? If you take a second look, it seems to imply that he will be the head of this Council. The Commissioner who is over the New Jersey Housing and Mortgage Finance Agency is mentioned here twice.

SENATOR SAXTON: I just wanted to point out that as I sat and listened to Sue's testimony-- I am a realtor myself and I have some idea as to what is involved in the purchase of houses. While I am not as active as I once was, if you will just bear with me for one moment

and let me furnish you with some information as to what the doubling of the New Jersey realty transfer fee might mean, not only in the instance of the general public, but in the instance of what it is that the bill itself purports to do, it may be somewhat startling to you.

In the case of a house that one might purchase for, say, \$30,000, which would be a relatively inexpensive house, there are government programs, FHA and VA programs, where an individual can buy with a very, very low down payment. That is important because very often low-income people do not have the opportunity to accumulate a big down payment. In almost all of those instances where there is an opportunity to buy a house with a low down payment, there are also closing costs. People in the industry use a number of things to compute the closing costs, and one of those things is the New Jersey realty transfer fee, which is presently \$3.50 per \$1,000. If you were to take a house-- Perhaps this is the wrong example because I just wrote it down. I should have used a lower figure because my example, I guess, is a lower figure. I happened to use a purchase price of \$60,000 which is, again, not a low-priced house in terms of what we are talking about today. But, if you take the \$60,000 house and assume with me that the closing costs -- including some prepaid taxes and perhaps a lawyer's fee and title insurance, and maybe a survey -- come to something in the neighborhood of \$1,200, which would be fairly reasonable for a house at that price, and then said what it would mean to that individual to double the New Jersey realty transfer fee as this bill does, it would mean an additional \$210.00 on those closing costs, or increasing the closing costs from what might be \$1,200 to \$1,400 or \$1,450, or almost a 17% or 18% increase in the closing costs.

I just point that out by way of an illustration of something that may look like a small amount when you talk about the cost per \$500.00 or the cost per \$1,000. But, when you compute it, and what it really means to a guy who is trying to buy a house, as we say in the industry "on a shoestring," it becomes a very, very significant increase.

SENATOR LIPMAN: Thank you very much, Senator. Are there any other questions? (negative response) Okay, thank you, again, for your testimony, Ms. Kovan.

MS. KOVAN: Thank you, Senator.

SENATOR LIPMAN: Mr. Stuart Hutt of the New Jersey Builders Association.

STUART HUTT: Thank you, Madam Chairman. I am the general counsel to the New Jersey Builders Association. I did not come with prepared remarks because I came -- as I think Senator Stockman said at the beginning of the session, which seems like three days ago -- to learn and to listen, to give you just some general observations, and to comment on what previous speakers have stated.

I would like to point out that my understanding is that the hearing is on three things today. Just for the record I think we ought to make it clear that the New Jersey Builders Association is against SCR-24. We are against it because I think all it would do is create a Mount Laurel III. If that amendment is passed, it would have so many ambiguities in it and such staid phrases, that there would have to be a lot of litigation as to whether or not the municipalities met the standards set forth in that bill. We do not think it is the way to go. We think it is retrogression. We do not think you can have zoning and planning done on a populace-voting basis. It should be done by the Legislature after hearings of this nature with pros and cons from all sides, taking into account all kinds of viewpoints from people, scientific facts, and court decisions, with the legislative process taking into consideration how it should be implemented.

That is the main reason we are against SCR-24. As a matter of fact, if you will notice in our municipal land-use law, we specifically provide -- or the Legislature specifically provides, I should say -- that zoning and planning matters should not be put on a referendum. The reason for that section of the law, and it was done by the drafters, is because it can be, as today exemplifies, a very emotional issue that does not necessarily relate to facts and figures. You could have tyranny of the majority over the minority in populace views, which doesn't solve anything.

For similar reasons, we are against Senator Gagliano's bill, mainly because of the moratorium. The bill itself -- I call it the "90% moratorium" -- allows 10% of the units to be built over two years,

but then does not say what happens at the end of the two years. I don't know whether that is a drafting error or what, but only two things can happen. If at the end of the two years you can still build anyhow, it hasn't helped a municipality to any extent. All it does is create chaos. If, on the other hand, it was intended that you couldn't build the other 90%, we seriously doubt its legality and constitutionality, because the bill specifically says that you received a court order allowing you to build. Again, it only leads to chaos.

Regarding our thoughts on S-2046, we think that is a serious attempt to get the Legislature into the Mount Laurel process. To that extent we applaud it. Unfortunately, we do not have a lot of comments on it because it is what I call "a moving target." I have already received pages and pages of revisions of the bill that was introduced and, as you heard this morning, there are going to be other Committee meetings revising even those. So, it is very difficult to analyze the bill completely. Unfortunately, our Association, or its representatives, were not included on that ad hoc committee that you talked about until the last meeting, when we did have one representative there. I understand we are now being invited for future meetings. We will now be in a better position with that committee to raise some of our concerns.

I would like to give you some idea of some of our concerns which we will raise with the committee, some of which have been expressed here today. One is, we are against the realty transfer fee being used to finance a Mount Laurel objective or social legislation. If there is social legislation to be enacted, which is a policy decision of this Legislature, then everyone in the State should share in the cost of that social policy. It should not be a burden on people who own or don't own houses. It is just an unrealistic and irrational method of raising revenues. Furthermore, just as the Senator said, it will cost \$200.00 per house, and that is a lot of money to solve the problems of the legislation. If you took all the realty transfer fees in the State and doubled them or quadrupled them, it would still be a drop in the bucket in terms of actual revenue raised in order to successfully implement the provisions of the bill. So, it wouldn't

even accomplish what the sponsors want it to. If you are trying to accomplish the objectives of the bill, you must find suitable funding sources. Raising and doubling the realty transfer fee is a delusion and, not only is it unfair, but it is not going to raise anywhere near the kind of money you need for the purposes of the bill anyhow.

We agree that some of the provisions of the bill should be simplified. The time line should be narrowed down much in the way that the Public Advocate spoke about. I don't want to go further into that.

I would like to point out one defect in the bill that I consider a very serious defect which no one has mentioned, and I think that today displays it. There has been a lot of discussion here today as to whether things are going to work out. Will this doctrine under Mount Laurel legislation or court order work out? Will it be workable? Everyone here, from the Mayor to the Public Advocate, is concerned about whether it will be workable. The answer is a simple one. No one knows. If anyone says he knows, he should go into the stock market forecasting business and become a millionaire overnight. No one knows. That means that we cannot make legislation and ironclad formulas that experience dictates may need changes. Now, to be specific, the bill is replete with all kinds of definitions. They define poor as being 50% of median and moderate as being 80% of median, that you can only pay 25% of your income, and so forth. All those definitions in the bill are pirated or are taken directly out of the footnoting of the Mount Laurel decision. These are the standards that the courts are using right now today based on guidelines as to what they thought at that time should be used as guidelines. However, the court itself was very careful to say, "We think these are the guidelines that should be used, but we don't know whether they are going to work." Experience may dictate that they have to be changed.

So, I do not think the definitions in the bill should be locked into those guidelines. We are purposely creating a housing council or housing commission that is supposed to be developing some expertise. Let's say two years down the line it may find out, for instance with interest rates going up, that people have to spend, let's say, 35% of their income in order to occupy a house. In Europe, for

instance, they spend 50% of their income. So, if that is the case, if that turns out to be a fact, then either one of two things is going to have to happen the way the bill is structured. Either there will be no housing built at all because no one will be able to afford it with those income restraints as dictated by the law, or someone is going to have to pass an amendment to that formula, which again is silly because you don't want to keep passing amendments to statutes on things you purposely created a commission with expertise on.

Therefore, the definitions should not be tied into any numbers. Let the commission with its expertise, as experience dictates, come out with guidelines in the way any administrative procedure is done by any administrative regulatory agency. They'll have public hearings on them, they'll take testimony, and they will decree that they have studied it and these should be the facts. We do not think there ought to be strait jackets on those kinds of definitions. I realize the pressure that was on the draftsmen of the first draft, and the easiest thing to hang onto was just to paraphrase the Mount Laurel decision. For legislation, that is one thing, but for a board decision it is something else because the settlements right now-- For instance, one of the definitions says, "A housing development that is to be considered as having low and moderate housing should have a minimum of 20% low- or moderate-income housing." There are settlements right now, approved by the Public Advocate, by the Urban League, by the court, in which particular housing developments do not have 20%. I am personally involved in two, one of which where only 13% of the project has to be low and moderate. In another one, it is only 17%. There were certain tailored reasons for this. The court made up for it by making the town in general, for instance, have 20%. One of the ways they did that was, if a different town was going to subsidize out of its own funds and build 100 senior citizen apartments, all low, that meant that the developments could come in at a little less. So, you need the flexibility. I think it is a very poor drafting technique to stretch out toward those numbers.

We also, of course, parrot the previous speaker when we say that this Council, obviously, should have a member of the building

industry on it. You must never forget what I consider the most important part of the Mount Laurel decision, which is Footnote 37, wherein the court said, "When it is all said and done," -- and I'm paraphrasing the court -- "the builders have to make a profit, because if the builders do not make a profit, they are not going to build. If they are not going to build, we wasted an awful lot of time writing this 200-page decision."

The builders are the only ones who are going to build these things, not the planners, not the legislators, not the regulators, and not anybody else, and yet there has been no one from the building industry to give our point of view.

I would like to make two other points. One is, people are saying that money is the problem in Mount Laurel housing, and it is. The perfect solution would be if some foreign country would give us aid the way we give foreign countries aid. They could come in here and subsidize the building of 100,000 Mount Laurel units, because that is really what the need is, 100,000 Mount Laurel units. The need is not for a half a million houses. That is where the problem is, the four to one ratio. However, that is not going to happen. We are not going to get that kind of money, so we have to look at this more creatively and say, "How are we going to solve the Mount Laurel problem, which is 100,000 units, not 500,000 units?" Now, there are two ways to solve it. One way is very simple, and that is for the Legislature, in a one- or two-sentence act, to say that municipalities cannot prohibit the conversion of a one-family house to a two-family house if it meets certain standards, such as the outside has to look the same, parking has to be available, etc. You will find if any of you go to your tax assessors in any of the towns you represent and say to them, "Have we done a reevaluation lately?" that they will say, "Yes." You say, "Now, tell me the truth, when your reevaluation inspectors went into those houses, did they find any so-called phantom two-family houses?" You are going to be shocked to find that thousands and thousands of illegal two-family houses exist in this State. Even though the town, by ordinance, does not allow them, people create them anyhow for a variety of reasons.

This could solve a few other problems. For instance, as a previous speaker pointed out, there are different household units today. We need more houses but there is less population, believe it or not. The Sternley Report points out the demographics of that. It is a phenomenon that we are experiencing now. You have it in any one of your communities. The kids go off to college, or they get married, and let's say the guy is retired. As the Senator said, what is going to happen now with the taxes going up to \$2,000, \$3,000, \$4,000, or whatever it is going to be? The guy is on a fixed income; he doesn't want to move. He doesn't want to go to the Sunbelt. He doesn't even want to go down to the Sunbelt in New Jersey, down in Ocean County. He wants to stay in the community in which he still goes to the same dentist, if for no other reason, but he can't afford it. What he would like to do-- He has already created an apartment because his mother-in-law was living with him or something, and there is a schoolteacher in town, or maybe a cop or a municipal clerk, or any other type of personnel who is serving that municipality, maybe even on the municipality's payroll, who is looking for a place to live. He or she can't afford a place to live in that town. Now, if he created a two-family house, that person would have the income to help to pay the taxes to maintain that house, and the owner could remain in the community. The old-time residents who have been in the community for many years are really the stability of the community. With two-family houses, they wouldn't be chased out by white elephants and high taxes. The other person would have a place to live. It might even be the neighbor's daughter who, at the age of 21, decides it is time to live on her own and not with mommy and daddy, and yet can't afford to spend \$700.00 or \$800.00 a month for a garden apartment. The homeowner would be glad to take someone like that in. I notice that in some of the literature they talk about these as "granny flats" or "mother-in-law flats."

