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**PUBLIC HEARING**

before

**SENATE LEGISLATIVE OVERSIGHT COMMITTEE**

on

**STATE RESPONSE TO THE MOUNT LAUREL II SUPREME COURT DECISION**

Held:  
October 4, 1983  
Room 348, State House Annex  
Trenton, New Jersey

**New Jersey State Library**

**MEMBERS OF COMMITTEE PRESENT:**

Senator Gerald R. Stockman, Chairman  
Senator Leonard T. Connors, Jr.

**ALSO PRESENT:**

Steven B. Frakt, Senior Research Associate  
Office of Legislative Services  
Aide, Senate Legislative Oversight Committee

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**SENATOR GERALD R. STOCKMAN (Chairman):** Good morning. My name is Gerry Stockman. I am the Chairman of the Senate Legislative Oversight Committee. I welcome everyone here this morning to the first hearing on the question of the Mount Laurel II decision and its implications for the Executive and Legislative Branches. The hearing itself is really the consequence of a resolution passed by the Senate some weeks ago, directing this Committee to inquire into the Guide Plan and what, if any, action the Administration has taken with regard to the Guide Plan, and to meeting the demands or requirements of the holding of the Mount Laurel decisions.

We plan to hear from at least five, and perhaps six witnesses today, if time permits. The lead-off witness will be Joe Rodriguez, the Commissioner of the Department of the Public Advocate. Before we go any further, I would like to introduce the people here. To my right is Senator Leonard Connors, a member of this Committee, and the Senator from the Ocean County area. To my left is Steve Frakt, a staff person for the Committee, and Betsy Doverman, who was involved in the resolution that really began this journey that we now enter into.

I have a brief introductory statement I would like to make about this hearing and the purpose of it, and then I would like to call on Joe Rodriguez for his statement. We have additional representatives from various other organizations. The New Jersey Committee of the Regional Plan Association has a representative here, Jim Wunsch. Jim Gilbert is here, the past President of the New Jersey Federation of Planning Officials, Ingrid Reed, Chairwoman of the Mercer County Planning Board, Harry Sayen, President of the Middlesex, Somerset and Mercer Regional Study Council and Peter Buchsbaum, Chairman of the Guide Plan Subcommittee, Land Use Section, of the New Jersey State Bar Association, not necessarily in that order, but with Joe Rodriguez as a start-off, we will proceed with this hearing today.

I would like to say this at the outset. Not since the school funding crisis of the mid-1970's, has the Supreme Court of this State issued as clear and strong a call for action from the Executive and Legislative Branches as it has in its forceful and unequivocal Mount Laurel II decision.

While the Court has given us a challenge, it has also given us an opportunity, one that goes far beyond the immediate and important case before the Court. By linking the Mount Laurel housing doctrine with the State Development Guide Plan, the Court has brought to the forefront in the most dramatic way the absolute need for an ongoing, coherent, deliberative and unified planning process within the State of New Jersey. I believe our response should be to put such a planning process in place. We have a duty to do so and that duty runs to the people of this State and especially to future generations.

The system of checks and balances makes it unlikely, if not impossible, for the three branches to work hand-in-glove with each other. Yet a reading of the Mount Laurel II decision shows that the Supreme Court has made a strong plea to the Executive and Legislative Branches to act -- and has based that plea on fundamental fairness and constitutional necessity.

The Court has asked for a revision of the State Development Guide Plan by January, 1985; it has lamented that its work "is partially legislative in character," undertaken "not by choice, but because of our understanding of our Constitution and the Legislature's failure to act," and it has urged that "State authorities responsible for (the Guide Plan) continue to act on the basis of sound planning principles," since "failure to do so would ... have adverse consequences for the State..."

The Court's call for action was issued last January, more than eight months ago, just at a time when the Administration was disbanding the planning apparatus in the Division of State and Regional Planning, the agency which drew up the Guide Plan. In the ensuing months, there has been no visible activity to inspire any confidence that the Executive Branch will, in fact, move to meet the Court's deadline for revision of the Plan; nor to my knowledge have there been any overtures from the Executive Branch towards a cooperative effort with the Legislature.

With this background, the Senate directed the Oversight Committee to explore the Administration's response to the Court plea for a revision of the Guide Plan. The Senate has thus expressed its concern over the issue, with full awareness of the consequences of a

lack of action -- namely, a Court-imposed, case-by-case, State planning process. The Administration remains strangely silent, however.

It is not the purpose of these hearings to point fingers, nor to dwell on what might have taken place in the nearly nine months since the decision was handed down. The issues are too important. Indeed, they have national significance. For instance, when an affordable housing demonstration site was dedicated in an Indiana county, one notable public figure wrote in a letter of congratulations, "The importance of affordable housing to our nation's well-being cannot be overstated." Those were the words of President Reagan. The fact is that we have a little more than one year to initiate a planning process and revise or replace the Guide Plan with a suitable vehicle that will serve the Court's needs in carrying out the Mount Laurel doctrine. If these hearings result in significant movement in that direction, then they will have achieved their purpose.

With that brief statement, I would like to open this hearing, and invite up to testify, our distinguished Public Advocate and friend, Mr. Joseph Rodriguez. Joe, would you come up, please?

Before Joe testifies, I would happily invite Senator Connors to make any statement.

SENATOR CONNORS: No statement at this time.

SENATOR STOCKMAN: Fine. Joe?