I respectfully submit that one practical, economic, viable way of solving the Mount Laurel problem is to take the existing housing stock, not only in the cities, but also in the suburbs, and house the Mount Laurel population in that fashion, reducing now -- let's take an

arbitrary number -- that need down to 50,000 homes instead of 100,000 homes. Now you would only have to build one-half the amount of new housing in New Jersey, and these pressures that you are talking about wouldn't happen.

There is a great perception out there that housing automatically springs up overnight. I mean, even before the Mount Laurel days, if I went into a planning board with a property for 500 homes, the neighbors got up in arms because they visualized that the date the approval stamp went down on that piece of paper they would turn out the lights and when they woke up the next morning the 500 homes would have cropped up. That is not the economic reality. That is not what happens. It's true you are seeing a lot of these paper approvals on Mount Laurel settlements and that someone is going to have 2,000 units, or 3,000 units or, as the Assemblyman said, 5,000 units. That is only approvals; that is not building. There are not enough carpenters, plumbers, money, finances, or demands for that. It is only an allocation thing. They are not going to spring up overnight and, as a matter of fact, even the courts now-- I just settled a case in which there is going to be 3,000 units, 20% of which will be Mount Laurel. That is for their fair share until 1990, which is only six years away. The Urban League, the court; and the town recognize, as does the builder, that there is no way they can build 3,000 units in five years. So, that is being spread out over 12 years.

It is a difficult thing to understand, and the average person doesn't understand it. However, the numbers are not quite as scary as they sound.

The one thing I would disagree with the Public Advocate about is that, in my opinion, Mount Laurel II does not, in any way, shape, form, or manner say that low- or moderate-income people should have a housing choice. You can search that opinion up and down, in and out, read every one of the 200 pages, and you will not find that sentence in it. Moreover, I don't think you will find it in Mount Laurel I either. In the Mount Laurel I opinion, the court did talk about the fact that the State should provide a variety of housing choices in the State, but that is a far different thing than saying that the low- and

moderate-income people should have a housing choice. I think it only clouds the issue and is counterproductive to producing real Mount Laurel housing needs, when we start talking about choices of type and variety of housing.

Mount Laurel was designed to give safe, sanitary, decent, and affordable housing, whether that means that the only economic way of doing it is with three-story garden apartments, or whether it means smaller homes, or whatever is available in that town from an economic point of view. It does not mean that you have to take a one-acre lot and give the Mount Laurel buyer a house on that one-acre lot on the grounds that he decides he wants to live on a one-acre lot like a rich person does. I do not think that kind of language is in the court's opinion and it only engenders the wrong thoughts in the populace. It is not substantiated by the court, and it is not what we are trying to solve.

Now, due to the lateness of the hour, I will shut up.

SENATOR LIPMAN: Senator Stockman?

SENATOR STOCKMAN: Where is that language?

MR. HUTT: What language?

SENATOR STOCKMAN: The language talking about the right of choice, or are you referring to the testimony of the Public Advocate?

MR. HUTT: I was referring to the testimony of the Public Advocate.

SENATOR STOCKMAN: Oh, it's not in the bill?

MR. HUTT: No, no, the Public Advocate testified earlier he believes that in Mount Laurel they should have a variety of choice. Remember, he said there are two strands. One is the affordability and the other is that they should have the same choice.

SENATOR STOCKMAN: I just have one other question. Do you care to comment on this question about the possibility of dealing on a regional basis of transfer rights, or some sort of mechanism whereby a suburb could buy some rehabilitation in a more urban community nearby and satisfy part of its obligation?

MR. HUTT: It is an excellent idea. It is done in Orange County, California, which is the granddaddy of inclusionary zoning.

You have to remember that this is a small State. We don't seem to realize what is happening in the rest of the world. But, Orange County, California, if I am correct, is as big geographically -- that County alone -- as the State of New Jersey. So, when we say a county in California, we are not talking about just a small area.

In Orange County, California, what they did was more or less similar. If a builder wanted to build, say, a \$200,000 house and he did not want to build any inclusionary homes, he would pay, let's say, \$10,000 to a builder who would build an inclusionary house, or a low- or moderate-income house in a different subdivision. You could buy your way out. Instead of building it, you could put some money up front. It is no different than all you busy fellows who say, "Look, I can't go to an insurance meeting, I can't go to a Boy Scouts' Board of Directors meeting, I'm too busy. But, here's my check, I'm doing something for you." So, you need people and you need dollars, and you match the two. It is the same theory. Moreover, it does something else. It helps the suburbs, and I don't think some of these suburban mayors see this properly. Their fair share is based on the statewide need or on the regional need. Right now, the court has held that up until 1990, the need is 100,000 Mount Laurel units. Now, that is what gives you the half a million building units, including the market units. Therefore, if you are in town "X," through whatever formula is going to be used -- and the Warren Township case would give you a formula -- your town now is going to have to build, let's say, 500 Mount Laurel units, because that is your fair share of the 100,000 Mount Laurel units.

Now, if the 100,000 Mount Laurel units were reduced to, let's say, 80,000 Mount Laurel units, then proportionately your 500 units would be reduced 20% also. So, if you could reduce the number of Mount Laurel units needed, it would affect the suburbs in the manner in which they want to be affected, because their fair share would be so much less -- a half of 10 is less than a half of 20. Therefore, if we can get the units rehabilitated, that reduces the need for 100,000 new units. The one thing that never made sense to me about Mount Laurel is this. Sixty percent of our population buys used cars. There are

secondhand stores for clothing. You can go to a flea market and get a good secondhand television set. But, when it comes to housing, the court hones in on the only way to solve housing for people who cannot afford it is new units, instead of old units. I don't mean slum units, but I mean old houses. There are people who are paying \$150,000 for a resale house because they cannot afford their new dream house of \$300,000. They take a dream house that is 10 years old and pay \$150,000 for it.

What we are overlooking is, you have to take existing housing stock and make it solve some of the Mount Laurel problem. That is why I suggested converting one-family dwellings to two-family dwellings. The only way-- As the previous speaker said, there are limited resources, and it is not realistic to think otherwise. The only way is to match resources with needs and with facts, and if you can reduce that 100,000 unit need down to more manageable limits, everyone will be happier.

SENATOR LIPMAN: Senator Cardinale?

SENATOR CARDINALE: In the course of the Public Advocate's testimony, he indicated that there are certain things actually now being built, that some low-income units are being built where a three-bedroom unit, for instance, would sell for \$33,500. I presume it is in the same project as a moderate-income unit and I presume that one of those of the same size would sell for \$55,500. Given market conditions and the cost of building today, I presume that the differentials between what it really costs to produce those units and those selling prices are being made up by selling other units in the same or a nearby project and causing a premium price to be paid for those. Is that the correct procedure insofar as my analysis is concerned?

MR. HUTT: In the illustration you gave that is 100% correct, because the illustration you gave is in Bedminster Township, which I think is a very abnormal situation, atypical, and which distorts everyone's thinking on Mount Laurel when it is used. But, in one way you are right. The reason is that there they can do it because they are selling \$200,000 town houses. It is a very hot market. It is not

elastic. You have a lot of high-priced executives there. Whether that town house costs \$200,000 or \$220,000, the guy is going to buy it. You can add \$1,000 to a Cadillac and you are not going to lose too many Cadillac sales, but if you add \$1,000 to a Chevy, you'll lose a lot of Chevy sales. The Public Advocate has been talking about Bedminster as an illustration. I think it is the poorest illustration in the world.

SENATOR CARDINALE: The very point I was getting at is the point you are making now. Let me ask just one more question to sort of nail it down. Is there any reasonable hope that on a statewide basis we could see 100,000 Mount Laurel units produced at anywhere near the price range we are talking about here in Bedminster? In other words, can the balance of the market, the other 400,000 units, be sold in the State of New Jersey to effectively create the subsidy which is operating in Bedminster?

MR. HUTT: The answer is "no." The Supreme Court recognized that. If you read the Warren Township decision, Judge Serpentelli, in his decision, specifically addressed himself to that point. He says in that decision that it can be done, but it is not the judicial function to make it happen. It is the judicial function to allow it to happen, and then it is up to the Legislature to do something about it. There is no way that you are going to produce a half a million houses in this State between now and 1990 -- build them and sell them. Our usual housing production in this State, even in good times, is only approximately 30,000 units a year of any type throughout the State. In bad years we were down as low -- a couple of years ago it was 18,000 units a year. So, it is not going to happen. I don't think the court even thinks it is going to happen, but what they are doing is allowing a vehicle to get as much of it to happen as is humanly possible. It is just like we are not going to have everyone see a doctor within a 20-minute wait. Some people will wait for two hours. We are going to try to get it down to, let's say, an hour. The optimum would be 20 minutes. So, you can't say the court thinks it can accomplish it, because they don't say they can. It is a goal. We have to get as close to the goal as is humanly possible. That is what they are saying.

SENATOR CARDINALE: One last question, if I may. Isn't there a great deal more land already zoned in the State of New Jersey absent any of these builder's remedy suits for housing, on which the lowest type cost housing could be built, land on which low-cost housing is not, in fact, being built today? When I say low cost, I mean the lowest cost possible in the market.

MR. HUTT: No. Senator, I support the view of the previous speaker, and even the Public Advocate to a certain degree when he said that perhaps he was being tactless or non-gracious, or whatever word he used. The fact of the matter is, most of these towns that are screaming the loudest brought it upon themselves. You had a speaker here this morning from Warren Township, who told you that his town has always had one-and-a-half-acre unit housing. I don't care who you are, you could be a genius, but you can't produce within an affordable range. Forget about the ranges that the court came up with. One of the problems with Mount Laurel is, I think it is too idealistic. In Orange County, California, for instance, so you will understand it-- I don't quite understand the court decision because it used Orange County as a model. In Orange County, lower income is 80% of median, and moderate is 120% of median. In Orange County, California, under HUD regulations, you can spend up to 30% of your income. I'm telling you that if our range in New Jersey -- if low was up to 80% of median and moderate was 120% of median, and you spent 30% to 32% of your income, you could get a lot of this housing built in the situations you are talking about, but not under these kinds of standards. The court itself recognizes that there is no way you can produce much of the lower-income housing -- the low-income. Maybe the moderate, but the low is so low that it is unbelievable. If you look at the statistics, you'll see, for instance in East Brunswick, that a low income unit, a one-family unit, sells for \$21,000. Now, I recently bought a car that cost me more than that, and it doesn't have a bed in it. (laughter) So, I mean, it is nice to talk in theory. I know the Army spends more than that for a cannon sometimes. You have to get into the world of reality.

The fact of the matter is, towns have been up to now, and still are, extremely exclusionary, not only in lot sizes, but in their tactics. They don't even want curbs. It has to be Belgian block curbs. They not only want shade trees, they want a Garden of Eden. If you want to process a 100-home subdivision, it can take a year and a half to get it through.

SENATOR CARDINALE: I don't want to interrupt you.

MR. HUTT: I am just saying that is why you have all this.

SENATOR CARDINALE: My question -- while your answer was very much to the point of the question as I phrased it -- really should have been phrased in another way.

MR. HUTT: Okay.

SENATOR CARDINALE: Don't we have a great deal of land in our urban areas that is currently zoned for multi-family construction, on which multi-family construction is, in fact, not being built, and isn't that the most cost-effective way to make that a desirable market? Isn't that the most cost-effective way to solve the problem of the need for affordable housing?

MR. HUTT: No. There is hardly any vacant land in those cities. What you do have is some deteriorated housing stock that could be rehabilitated. But, one of the problems with that is that this Legislature has failed to pass legislation to encourage that. For instance, anyone who goes into a rehab project is immediately faced with having to pay prevailing wages. That immediately shoots the cost up so high -- so unrealistically high -- that you can't come out even. Secondly, we do not have serious tax abatement as they have in the City of New York. Thirdly, we allow rent control. No builder in his right mind is going to make such a risky investment; no lender is going to lend on that investment when you have such serious rent control problems. You have all these other things working against the fact as to why the builders don't go into those cities and build -- regulations, red tape, and other reasons. If you can't produce a unit in a city that the market in the city can take, you know, if you build something that ends up costing \$1,000 a month to rent, and there is no market to rent for \$1,000 a month in the city, you are not going to go in there. That is really the problem.

SENATOR CARDINALE: You are relating it to the economic problem; I am only talking about the zoning potential, the potential for these units to occupy land which is already zoned.

MR. HUTT: Well, there is no vacant land of any significance that I know of in the cities. The Sternley Report pointed that out. For instance, that is why the consensus committee came up with a so-called reallocation plan. The City of Newark has a present need under Mount Laurel of 33,000 units. They studied the population. If you are telling me that there is enough vacant land in the City of Newark to build 33,000 units, then you will have to drive me there and show it to me because I don't see it.

SENATOR CARDINALE: Thank you.

SENATOR LIPMAN: Mr. Hutt, thank you so much for your testimony. We appreciate it; it was very enlightening. Thank you for coming.

Senator Cardinale, the city does zone for multiple-housing, but we need to zone for the upper income, and maybe the suburbs need to zone for multiple-housing. It is for indigenous poor and, as the gentleman just pointed out, we already need 33,000 units for our own indigenous poor.

Our next witness will be Ms. Lisa DiGiulio, who is a very faithful witness and a representative from Mahwah Township.

LISA DIGIULIO: Senators, thank you for giving me the opportunity to speak before you go home. My name is Lisa DiGiulio, and I am a concerned citizen from Mahwah, New Jersey. I am also Chairman of the Mayors' Advisory Committee and the Mayor's assistant on Mount Laurel II. I am also cochairman of the State Mayors' Task Force and I have been working closely with the amendment committee working to amend this bill. I am hopeful that this bill, in its amended form, will be the answer and the guide for the towns under the Mount Laurel II doctrine.

May I quote the Mount Laurel doctrine for a moment? The judicial role in this sensitive area is appropriate, since powerful reasons suggest, and we agree, that the matter is better left to the Legislature. We act first and foremost because the Constitution of our State requires protection of the interests involved and because the

Legislature has not protected them. We recognize the social and economic controversies -- and their political consequences -- that have resulted in relatively little legislative action in this field. We understand the enormous difficulty of achieving a political consensus that might lead to significant legislation enforcing the constitutional mandate better than we can, legislation that might completely remove this court from those controversies. But enforcement of constitutional rights cannot await a supporting political consensus. So, while we have always preferred legislative to judicial action in this field, we shall continue, until the Legislature acts, to do our best to uphold the constitutional obligation that underlies the Mount Laurel doctrine. This is our duty. We may not build houses, but we do enforce the Constitution.

The judicial role, however, which could decrease as a result of legislative and executive action, will necessarily expand to the extent that we remain virtually alone in this field. In the absence of adequate legislative and executive help, we must give meaning to the constitutional doctrine in the cases before us. Although the complexity and political sensitivity of the issue now before us make it especially appropriate for legislative resolution, we have no choice, absent that resolution, but to exercise our traditional constitutional duty to end an abuse of the zoning power.

The provision of decent housing for the poor is not a function of this court. Our only role is to see to it that zoning does not prevent it, but rather provides a realistic opportunity for its construction as required by New Jersey's Constitution. The actual construction of that housing will continue to depend, in a much larger degree, on the economy, on private enterprise, and on the actions of the other branches of government at the national, State, and local levels. We intend here only to make sure that if the poor remain locked into urban slums, it will not be because we failed to enforce the Constitution.

I would like to know where in the United States Constitution, or the State Constitution, it guarantees everyone the right to own a new home subsidized by me, the homeowner. If the court orders the

houses built, then the court should fund them. If the court orders a master planner, why should the town be ordered to pay for his services to testify against the town? Is this constitutional? The court does not want people locked into urban slums, but it refuses to identify the possibility of suburban slums. You talk about urban slums, why aren't they corrected? Is this the answer, to move one slum to another area?

I totally agree that affordable housing is needed throughout the United States. My only objection to it is that I have not seen any planning or guidelines for it. The so-called builder's remedy, without controls, will destroy municipalities. Input must come from all those involved in constructing low and moderate housing -- the municipalities, the developers, the State, and the people.

Now I finally see a bill materializing that might have this input, but I must state that I found it very depressing when I first started coming to Trenton to have to beg for legislation. Putting aside political differences, I hope both parties will finally agree and will support a workable bill that will be of benefit to all concerned.

I have three amendments to present to this Committee which have been typed and presented by my attorney. Basically, all municipalities should be eligible to be reviewed by this Council whether adjudicated or not. Everyone is entitled to a fair hearing before the Council. I do not feel that any town should be penalized if it was in court before legislation, simply because the Legislature did not act. If there had been legislation proposed and acted on before, a lot of these towns would have been covered by that. Since the Legislature is at fault for not acting, I feel that something should cover these towns in the form of a review to the Council.

Low-income housing must be disbursed throughout developments so that people are not stigmatized and socially rejected, but rather integrated and welcomed into a town at a pace the town can absorb. Clustering is a terrible way to welcome and, at the same time, stigmatize people according to their pocketbooks. This is one amendment I totally believe in. I can really relate this to the first time I came into Trenton. I guess I came in through the back way, and what I saw was totally depressing. There is no reason why that area

cannot be revitalized. If you can't start here, then all you are going to do is move these people to the suburbs and create a suburban slum.

And finally, I want to mention funding for some of the off-site improvements the town must absorb to offset the builder's remedy, a remedy that will destroy municipalities.

Please keep in mind while planning, that competitive incentive and competition are important elements in the success of our country. In your planning for low- and moderate-income housing, don't destroy that incentive in the people who have worked to own their own homes, to move up, and to better themselves, but rather create that incentive for those who want the chance to better themselves and move up.

Correct planning is the key to this housing. It is a big job, but I am confident you can handle it. I endorse Senator Lipman's bill in its amended form and hope this bill will compromise all parties to a satisfactory agreement and success for a better New Jersey.

May I add that it took a woman Senator to accomplish and introduce this hopeful remedy and legislation. Thank you, Senator Wynona Lipman.

There is one other thing I would like to say. The gentleman before me spoke of spending \$21,000 for a car, and that was his choice. I would like to see him ordered to drive a Chevy and see how it would like it. That is basically what you are doing with housing. Compare it; you're busing housing. I have very dear friends who love living in the city. Give them a better place and they will continue to love living in the city. However, I agree with you, Senator Stockman, that we need the money in the urban areas, but not for the reason that I don't want these people in my town. I welcome them. But, the way it is planned, to cluster them in areas and stigmatize them so that the minute they come into town they have a label on them, is not the way to plan this type of housing. If they can't be integrated, if they can't come in accepted, it will never work. You can talk about numbers, you can talk about the builders. The builders are only interested in making money. I am interested in having people actually live in these homes, being welcome, not living in terror, and not being stigmatized.

There will be social problems, economic problems, terrible situations between the low-, moderate-, and high-income people. I wish I could buy a \$21,000 car. It is a shame that for that kind of money it doesn't have a bed in it. But, if I wanted him to drive a Chevy, I'm sure he wouldn't like it. That is what the court is doing. They are ordering us to do what we don't want to do in our area and our homes. There is a difference between a Chevy and a \$21,000 car, and there is a difference between the working class, the upper class, and the middle class.

That is all I have to say. I am so happy that finally Senator Gagliano and Senator Stockman are smiling at each other.

SENATOR LIPMAN: Yes, that's a good sign, Ms. DiGiulio, a very good sign.

MS. DiGIULIO: I hope you will be at that meeting on August 28, the one that Jack Trafford mentioned.

SENATOR LIPMAN: If I am invited this time. That is why I asked Mr. Trafford so many questions. They are revising the legislation without the sponsor, which is all right.

MS. DiGIULIO: Will we be seeing the legislation in the September session?

SENATOR LIPMAN: When the Legislature returns after Labor Day, we might have it all together. I want to assure you that your amendments will be considered.

MS. DiGIULIO: Okay, fine.

SENATOR LIPMAN: Everyone has them now.

MS. DiGIULIO: You realize that I was told today that the judge came to a ruling on my town. I don't know what that ruling is. I'm sure it wasn't favorable to the town. But, there is a time element here. As Mayor Hornik said this morning, we are really in the trenches. I don't know if you realize how serious this is in some of these towns. It is very hard not to personalize, but one of our developers is insisting that the town pick up \$800,000 of off-site improvements. They threaten us and they coerce us into making these agreements. It has just become unbearable to the town. This is a serious problem. I don't know whether I can impress that on you or not. So, any help would be appreciated. Thank you.

SENATOR LIPMAN: All right. That is your last amendment, right, about the off-site development?

MS. DiGIULIO: Yes. I mean, without funding, and I think we ought to stock the urban areas. Otherwise, what you are going to do is board up those areas and just move to the suburbs, without transportation and jobs.

SENATOR LIPMAN: All right, thank you very much. Ms. Catherine Graham, President, Trenton Branch NAACP.

CATHERINE GRAHAM: Madam Chairman and members of the Committee: I, too, feel like I have been through the wringer sitting here today because every time I went to the telephone I was canceling another appointment in my office to stay here. Since we are the culprits who started this, I thought that I should linger long enough with you to express my opinion.

I am President of the Trenton Branch NAACP. I have been active with the NAACP since I was a youth starting out in Trenton, and that has been over 35 years ago. Some of the major changes in this country today were brought about through the NAACP and through the judicial system. Many of these changes met opposition, and the opposition was expressed in all kinds of ways. It was expressed with violence, blood, and fighting, but nevertheless, changes came and we survived.

I sat here today and listened to many of the speakers and I really didn't think I was in America. I thought that some of these cities-- You know, Julian Bond once told me about Atlanta, Georgia. He said, "Catherine, don't come and tell me what we are going to do in Atlanta, Georgia, because New Jersey is worse than Atlanta, Georgia." Listening today to some of the speakers, I came to the conclusion that we do have certain areas in this State that do not belong to the State of New Jersey.

Most of the benefits that have happened for the people, the minorities -- when I say minorities I mean ethnic people too -- have happened through the courts. They have been forced, but not by the people. As someone said today, "We are going to let the people decide." Basically, people have not decided anything in the history of

this country, not even the President. We have an electoral college. We think we can elect a President. People do not even elect politicians; actually, money elects politicians.

I am here to tell you that I support Senate Bill 2046. There are some problems with it and it needs some straightening out. One of the things it speaks to is implementation, and that is the most important thing that the Mount Laurel decision has not been about. We have evaded the issue for nine years, and for nine years we sat in this chamber and knew that there was something out there that had to be done. It is the law, and maybe we are going to get real great and be like Washington and challenge the Supreme Court. I don't appreciate everything it does, but I don't feel that we can challenge it. It is the law; it is the high court of the land.

I would not ask anyone to support anything that says, "Let's stop it," or "Let's put it on a referendum," because if you really want to put a vote on a referendum we could rally the urban cities and probably defeat it, that is if we really wanted to. But, I think it is an excuse we use when we really do not want to do something.

I sat and listened today. I didn't prepare a statement because I am usually best at saying what I feel. Sometimes when I write something I don't like it after I have written it. One of the things that Mount Laurel speaks to is affordable housing. When we talk about affordable housing, everyone thinks about the poor. I heard a statement made here this morning that a man was paying \$4,500 on a \$45,000 house. Let me tell you something, and Senator Stockman is here to tell you too. I pay \$5,200 on my house a year, and I live in the City of Trenton. I have lived here ever since I was a young girl, in the neighborhood where Senator Stockman lived. So, the taxes are not just way off somewhere in upstate New York. We are paying them in the City of Trenton. It is about time that the State of New Jersey, and the country, share some of the burdens of the urban cities.

Do you know why the cities are in decay? They are in decay because you took everything from them and you ran. You left nothing but bad housing and people were forced to buy it. The houses were ready to fall when people were paying exorbitant prices for them.

People could not meet the mortgages. I'm saying to each and every one of you that when you talk about change and what it is going to do to my neighborhood-- Someone just said there is a difference between the higher class, the middle class, and the lower class. Let me tell you something. A well-known person who I knew from going to school with him is presently Dean of the University of Hawaii. He lived on Princeton Avenue. So, it isn't what you are, where you live, where you came from, or what you are going to be. It is what we do with what we have, and whether we are true Americans reaching for a dream. I have a right to a dream. If I want to live in suburbia, I want to live there. Personally, I don't want to live there. I chose to stay in the City of Trenton because I believe in its survival.

In yesterday's paper there was an article, and I think the builder hit on it a little bit. The average house in this country today costs \$100,000. When you say average housing-- I have it right here in front of me. Last year, the average house purchased in this country cost \$89,000. Today you will find that we are forcing young people to buy housing far above their means. They are living in houses that they cannot afford. Today we have one of the greatest foreclosure rates and bankruptcy rates; we are in a grave state of economy. Those of you in real estate should know this. I happen to be in real estate on the side. I have a license.

The point is, those of you who are here who are representing constituents who say that your constituents are not for change, I daresay you don't even know what your constituents are thinking about because most people in the suburbs of Trenton commute back and forth to New York and leave their wives and children home. When they come in late at night is when they are really home and, if you don't believe it, come in from New York on some of the commuter trains that are going in all different directions in New Jersey.

The Mount Laurel decision was another decision like the one in 1954. You said it wasn't going to work. Let me give you an example of what happened in the decision of 1954. At West Virginia State College -- and Senator Lipman may know this -- the whites had to travel past two black colleges to go to college. But, when the desegregation

law of 1954 came along, within two months white students stopped going 100 miles to another school, and West Virginia, which was predominantly black, became predominantly white. It was a necessity for them. It was an economic problem for them to travel 100 miles to school, and it didn't work.

I'm saying that the Mount Laurel court decision can work if the people who are elected give it an opportunity to work and try to make it work. Stop listening to cries from the various communities. You know, it's sad, because some of the things I heard here today I would attribute to Alabama and Mississippi, but not to the State of New Jersey. I can't conceive that we have gone back in time to where we think that people cannot live together. You know, it does not necessarily mean black folks. It can mean any kind of people. Black people are not the only people who are poor. We are a small percentage of the poor. There are 225 million people in this country, and we represent about 35 million.

I heard something else that is traditional when there is a change, "We will need more policemen." I feel the first thing they think of is that poor people will come in and they will begin to rob. That is not true. Poor people want to live good; poor people want to raise their children; poor people want a better education; and, poor people want to survive. They are tired of being put down by those persons who have been elected to defend this country and this State.

I do not have much more to say. I am weary. I am a little tired, so I have lost many of the things I was going to say to you. But, I will say one thing. If you look at Newark, if you look at Trenton-- I was in Trenton when I was very young, and I can remember it. And, you can remember Newark. Newark wasn't always what Newark is today, and Trenton wasn't always what Trenton is today. Urban renewal projects came in and gave the other people the opportunity and the money to move, and the poor people who were left in these cities had to stay. They didn't own anything. They had houses on contract for sale. They thought they owned them, but they didn't. People stepped in and collected their money for houses that had been lived in for 20 years. So, there are many sad tales to an urban city, but the urban

city is going to survive. I know our City is going to survive because there are those of us who are going to fight together to make it survive. Right across State Street here, there were some old houses that you could have bought for about \$10,000 five years ago. They just recently sold for \$150,000 and \$200,000 after they were renovated. We do have a minority in one of those houses which cost \$150,000 or more.

I'm saying that there are those of us who feel dedicated enough to stay here in this community to fight for this City. We are also saying that suburbia is nothing but-- You zone your property for apartment buildings, for office buildings. You are taking the businesses out of the City. You have office buildings, and I don't know what is any different about the parking problem with office buildings coming in than with more housing coming in. You have offices from one end of this country to the other, right through the suburban areas.

I think what we need to do is really face the cold facts of what we are trying to do. We are not just talking about people living next-door to each other. Just ride in your car and look at the apartments that are going up, up, up, and up. I don't think I would like to wake up and see 1,000 apartments around me. Just go down I-95 and look at the apartment buildings. They are going up and they are going up with someone's permission. But, the Mount Laurel decision just managed to mention the poor, and everyone gets frightened when they hear the word "poor." I think that most of us have been poor at sometime in our lives.

I daresay that those of you who are sitting listening to people today paid a whole lot of money for your houses. Fifteen years ago no one was paying \$75,000 to \$100,000 for a house that was only worth \$25,000. That is what is happening now. We are paying triple the price for a house. We have to build something that people can afford. Affordable housing does not necessarily just mean for the poor minority. It means for your son, or my son, or your daughter, who is maybe graduated from college and is making a \$21,000 a year salary, who wants a decent house in which to live. He or she can't afford a \$100,000 house.

I am saying to each one of you that the kind of legislation you came in here with today smacks, to me, of a return to Jim Crowism. I am referring to S-1913 and SCR-24. One is saying let's halt it for a few days. That is no answer. The other one is saying let's give it back to the municipalities. Well, you know, that should have a familiar ring to you and me. Let's give states' rights back. You know what states' rights did to this country. I am standing firm and fighting for salvation. I know that the NAACP will continue its fight to see that the Mount Laurel decision is carried out.

Thank you very much for listening to me. A little earlier I might not have been quite so emotional, but I am very tired.

SENATOR LIPMAN: Ms. Graham, we are glad to hear you, emotional or not. That is what it is all about really. We thank you so much for your testimony. Are there any questions for Ms. Graham? (negative response) Thank you again, and we're sorry we had you so late in the day.

MS. GRAHAM: That's perfectly all right.

SENATOR LIPMAN: Is Phyllis Salowe-Kaye here? (no response) Committeeman William Cherry from Princeton Township. You've been here for a long time, haven't you, Mr. Cherry?

WILLIAM CHERRY: Thank you very much, Madam Chairman. Senators, ladies, and gentlemen: It is very kind of you to listen to me. It was a great privilege to hear Ms. Graham a moment ago. I was very impressed and moved. I second her basic emotional desires. I am speaking now informally, or extemporaneously, if you will, on behalf of the Princeton Township Committee and, in a certain sense, on behalf of Princeton Borough also, because, in fact, we are all one community in Princeton which I call the City of Princeton for reasons I will bring forth in a moment.

The best thing for me to do is to speak on a specific and rather narrow topic because, in my mind, it is the most important one which binds the general coverage of the bill you are working most hard on and is a direct concern which you can influence the most. That is the matter of the density bonus technique for funding the affordable housing. Let me say this. On Tuesday night, the Princeton Township

Committee passed a resolution affirming their intention -- which has been sustained for decades and decades, if not for a century or more -- to provide affordable housing. This has been a concern of the Princeton community for many, many years, for as long as I can remember, and I came during the immediate sequel to World War II.

Let me say this about Princeton, and I am going to make you sort of angry because I am talking about one town. It is not a town and, above all, it is not a suburban community. Sure, we send some commuters to New York City, but so does Newark, Madam Senator. In 1666 when the British overwhelmed the Dutch in New Amsterdam, which then became the Colony of New York, the Princeton area was sparsely settled with English and Dutch farmers. They lived side-by-side in peace for two centuries with the Lenni Lenape Indians, who, unfortunately, have gone now.

In 1756, the College of New Jersey, later Princeton University, moved into Princeton and subsequently, in 1811, the Princeton Theological Seminary, the oldest Presbyterian seminary in the United States, moved into Princeton. From then on, subsequent institutions arrived which are of national and worldwide consequence, and formed the indigenous industry of Princeton. So, Princeton is a city unto itself, with its own industry. It differs only from the other cities of the State of New Jersey in that that industry has not yet collapsed economically, for which I am very grateful.

Now, during the course of the development -- which is continuing to this very day -- this industry of higher and specialized education, research, and related services provided literally thousands of subsidized dwelling units for various types of households, as you can imagine, dormitories for undergraduates, special housing for married graduate students, for junior faculty, for senior faculty, for professors emeritus, and so on, all of the different economic levels, to be sure, some of them right down at the bottom because, you know, some folks who are graduate students don't have a nickel to their names. I was one once, so I can tell you.

In any case, that was the broad subsidized housing in Princeton as a result of its main industry, which was, and is, higher

education. Princeton, of course, is a city in another respect. When the United States first became a free and independent nation, Princeton was its first capital. Princeton was the first capital of the State of New Jersey, but the education business -- the industry -- has persisted all along.

In addition to the dwelling units which were subsidized at various levels by the industry itself in relatively recent years, the last three decades -- or maybe a little more, since World War II -- the municipalities, with the help of Federal and State subsidies, and also with the help of very charitable private persons and institutions, have built a large number of units too. Therefore, these have always represented to the world that Princeton never was exclusionary. We are, and were, the most cosmopolitan town, certainly in the State of New Jersey, and I daresay pretty much in the whole United States of America. Nevertheless, we are still looked on by folks in Trenton -- and I'm sorry about that -- as a rich suburb. Yes, we do have rich people there, quite a lot of them, and they are very rich. But, we have some very, very poor people there. Nevertheless, those folks who are currently residing in the denser areas -- now, I'm speaking specifically about Princeton Township, which I represent explicitly-- We have a zoning area which is seven units to the acre. It is made up of housing which is in many cases old. One of my very, very dearest colleagues in politics lived in a house which was assessed at \$120,000 a few years ago. It's probably more now, I don't know. But, my point here is, it seems as though no matter how dense you make the housing, the selling price is very, very high.

We are going to do this affordable housing again, as we have in the past, although we cannot engage in the type of financing which has been suggested in the Mount Laurel II decision of using the density bonus technique. You are all familiar with that so no one needs an explanation of what I am talking about, the density bonus thing. You know that in the early 1970's, Princeton began to construct a new master plan. Either we invented, or certainly reinvented the concept of the density bonus as a mechanism for providing affordable housing at a time when there was no mandatory powers invested in the

municipalities, as there are now by virtue of the Mount Laurel II decision. The Supreme Court of the State, in reviewing the consequences of its Mount Laurel I decision, and then, of course, Oakwood versus Madison, and in studying, filing, and Chief Justice Wilentz's writing the Mount Laurel II decision, noted that Princeton had discussed and, indeed, put forth in its master plan the idea of density bonuses in order to provide for what they called "internal subsidization of affordable housing." So, in the course of discussing what the Supreme Court calls "affirmative measures" that, in fact, provide a realistic opportunity for the construction of affordable housing-- I might say they are a marvelous set of words which require more than the wisdom of Solomon to truly interpret. I do not mean to be a little sarcastic; it really is a difficulty, a serious one. They quoted Princeton in two different places with respect to this proposition of the density bonus, which the court mentioned as a conceivable affirmative measure.

But now, Senators, ladies, and gentlemen, Princeton only proposed that as an experiment. We were going to do it in terms of developing a very limited number of affordable housing units. However many we could get, fine, but we had no numerical goal, certainly no goal anything like the size that is now appearing to be what the court requires of us and others in their fair share.

You know, of course, the consequences of what turns out to be the economic reality of the density bonus. First and foremost, it is a source of enormous profit for landowners and developers, and it seems to lead to a five to one consequence of development density far more than was to be expected in any reasonable master plan. I am not going to tell you that Princeton would be ruined more seriously than other municipalities. I happen to be a little bit familiar with the Town of Cranbury, which is a little town of 700 dwelling units. It has now been suggested in court testimony that they build 4,110 dwelling units. My goodness, ladies and gentlemen, that is almost six times the size of the existing town. In regard to the preservation of farmland, the court showed a great concern, in its writings at least, that the protection of the environment should be a major consideration.

I suggest to all of you that the court never meant bonus density funding as a requirement. Even if all other techniques of funding should fail and you do not get the affordable housing you seek, or the numbers that you seek, I urge upon you my interpretation that -- and I can assure you that I have studied this decision, as you can well understand, for many, many, many long hours, as probably you have too -- that is not a requirement. However, it was seized upon by the developers and, quite frankly, some of the legal fraternity are perhaps not quite as honorable as the folks present here. I call your attention to the gentleman, who when referring to filing a case against Princeton Township, referred to the municipalities as little baby harp seals, which squirm and shriek for a few minutes, but soon roll over dead when you get through with them. Do you remember that member of your fraternity, Senator Stockman?

Anyhow, this density bonus, if it is obligatory, means, frankly I feel, the murder of my community. I can't support that. I am willing to take all kinds of taxes, especially if you give me the opportunity to have graduated taxes, in some sense, and the ability to pay. I am speaking now just for myself. Or, a graduated real estate tax, if you will, but, look, if you merely say apply real estate taxes, raise the "cap," and things like that-- Again I tell you, ladies and gentlemen, we have very poor people in our hometown, and to drive them out in order to bring others in doesn't seem to be the right way to go.

Thanks a lot. I think that is really my message to you. I appreciate your hearing me.

SENATOR LIPMAN: Mr. Cherry, we appreciate the historic tour. Senator Stockman reminds me that he represents the first capital of New Jersey, and also the present capital, so that should give him some special standing with this Committee. Do you have a question, Senator Stockman?

SENATOR STOCKMAN: No, I have not. I just want to say hello and thank you, Bill, for coming down to share your thoughts with us.

COMMITTEEMAN CHERRY: Thank you very much.

SENATOR LIPMAN: Senators, are there any further questions? (negative response) Okay, thank you very much.

COMMITTEEMAN CHERRY: Please make the density bonus thing external to your legislation, and rule it out. Thank you very much.

SENATOR LIPMAN: That is a point well taken, Mr. Cherry. We have one last speaker, Committeeman Thomas Weidner of Cranbury Township. Mr. Weidner?

THOMAS WEIDNER: I have copies of my statement here if you would like to have them. I guess they say the last shall be first and the first shall be last. I think if I had a preference, I would take it the other way around, but that's okay.

Mr. Cherry mentioned what the court-appointed expert in Cranbury Township's case had recommended. That is now the decision of the court as of two or three days ago. I would like, if I may, to just talk to you to some extent about what that decision means.

My name is Tom Weidner. I am a former Mayor and currently a Committeeman in Cranbury Township, Middlesex County, New Jersey. I speak on behalf of the entire Township Committee, Republicans and Democrats. Cranbury is currently in the midst of a Mount Laurel trial in which the court recently ruled that Cranbury must provide sufficient housing for low- and moderate-income persons such that its population will increase nearly sevenfold by 1990. That decision will destroy our efforts to preserve farmland and protect our village area, which is designated both a national and State historic district.

Let me just say what my conclusion is first before I continue on and also say at the outset that I am not trying to say that the cities in New Jersey don't have a problem and, certainly, whatever efforts can be made to help those cities I think should be made. That is not really the focus of my testimony here though. My conclusion is that whatever bill is introduced should limit the amount of growth a municipality has to absorb either through whatever planning commission is established, or through Mount Laurel litigation. The suggestion I have is 100%, but I am certainly not tied to any specific number. However, a sevenfold increase is ridiculous and absurd in a five-year period.

Secondly, I think that a builder's remedy, if we are going to continue with this type of litigation, should be limited to being

consistent with sound planning principles when the builder has been denied relief on a bona fide application to the planning board. If you did nothing more than that I would be satisfied, whether you have a planning commission or you don't have a planning commission.

Thirdly, I think that in whatever legislation you pass you should reaffirm the other planning goals that the Legislature has set up under the municipal land-use law. I think you have to be careful when passing whatever legislation you pass, that housing doesn't become the only priority in the State of New Jersey at the sacrifice of other important goals such as farmland preservation and historic preservation — at least they are important as far as Cranbury is concerned.

I will go along with my statement and I will try, instead of reading it verbatim, to highlight as much as I can because I have gone through some planning board meetings and I sympathize with your perseverance.

Cranbury is a town of less than 2,000 people and less than 750 housing units. Nearly three-quarters of our land is prime farmland in active agricultural use.

Prior to the last Mount Laurel decision, we enacted a new master plan and that plan would permit 1,500 additional housing units, of which 300 would be low and moderate income, which could be erected over the life of the master plan. In addition, our ordinances were designed to preserve approximately 3,500 to 4,000 acres of prime agricultural land and, at the same time, protect the village area of the Township. The 218 houses in our central village, as I said, are on the national and State historic registers. It is apparent, based upon the court decision that says that our population must increase sevenfold, that these efforts are not enough and that the Town's attempt to preserve farmland and to protect its historic area are to be sacrificed in order to provide builders' remedies and unreasonable numbers of housing units under court edict.

The preservation of farmland has been specifically recognized by this Legislature. I am not going to read to you the law that you passed, L. 1981, Chapter 276, other than to highlight your recognition that the retention of farmland is important and that the future of

agriculture has been threatened by suburban development of the State's prime farmland, which has resulted in significant direct loss of agricultural land. That is a law which you have passed. You passed similar laws in 1976 and 1983, and those are cited in the statement which I have provided. Similarly, with respect to the Town's designation as a national and State historic district -- again, I am not going to quote that entire verbiage there which has been approved by both the national and State governments, other than to point out that they indicate that Cranbury is the best preserved nineteenth century village in Middlesex County. Indeed, it is one of the finest preserved nineteenth century towns in the entire State of New Jersey.

Let me emphasize that Cranbury is ready, willing, and able to provide substantial numbers of low-income housing units, even tripling the Town's population, to comply with Mount Laurel, preserve farmland, and protect the historic village. The court ruled, according to what I conceive to be their Alice in Wonderland formula, that Cranbury must provide 4,080 housing units by 1990, as I indicated a sevenfold increase. In fact, in order to provide those numbers, builders would have to erect more houses than currently exist in Cranbury each year for the next five years. Overall, these "fair share" numbers are two to two and a half times what the private market can construct. Unfortunately, any single municipality may be fully developed with these numbers.

We have been advised that the six builder/plaintiffs may well be entitled to a builder's remedy. Let me point out that in our lawsuit the Urban League started as the plaintiff and, after the remand as a result of Mount Laurel II litigation, we had six builders come into the lawsuit. They have never proposed to build one house, while I have been on the Township Committee, for low or moderate income and, as far as I am concerned, they are using Mount Laurel as a sword of Damocles to raise their profits at the expense of the Town's efforts to preserve its farmland and its historic village. These builders are located in every corner of the Township. Rough estimates indicate that they stand to gross an additional \$16 million if successful. To provide a builder's remedy to all or most of these individual

plaintiffs will necessarily result in the destruction of our efforts to preserve our Town's farmland and will undermine, and perhaps destroy, our efforts to protect the national and State historic area.

Accordingly, I support legislation that would place a limit on how much growth a municipality must absorb -- and, again, I just suggest a figure of 100% -- and deny a builder's remedy unless it is consistent with sound planning principles and the builder has been denied relief on a bona fide application to the planning board. Failure to so limit Mount Laurel litigation will place municipalities at the mercy of land speculators who can make millions of dollars at the expense of other sound planning goals, such as farmland and historic preservation. If the courts fail to uphold such legislation, the only alternative is a constitutional amendment to undo Mount Laurel, which frankly and conceptually I am not too anxious to do. But, when the courts go about their formulas, use these formulistic approaches, create unrealistic numbers, and in the process destroy our efforts to try to preserve farmland and protect our historic district, and then tell us we have to increase sevenfold by 1990, we are really at our wit's end.

Thank you very much for hearing me. I know the hour is late, but I would be happy to answer any questions if anyone has any. Thank you, Senator.

SENATOR LIPMAN: Senators, are there any questions? (negative response) Mr. Wiedner, I just want to say we understand Cranbury's particular difficulty and we appreciate your testimony very much. Senator Stockman?

SENATOR STOCKMAN: I want to second that, but I am not going to say anything more -- something privately, but nothing more.

SENATOR LIPMAN: Okay, if there are no more questions and no more testimony, I declare this hearing ended, for the time being. I should remind the Committee members that we will have a follow-up hearing tentatively scheduled for August 30. We hope the Committee will be present, as well as anyone else who wishes to present testimony about the Mount Laurel II decision.

Thank you all very much for coming.

SENATOR STOCKMAN: You do not want a motion to move S-2046?

SENATOR LIPMAN: No, this is a hearing, Senator.
Unfortunately, we cannot move the bills out today.

(HEARING CONCLUDED)

APPENDIX

TESTIMONY OF THE NEW JERSEY

DEPARTMENT OF THE PUBLIC ADVOCATE

ON SCR 24, S. 1913 AND S. 2046

BEFORE THE SENATE COMMITTEE ON

STATE GOVERNMENT, FEDERAL AND INTERSTATE

RELATIONS AND VETERANS AFFAIRS

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU ON THE IMPORTANT SUBJECT OF THE MT. LAUREL DECISION AND THE PROVISION OF LOWER INCOME HOUSING. I AM HERE TODAY TO REGISTER THE PUBLIC ADVOCATE'S STRONG OPPOSITION TO SCR 24 AND S-1913 BECAUSE THEY COMPLETELY UNDERMINE THE ASPIRATIONS OF THE LOW AND MODERATE INCOME HOUSEHOLDS OF THIS STATE WHO SEEK DECENT, AFFORDABLE HOUSING. IN CONTRAST, S-2046 REPRESENTS THE FIRST SERIOUS COMPREHENSIVE LEGISLATIVE ATTEMPT EVER TO RESPOND TO THE MT. LAUREL DECISION. WHILE THE DEPARTMENT BELIEVES THAT SOME CHANGES IN IT ARE NECESSARY, WE SUPPORT THE GENERAL FRAMEWORK OF THIS BILL. A REPRESENTATIVE OF OUR DEPARTMENT HAS BEEN PARTICIPATING IN MEETINGS OF THE AD HOC HOUSING COMMITTEE WHICH IS ATTEMPTING TO REVISE AND STRENGTHEN THE BILL. IN THIS TESTIMONY, I WOULD LIKE TO EXPLAIN WHY WE OPPOSE SCR-24 AND S-1913. I WOULD ALSO LIKE TO OFFER SOME COMMENTS ON S-2046 WHICH MAY BE HELPFUL IN DEVELOPING AMENDMENTS TO S-2046.

SCR 24 IS A PROPOSED CONSTITUTIONAL AMENDMENT WHICH PROPOSES TO OVERTURN THE MT. LAUREL DECISIONS. THE MT. LAUREL DOCTRINE IMPOSES AN AFFIRMATIVE CONSTITUTIONAL OBLIGATION UPON NEW JERSEY MUNICIPALITIES TO PROVIDE A REALISTIC OPPORTUNITY FOR THEIR FAIR SHARE OF LOW AND

MODERATE INCOME HOUSING. ACCORDING TO MT. LAUREL, THE LAND IN THIS STATE MUST BE OPEN TO THE POOR AS WELL AS THE RICH. LOW AND MODERATE INCOME PEOPLE CANNOT BE KEPT OUT OF THE SUBURBS BECAUSE THEY DO NOT EARN EXECUTIVE LEVEL SALARIES. OF EQUAL IMPORTANCE, MT. LAUREL REQUIRES THAT TOWNS WHICH ZONE FOR COMMERCE OR INDUSTRY MUST RESPOND TO THE HOUSING NEEDS OF EMPLOYEES WHO WILL WORK IN THOSE INDUSTRIES.

AFTER YEARS OF FRUSTRATING DELAYS AND LEGAL EVASIONS, THE MT. LAUREL DECISION IS NOW PAYING DIVIDENDS. IN BEDMINSTER THE DEVELOPER OF "THE HILLS" IS CONSTRUCTING 260 UNITS OF LOW AND MODERATE INCOME HOUSING AS PART OF ITS PLANNED UNIT DEVELOPMENT. THE LOW INCOME UNITS WILL SELL FOR \$26,500 FOR A ONE BEDROOM UNIT AND \$33,500 FOR A THREE BEDROOM UNIT. THE MODERATE INCOME UNITS WILL SELL FOR \$47,000 TO \$55,500. THE FIRST LOWER INCOME RESIDENTS BE SHOULD MOVING IN BY LATE FALL, AND ALL 260 UNITS SHOULD BE OCCUPIED BY NEXT SPRING.

IN MT. LAUREL TOWNSHIP 92 UNITS OF LOW AND MODERATE INCOME HOUSING ARE UNDER CONSTRUCTION IN "TRICIA MEADOWS," A MOBILE HOME PARK. THE LOW INCOME PURCHASERS CAN PURCHASE A MOBILE HOME FOR \$13,500 PLUS PAD RENTAL, WHILE MODERATE INCOME PURCHASERS CAN ACQUIRE A UNIT FOR \$18,500.

MOST IMPORTANT OF ALL, THE PUBLIC ADVOCATE HAS JUST REACHED SETTLEMENT WITH ALL TWELVE DEFENDANTS IN THE MORRIS COUNTY EXCLUSIONARY ZONING SUIT. THE SETTLEMENT WILL PRODUCE 7,078 UNITS OF LOW AND MODERATE INCOME HOUSING OVER THE NEXT SIX YEARS, 5,300 THROUGH NEW CONSTRUCTION BY PRIVATE DEVELOPERS AND 1,778 THROUGH PUBLIC SUBSIDIES, REHABILITATION OR AGREEMENTS WITH EXISTING LANDLORDS.

UNDER THE TERMS OF THESE SETTLEMENTS, THESE UNITS MAY BE OCCUPIED ONLY BY LOWER INCOME HOUSEHOLDS. HALF OF THESE UNITS WILL BE AVAILABLE TO LOW INCOME HOUSEHOLDS; IN MORRIS COUNTY A FAMILY OF FOUR WITH AN INCOME OF LESS THAN \$16,350, WHICH IS 50% OF THE REGION'S MEDIAN INCOME, IS LOW INCOME. THE REMAINDER ARE RESERVED FOR MODERATE INCOME HOUSEHOLDS; A FAMILY OF FOUR WITH AN INCOME OF LESS THAN \$27,750, WHICH IS 80% OF MEDIAN, IS MODERATE INCOME. FURTHERMORE ALL OF THE SETTLEMENTS CONTAIN RE-SALE CONTROLS TO ENSURE THAT THE UNITS REMAIN AFFORDABLE TO LOWER INCOME HOUSEHOLDS OVER TIME.

ALL OF THESE SETTLEMENTS ARE CONDITIONED UPON THE DEFENDANTS RECEIVING A SIX YEAR JUDGMENT OF REPOSE FROM THE COURTS. MORRIS

TOWNSHIP AND HANOVER TOWNSHIP, HAVE ALREADY RECEIVED SUCH A JUDGMENT WHICH PROHIBITS A DEVELOPER FROM CHALLENGING THEIR ZONING FOR SIX YEARS. THE COURT WILL DETERMINE IN SEPTEMBER WHETHER THE OTHER TEN MUNICIPALITIES RECEIVE SIMILAR JUDGMENTS OF REPOSE.

WHAT HAPPENED IN MORRIS COUNTY IS BEGINNING TO HAPPEN THROUGHOUT THE STATE. FIVE MUNICIPALITIES JUST ENTERED INTO SETTLEMENTS IN MIDDLESEX COUNTY. A NUMBER OF OTHER SETTLEMENTS THROUGHOUT THE STATE ARE IMMINENT. THE EFFECT OF THESE SETTLEMENTS WILL BE, FOR THE FIRST TIME, TO OPEN THE DOOR OF THESE MUNICIPALITIES TO LOWER INCOME HOUSEHOLDS.

SCR 24

SCR 24 WOULD SLAM THESE DOORS SHUT AND LEGITIMIZE THE EXCLUSION OF LOWER INCOME PEOPLE. A MUNICIPALITY WOULD BE GIVEN THE CONSTITUTIONAL RIGHT TO EXCLUDE ALL LOW INCOME PEOPLE FROM THE TOWN EXCEPT FOR THOSE PERSONS "RESIDING IN THE MUNICIPALITY OR WHO WILL BE EMPLOYED IN THE MUNICIPALITY AS A RESULT OF ZONING OR PLANNING DETERMINATIONS MADE BY THE MUNICIPALITY ON OR AFTER THE ADOPTION OF THIS AMENDMENT." UNDER THIS AMENDMENT, THE NEW JERSEY CONSTITUTION WOULD DECLARE THAT AN EMPLOYEE WHO WORKS IN THE COMMUNITY AS A RESULT OF A PLANNING DECISION MADE PRIOR TO PASSAGE OF THIS AMENDMENT COULD LEGALLY BE PREVENTED FROM LIVING IN THE COMMUNITY WHERE HE OR SHE WORKS. UNDER THIS AMENDMENT, THE NEW JERSEY CONSTITUTION WOULD DECLARE THAT EACH MUNICIPALITY IS A SEPARATE ISLAND. AN EMPLOYEE WHO WORKS IN ONE TOWN COULD LEGALLY BE BARRED FROM LIVING IN A NEIGHBORING TOWN. A SENIOR CITIZEN WISHING TO MOVE TO A SMALLER RETIREMENT HOME COULD LIKEWISE BE EXCLUDED; SO TOO COULD PERSONS LOOKING FOR WORK WOULD LIKE TO MOVE NEAR EMPLOYMENT CENTERS.

MT. LAUREL ESTABLISHES THE PRINCIPLE THAT LAND USE CONTROLS MUST CONSIDER THE NEEDS OF RICH AND POOR ALIKE. SCR 24 WOULD SUB-

STITUTE CONSTITUTIONAL "KEEP-OUT" SIGNS ON THE BORDERS OF EVERY
SUBURBAN MUNICIPALITY. SCR 24 WOULD BE A TRAGEDY TO THE 40% OF NEW
JERSEY HOUSEHOLDS WHO HAVE LOW AND MODERATE INCOME HOUSEHOLDS. IT
WOULD AFFECTIVELY DESTROY THE HOPES OF MANY BLUE COLLAR WORKERS,
YOUNG MARRIED COUPLES JUST ENTERING THE JOB MARKET, AND SENIOR
CITIZENS FOR DECENT, AFFORDABLE HOUSING. SCR 24 SHOULD BE REPUDIATED.

S-1913

THE DEPARTMENT OPPOSES S-1913 NOT ONLY BECUASE IT REPRESENTS AN UNWISE POLICY, BUT ALSO BECAUSE WE ARE CONVINCED THAT THE BILL, IF ENACTED, WOULD BE DECLARED UNCONSTITUTIONAL. THE KEY PASSAGE IS PARAGRAPH 4, WHICH PROVIDES:

A MUNICIPALITY WHICH IS UNDER A COURT ORDER ISSUED BETWEEN JANUARY 1, 1983 AND DECEMBER 31, 1986, INCLUSIVE, TO PERMIT OR PROVIDE FOR THE CONSTRUCTION OF HOUSING UNITS SHALL NOT BE REQUIRED TO PERMIT OR PROVIDE FOR THE CONSTRUCTION OF MORE THAN 10% OF THE UNITS WITHIN THE TWO-YEAR PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THIS ACT OR WITHIN TWO YEARS OF THE DATE OF THE ORDER, WHICHEVER IS LATER.

THIS BILL SEEKS TO RATION CONSTITUTIONAL REMEDIES AND REWARDS MUNICIPALITIES FOR DEFYING THE CONSTITUTION. UNDER ITS TERMS, A MUNICIPALITY HAS NO OBLIGATION FOR LOWER INCOME HOUSING SO LONG AS IT CAN DELAY LITIGATION. FOR EXAMPLE, IF A MUNICIPALITY IN LITIGATION CAN DRAG OUT A LAWSUIT UNTIL AUGUST 1986, THEN IT MUST MEET ONLY 10% OF ITS CONSTITUTIONAL HOUSING OBLIGATION BETWEEN NOW AND AUGUST 1988.

IN MANY INSTANCES THE FORMULA WOULD GUARANTEE THAT NO LOWER INCOME HOUSING IS BUILT. THIS IS NO JUSTIFICATION FOR PERMITTING ONLY 10% OF A MUNICIPALITY'S FAIR SHARE TO BE PHASED IN OVER A TWO YEAR PERIOD. BEDMINSTER TOWNSHIP HAS ENTERED INTO AN AGREEMENT WITH US PROVIDING FOR 650 UNITS. TWO HUNDRED SIXTY OF THESE ARE NOW UNDER CONSTRUCTION. UNDER S-1913 BEDMINSTER WOULD NEED TO APPROVE ONLY 65 UNITS IN THE NEXT TWO YEARS. SUCH A RESTRICTION WOULD CRIPPLE ENFORCEMENT OF MT. LAUREL RIGHTS.

IN SOUTHERN BURLINGTON COUNTY V. MT. LAUREL TP. I, 67 N.J. 151, 188 (1975), THE SUPREME COURT DECLINED TO DECIDE WHETHER TIMED GROWTH LAWS WERE CONSTITUTIONAL. THE COURT DID COMMENT:

WE NOW SAY ONLY THAT ASSUMING SOME TYPE OF TIMED GROWTH IS PERMISSIBLE, IT CANNOT BE UTILIZED AS AN EXCLUSIONARY DEVICE OR TO STOP ALL FURTHER DEVELOPMENT AND MUST INCLUDE EARLY PROVISION FOR LOW AND MODERATE INCOME HOUSING.

MEASURED BY THIS STANDARD, S-1913 IS CLEARLY UNCONSTITUTIONAL. A LAW WHICH POSTPONES ALL LOW AND MODERATE INCOME HOUSING OBLIGATIONS

UNTIL THE MUNICIPALITY'S ORDINANCE IS DECLARED UNCONSTITUTIONAL,
AND THEN PERMITS ONLY 10% OF ITS FAIR SHARE TO BE PHASED IN OVER
TWO YEARS, IS "AN EXCLUSIONARY DEVICE AND DOES NOT INCLUDE EARLY
PROVISION FOR LOW AND MODERATE INCOME HOUSING." THIS COMMITTEE
SHOULD REJECT S-1913.

IN MT. LAUREL II, THE SUPREME COURT ONCE AGAIN URGED THE LEGISLATURE TO DEVELOP A METHOD OF IMPLEMENTING THE CONSTITUTIONAL OBLIGATION TO PROVIDE REALISTIC HOUSING OPPORTUNITY FOR LOWER INCOME HOUSEHOLDS. THERE IS NO DOUBT THAT SUCH A COURSE OF ACTION IS HIGHLY DESIRABLE. THE TEST OF ANY PROPOSED LEGISLATION IS WHETHER IT HELPS, RATHER THAN HINDERS, THE PROVISION OF THIS HOUSING. I BELIEVE THAT S-2046, WITH CERTAIN AMENDMENTS, HAS THE POTENTIAL TO BE A MAJOR HELP. RATHER THAN FOCUS ON THE ENTIRE BILL, I WOULD LIKE TO DISCUSS CERTAIN CRITICAL PARTS OF IT.

ANY BILL WHICH SEEKS TO COMPREHENSIVELY RESPOND TO THE MT. LAUREL DECISIONS AND TO THE NEED FOR LOWER INCOME HOUSING SHOULD CONSIDER AT LEAST FIVE ELEMENTS: PHASING, FAIR SHARE, RESALE CONTROLS, FINANCING, HOUSING SUBSIDY. I WOULD LIKE TO DISCUSS EACH OF THESE IN TURN.

PHASING

ONE OF THE MOST CONTROVERSIAL ISSUES IN S-2046 IS SECTION 22, WHICH CONCERNS THE ISSUE OF PHASING - DETERMINING THE PERIOD OF TIME IN WHICH A MUNICIPALITY MUST PROVIDE ITS FAIR SHARE OF LOWER INCOME HOUSING. SECTION 22 GIVES SOUND GUIDANCE TO A COURT IN DRAFTING A PHASING ORDER. IN ADDITION, HOWEVER, IT ESTABLISHES A SPECIFIC FORMULA: MUNICIPALITIES SHALL NOT BE REQUIRED TO PHASE-IN LOWER INCOME HOUSING "AT A RATE GREATER THAN 25% AS SOON AS POSSIBLE BUT NO LATER THAN ONE YEAR AFTER ENTRY OF JUDGMENT AND 15% AT TWELVE MONTH INTERVALS THEREAFTER."

WE BELIEVE THAT NO SUCH FORMULA CAN BE FAIR IN ALL INSTANCES AND THAT IT WILL PRODUCE A NUMBER THAT IS TOO HIGH IN SOME CASES, AND TOO LOW IN OTHERS. FOR EXAMPLE, ASSUME A MUNICIPALITY HAS A FAIR SHARE OF 2,500 (WHICH IS PROBABLY AS HIGH AS ANY IN THE STATE). UNDER THIS FORMULA IT WOULD HAVE TO ABSORB 625 UNITS WITHIN TWELVE MONTHS OR LESS, VERY POSSIBLY MORE THAN IT CAN HANDLE. THE FORMULA, DEPENDING UPON INDIVIDUAL CIRCUMSTANCES, MIGHT WELL BE UNFAIRLY HIGH FOR THAT TOWN. ON THE OTHER HAND, PLAINTIFFS NEGOTIATED A PHASING AGREEMENT WITH HANOVER TOWNSHIP IN WHICH ALMOST 1/2 OF ITS

250 FAIR SHARE UNITS WOULD BE APPROVED IMMEDIATELY, AND ALL OF THEM WOULD RECEIVE FINAL APPROVAL BY MARCH, 1987. THE PHASING SCHEDULE OF PARAGRAPH 22 WOULD UNDULY AND UNNECESSARILY PROLONG THE CONSTRUCTION OF LOWER INCOME HOUSING IN HANOVER.

IN SHORT, ANY LEGISLATIVE PHASING FORMULA WOULD BE TOO BURDEN-SOME TO MUNICIPALITIES IN SOME CASES, AND TOO RESTRICTIVE TO HOUSING ADVOCATES IN OTHERS. THE AD HOC HOUSING GROUP IS TRYING TO REPLACE A RIGID FORMULA APPROACH WITH A LIST OF FLEXIBLE CRITERIA FOR A COURT TO APPLY IN ESTABLISHING A PHASING SCHEDULE. I RECOMMEND THAT S-2046 BE AMENDED TO ADOPT SUCH AN APPROACH.

CALCULATION OF FAIR SHARE

ANY CONSIDERATION OF FAIR SHARE SHOULD BEGIN WITH A REVIEW OF RECENT DEVELOPMENTS. THIS SPRING JUDGE EUGENE SERPENTELLI ASKED A GROUP OF 22 PLANNERS HEADED BY CARLA LERMAN, EXECUTIVE DIRECTOR FOR THE BERGEN COUNTY HOUSING AUTHORITY, TO TRY TO DEVELOP THE BEST POSSIBLE FAIR SHARE PLAN. OVER A THREE MONTH PERIOD THEY UNANIMOUSLY AGREED UPON A METHOD OF ESTABLISHING HOUSING REGIONS, DETERMINING HOUSING NEEDS AND ALLOCATING THOSE NEEDS AMONG MUNICIPALITIES. THE CONSENSUS PLAN WHICH THEY DEVELOPED WAS JUST ADOPTED BY JUDGE SERPENTELLI IN THE WARREN TOWNSHIP DECISION. IN THE MORRIS COUNTY CASE, JUDGE SKILLMAN ASKED CARLA LERMAN TO BE THE COURT'S EXPERT AND USE THE CONSENSUS FAIR SHARE FORMULA TO DETERMINE THE FAIR SHARE NUMBER OF THE MORRIS DEFENDANTS. ALTHOUGH JUDGE SKILLMAN MADE CLEAR THAT HE WOULD NOT DECIDE UNTIL AFTER A TRIAL WHETHER HE WOULD APPROVE THE FORMULA, THE LERMAN NUMBERS SERVED AS A BASIS FOR NEGOTIATION AND SETTLEMENT.

THE LERMAN REPORT CONTAINS AN IMPORTANT CAVEAT. THE FAIR SHARE NUMBER FOR A PARTICULAR MUNICIPALITY IS COMPUTED ON THE BASIS OF A UNIFORM FORMULA WITHOUT ANY LOOK AT THE UNIQUE CHARACTERISTICS

OF THE MUNICIPALITY. AS THE REPORT STATES:

CLEARLY, WHEN A MUNICIPALITY IS ASSIGNED
ITS FAIR SHARE NUMBER, THERE WILL BE NEED
AND OPPORTUNITY TO EVALUATE THAT SHARE IN
LIGHT OF PARTICULAR CONDITIONS WITHIN THAT
TOWN; THAT WILL BE THE APPROPRIATE TIME TO
RAISE QUESTIONS OF FEASIBILITY, PREVIOUS
EFFORTS AND ACCOMPLISHMENTS, STAGING AND
ALTERNATIVE MEANS OF MEETING GOALS.

MARCH 1984 REPORT (p. ii).

THE MORRIS COUNTY SETTLEMENTS ILLUSTRATE THE APPLICATION OF THIS
CAVEAT. FOR EXAMPLE, THE FAIR SHARE NUMBER OF ROXBURY TOWNSHIP UNDER
THE LERMAN PLAN IS 1028. ROXBURY TOWNSHIP DEMONSTRATED TO US, HOWEVER,
THAT IN LIGHT OF ITS LACK OF SEWER CAPACITY AND OTHER LOCAL FACTORS,
ITS FAIR SHARE SHOULD BE ONLY 602. BASED UPON THIS INFORMATION,
THE PUBLIC ADVOCATE ACCEPTED A SETTLEMENT FOR 602 UNITS AND THE TOWN-
SHIP'S APPLICATION FOR A JUDGMENT OF REPOSE ON THE BASIS OF A
SHOWING THAT THE TOWNSHIP WOULD PROVIDE 602 HOUSING UNITS.

I HAVE GIVEN THIS HISTORY TO RAISE THE QUESTION OF WHAT THE ROLE OF THE COUNCIL ON AFFORDABLE HOUSING SHOULD BE. UNDER S-2046 ITS ROLE IS TO REDO WHAT THE LERMAN PLANNERS AND JUDGE SERPENTELLI IN THE WARREN DECISION HAVE ALREADY DONE. THE COUNCIL IS DIRECTED TO ESTABLISH HOUSING REGIONS, ESTABLISH PRESENT AND PROSPECTIVE NEED, PROVIDE POPULATION AND HOUSEHOLD PROJECTION, AND ESTABLISH CRITERIA FOR ALLOCATING THE NEED AMONG MUNICIPALITIES IN THE REGION. THE MUNICIPALITY WILL THEN DETERMINE ITS FAIR SHARE AND THE FAIR SHARE IT CAN REASONABLY ACCOMMODATE. THE COUNCIL WILL REVIEW THE MUNICIPAL DECISION AND APPROVE, REJECT OR MODIFY IT.

I WOULD SUGGEST THAT THE COUNCIL SHOULD NOT UNNECESSARILY REDO EVERYTHING THE LERMAN REPORT DID. INSTEAD THE LEGISLATION SHOULD ADOPT THE LERMAN REPORT AS ITS STARTING POINT. EACH MUNICIPALITY SHOULD BE FREE TO DO WHAT ROXBURY TOWNSHIP DID, DEMONSTRATE TO THE COUNCIL WHAT PART OF THE LERMAN NUMBER IT CAN REALISTICALLY ACCOMMODATE. THE COUNCIL CAN THEN APPROVE A FINAL FAIR SHARE NUMBER, JUST AS THE COURT DID IN THE MORRIS COUNTY CASE.

THIS PROPOSAL WOULD SAVE A GREAT DEAL OF STATE MONEY AND EFFORT. MORE IMPORTANTLY, IT WOULD AVOID UNNECESSARY DELAY IN

ACTUALLY PROVIDING LOWER INCOME HOUSING. IT AVOIDS THE UNDESIRABLE
SCENARIO OF MUNICIPALITIES DELAYING UNDERTAKING MT. LAUREL STUDIES
AND REZONING, AND DEVELOPERS BEING PREVENTED FROM HAVING THEIR
APPLICATIONS CONSIDERED FOR NINE MONTHS OR MORE WHILE THE COUNCIL
REINVENTS THE WHEEL. THERE HAS BEEN TOO MUCH DELAY ALREADY AND
THERE IS TOO GREAT A HOUSING NEED TO UNNECESSARILY DELAY THE
PROCESS FOR AN ADDITIONAL NINE MONTHS.

HOUSING SUBSIDY

THE FEDERAL GOVERNMENT HAS CUT BACK UPON HOUSING SUBSIDIES AT A TIME WHEN THEY ARE MOST NEEDED. THERE IS AN URGENT NEED FOR A STATE PROGRAM TO MAKE UP FOR AT LEAST PART OF THE FEDERAL DEFAULT. SEVERAL BILLS, A-974 AND S-2046, SEEK TO PARTIALLY FILL THAT NEED BY ESTABLISHING A HOUSING TRUST FUND. WE STRONGLY SUPPORT THAT CONCEPT.

ONE QUESTION, HOWEVER, THAT MUST BE ANSWERED IS THE ALLOCATION OF SUCH A FUND BETWEEN URBAN AND SUBURBAN AREAS. SECTION 20 OF S-2046 PROVIDES THAT "A REASONABLE PERCENTAGE" OF THE TRUST FUND ESTABLISHED BY THE ACT SHOULD GO TO "URBAN AID MUNICIPALITIES WHICH HAVE A DISPROPORTIONATELY HIGH PERCENTAGE OF LOW AND MODERATE INCOME RESIDENTS." I SUGGEST THAT THE LEGISLATURE SHOULD ESTABLISH A MUCH MORE SPECIFIC STANDARD FOR ALLOCATION THAN MERELY "A REASONABLE PERCENTAGE."

THE GREATEST NEED FOR DECENT, AFFORDABLE HOUSING IS IN THE CITIES. IF WE DO NOT MAINTAIN AND REHABILITATE OUR URBAN HOUSING BEFORE IT IS TOO LATE, WE WILL HAVE LOST A SOURCE OF HOUSING THAT IS IRREPLACEABLE. FOR THESE REASONS, WE AGREE WITH THE LEAGUE OF MUNICIPALITIES THAT THE MAJORITY OF ANY TRUST FUND SHOULD GO TO THE CITIES

NEVERTHELESS THERE IS ALSO A REAL NEED FOR SUBSIDY ASSISTANCE IN THE SUBURBS. EVEN IF WE REPEALED ALL ZONING BARRIERS IN EVERY SUBURB AN MUNICIPALITY AND PERMITTED ANY DEVELOPER TO BUILD ANY DEVELOPMENT THAT HE WANTED CONDITIONED SOLELY ON PROVIDING TWENTY PERCENT LOWER INCOME HOUSING, WE COULD NOT MEET ALL OF THE STATE'S FAIR SHARE NEED. FURTHERMORE, WHILE INCLUSIONARY DEVELOPERS WITHOUT GOVERNMENTAL ASSISTANCE CAN PROVIDE HOUSING FOR HOUSEHOLDS WITH INCOMES AS LOW AS FORTY TO FIFTY PERCENT OF MEDIAN, IT IS NOT REALISTIC TO EXPECT THAT THEY CAN PRODUCE HOUSING AFFORDABLE TO HOUSEHOLDS WITH INCOMES OF LESS THAN FORTY PERCENT OF MEDIAN. SUCH HOUSEHOLDS MUST RELY UPON SUBSIDIES IF THEY ARE TO HAVE THE OPPORTUNITY TO LIVE IN THESE DEVELOPMENTS.

THE PUBLIC ADVOCATE RECOMMENDS THAT THE LEGISLATURE RESPOND TO NEW JERSEY'S HOUSING NEEDS BY APPROVING A-974, AN ACT TO CREATE THE FUND FOR HOUSING REHABILITATION, SHELTER FOR THE HOMELESS AND HOUSING ASSISTANCE. THIS WOULD PROVIDE APPROXIMATELY \$20,000,000 WHICH THE PUBLIC ADVOCATE BELIEVES SHOULD BE TARGETED SOLELY TO URBAN MUNICIPALITIES. THE FUNDS WOULD BE RAISED BY APPLYING THE STATE'S SHARE OF THE REAL ESTATE TRANSFER TAX TO THESE HOUSING PROGRAMS. OUR

DEPARTMENT HAS ALREADY TESTIFIED IN SUPPORT OF THIS BILL WITH ONE CAVEAT. SECONDLY, THE LEGISLATURE SHOULD INCREASE THE REALTY TRANSFER FEE AS PROPOSED IN S-2046 AND A-2360 AND USE THESE INCREASED FUNDS TO HELP SUBURBS MEET THEIR FAIRE SHARE. THE MONEY COULD BE USED TO INCREASE THE PERCENTAGE OF LOWER INCOME HOUSEHOLDS IN INCLUSIONARY DEVELOPMENTS, TO PERMIT PERSONS OF LESS THAN 40% OF MEDIAN TO OCCUPY THE UNITS, OR ESTABLISH REHABILITATION PROGRAMS. WE SUPPORT THE FUNDING PROPOSALS OF BOTH A-974 AND S-2046, BUT BELIEVE THAT THE MECHANICS FOR IMPLEMENTATION ON BOTH BILLS SHOULD BE MESHED TOGETHER.

IT IS IMPORTANT TO ENSURE THAT THIS FUNDING IS ESTABLISHED AND CONTINUES OVER TIME. WE RECOGNIZE THAT A REVENUE BILL CANNOT ORIGINATE IN THE SENATE. S-2046 COULD EASILY BE AMENDED TO PROVIDE THAT IT DOES NOT TAKE EFFECT UNTIL A-974 AND A-2360, BILLS WHICH HAVE THESE SUBSIDY PROVISIONS, ARE SIGNED INTO LAW.

A CRUCIAL FEATURE OF S-2046 IS PARAGRAPH 21, WHICH SEEKS TO ASSURE THE CONTINUED FUNDING OF THE HOUSING SUBSIDY PROGRAM. THE PARAGRAPH PROVIDES THAT CERTAIN PARTS OF THIS ACT WHICH IMPOSE LIMITATIONS UPON THE COURTS IN ENFORCING MT. LAUREL RIGHTS AUTOMATICALLY EXPIRE IF THE HOUSING FUNDING IS NOT CONTINUED FOR

SIX YEARS. THIS IS A CRUCIAL LINK BETWEEN THE FAIR SHARE PROVISIONS OF THIS BILL AND THE HOUSING SUBSIDIES TO ENSURE THAT THE FUNDING FOR HOUSING CONTINUES EVEN IF THE GOVERNMENTAL INTEREST WHICH IS NOW BEING FOCUSED ON HOUSING IS DIVERTED TO OTHER ISSUES.

TAX EXEMPT FINANCING AND RESALE CONTROLS

THERE ARE TWO OTHER IMPORTANT ROLES WHICH THE STATE SHOULD UNDERTAKE IN PROMOTING LOWER INCOME HOUSING, FINANCING AND RESALE CONTROLS. SECTION 23 WOULD REQUIRE THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY TO EXPEND AT LEAST 50% OF THE PROCEEDS OF ITS TAX EXEMPT BONDS TO ASSIST IN THE FINANCING OF LOWER INCOME HOUSING. THE AGENCY MADE A MAJOR CONTRIBUTION IN PROVIDING TAX EXEMPT FUNDING FOR THE 260 LOWER INCOME UNITS WHICH ARE BEING CONSTRUCTED IN BEDMINSTER. DESPITE THIS, FEDERAL LAW PERMITS SUCH FUNDING TO BE USED FOR EITHER LOWER INCOME OR MIDDLE INCOME HOUSING, AND THE AGENCY HAS NOT COMMITTED ITSELF AS TO WHETHER IT WILL CONTINUE TO FINANCE LOWER INCOME HOUSING DEVELOPERS SUCH AS BEDMINSTER. YET SUCH TAX EXEMPT FINANCING MAY DETERMINE WHETHER A DEVELOPER CAN POSSIBLY CONSTRUCT THIS HOUSING. SECTION 23 IS AN ESSENTIAL PART OF THE LAW.

THE AD HOC HOUSING COMMITTEE ALSO AGREED TO REQUEST AN AMENDMENT ON RESALE CONTROLS. MT. LAUREL II REQUIRES THAT MUNICIPALITIES TAKE STEPS TO GUARANTEE THAT LOWER INCOME UNITS REMAIN AFFORDABLE TO LOWER INCOME HOUSEHOLDS OVER TIME. IN BEDMINSTER, A NON-PROFIT CORPORATION HAS BEEN ESTABLISHED TO CARRY

OUT THIS ROLE. NUMEROUS OTHER MUNICIPALITIES ARE EXPECTED TO DO THE SAME THING. IT WILL, HOWEVER, BE EXTREMELY CUMBERSOME AND WASTEFUL TO ESTABLISH EIGHTY SEPARATE NON-PROFIT CORPORATIONS THROUGHOUT THE STATE. THE AD HOC HOUSING COMMITTEE INSTEAD PROPOSES THAT THE DIVISION OF HOUSING, D.C.A., BE GIVEN THE RESPONSIBILITY FOR ADMINISTERING RE-SALE CONTROLS ON A STATEWIDE BASIS, JUST AS THEY NOW ADMINISTER SECTION 8 HOUSING ELIGIBILITY DETERMINATIONS STATEWIDE. UNDER THE PROPOSED AMENDMENT, D.C.A. WOULD ENTER INTO LONG TERM CONTRACTS WITH THE MUNICIPALITY OR DEVELOPERS TO ADMINISTER THE RESALE CONTROLS FOR THEIR DURATION. WE SUPPORT THAT AMENDMENT.

CONCLUSION

IN SUMMARY, WE SUPPORT THE BASIC FEATURES OF S-2046. WE HOPE THAT OUR COMMENTS ARE HELPFUL IN DETERMINING WAYS TO STRENGTHEN THE BILL. WE OPPOSE SCR 24, S-1913 AND URGE THIS COMMITTEE TO REJECT THIS LEGISLATION.

Recommendation in regard to Section 14.

14b. Any matter not adjudicated prior to June 1, 1984, insofar as builders remedies or mandatory zoning pursuant to Mount Laurel II shall upon motion by either party be referred by the Court to the Council in order to exhaust the mediation and review procedure established in Section 13 of this Act. The purpose of this Section is to afford municipalities presently under zoning challenge to have an opportunity for a uniform application of fair share numbers and equal treatment with those municipalities who would be subject to this act subsequent to the date of enactment.

In regard to the construction of inclusionary developments of which at least 20% are low and moderate income units, said development must be constructed in a manner that the low and moderate units are equally disbursed within said development. It shall be required that if the development is built in sections, that there be no more than 20% low and moderate income units in each section. The purpose of this provision is to guarantee that there be fair integration of the housing units.

Section 20f.

Reimbursement to municipalities for any shortfall or additional expenditures caused by the installation of improvements

such as roads or municipal utilities which are not reimbursible by the developer pursuant to the law as set forth in Mt. Laurel in regard to municipal subsidy in behalf of such low and moderate income housing construction