**JOSEPH H. RODRIGUEZ:** When we received the invitation to be here today, at my direction we prepared a statement which appears to be rather lengthy. But I think what it does, is develop clearly, I hope, the position of the Office of the Public Advocate with respect to Mount Laurel. Now, I am not going to read it in its entirety, and I would hope that anyone who makes reference to any comment I make, would look specifically to the statement for greater clarity. (See Appendix)

I think we have to start by understanding that the mission of the Public Advocate with respect to the housing needs of the State are not simply limited to Mount Laurel. I think our commitment and our record clearly demonstrate that we are concerned about our declining cities, we are concerned about Atlantic City, we are concerned about the reinvestment tax credit being some stimulus to housing in Atlantic City, and we are concerned about the homeless, the unemployed and those

on public assistance. We are in court protecting the rights of senior citizens and disabled tenants with respect to condominium conversion, and we are constantly seeking to attempt to remove governmental restrictions which bar families with children from affordable housing throughout the State. This has been our commitment, because I think what we have to do, and I am happy to hear we are not here to point a divisive finger of blame, but to look to see what it is we can do to bring the resources of the State together to provide decent, safe and affordable housing for the poor of our State, particularly in the cities.

It is against this background that we discuss the Mount Laurel concept. It goes back to 1975. The Supreme Court decided what we now know to be Mount Laurel I. At that time, it raised the housing problem in New Jersey to a constitutional dimension. It waited eight years to reconfirm what it said in 1975, so when it spoke in January, 1983, it spoke from eight years of frustration from seeing that its pronouncements were really not being followed with respect to providing for realistic opportunities for housing. What it did in Mount Laurel II, was to clearly say that it had to put judicial steel behind what they felt to be the general welfare and the constitutional dimension of housing. Yet they fully recognized that for some reason throughout the eight, really twelve years, since Mount Laurel I was first introduced into court, that for twelve years there has been inaction. It recognized that it is a politically volatile area and, therefore, it could not wait for a consensus, but had to speak in a constitutional manner, which it did in Mount Laurel II.

Now, once it speaks in a constitutional manner, I think the responsibilities of everyone concerned, their instincts, must be heightened, because now we have a clear path to follow.

What is the problem? The problem is, where do you place housing that many times is not wanted? It is similar to recognizing the needs for prisons and mandatory sentences, but yet not being able to place the prison. To talk about the environmental beauty of resource recovery for the sake of the environment, but not to be able to place the resource recovery facility. To talk about the constitutional need for housing, but yet to be engaged in combat

everytime the location of the housing is discussed. The Court attempted to address that. It addressed that by talking in terms of, where should it logically go? Growth areas. The growth areas, because there are a lot of other circumstances involved in the growth areas -- employment, the infrastructure, sewerage, availability of water and employment opportunities. These will be the logical places, growth areas. They established limited growth areas. Towns, if they fell within the limited growth area, for a variety of reasons would have no constitutional responsibility to move in the housing field at this time. Agricultural areas, to preserve the agricultural areas. Environmental areas, preserve them. What they were really saying was, there is a need, and the need is not just simply an indigenous local need, but it could very well be, and it is a fair share need. How does the region accommodate this fair share need? So, they are saying, we have to maintain our environment. We have to maintain a rational plan. The most rational dimension that was available was the Guide Plan and, in fact, that is what they adopted as the basis for determining the Mount Laurel plan. They put constitutional requirements, answers that had to be responded to by a municipality before they could deal with land, one being, we must seek to provide affordable housing, but we cannot do it because of the economy. Well, before we allow you to go to lease cost, which, incidentally, lease cost in Atlantic City -- you are now talking about several million dollars an acre -- is well beyond the ability of the average person.

But, before you can deal with lease costs anyplace else in the State, you have certain things you have to respond to. How about, have you legitimately and in good faith sought subsidies? Why? Because subsidies have a tendency to put a downward pressure, of course, on the availability of the housing market. Have you looked? Have you considered density bonuses? You know if you put two houses on an acre that the land cost, of necessity, is going to have a high price. Have you looked at density bonuses, because if you put more units per acre, of course, the land use would be lower, and it brings it within the affordability of people. Have you considered modular homes and mobile homes?

So, they ask a variety of questions in an effort to make housing available for low and moderate-income persons. Their quotes are very readable and clear, and I do not have to go into great detail regarding the quotes. But the Court said, "Now that we have made these pronouncements, we are going to put steel behind our opinion." What is it? What is this area they are trying to reach, when they say "affordable housing for moderate and low-income families?" There is a fear that what the Supreme Court attempted to do was to ghettoize municipalities.

If you understand the opinion, moderate-income families of four would be 80% of the median income. If we look at Bergen County, we're saying, "Provide a house for those in an income bracket of \$25,200 or less." In Camden County, it is \$21,750 income or less; in Mercer County, \$23,450 income or less. Low-income families in Bergen County range from \$16,350; Camden and Mercer Counties are roughly in the \$14,000 annual range. We are looking at providing housing stock for roughly 40% of the wage earners of the State of New Jersey. Among the beneficiaries of that category are municipal employees, such as policemen, firemen and school teachers, as well as senior citizens and young families. They placed the developers' remedy within the opinion -- the developers who can legitimately project building with components of, say, 20%, for low and moderate-income housing -- regarding the ability and the quickness with which approvals can be granted, that the delay time in approval seeking just increases the costs of the project and, of course, the project costs are then conveyed to the purchaser.

Looking at other ways of constructing, downsizing some of the homes, which at today's market-- If you look at a construction cost of some \$30.00 per square foot, a square footage reduction of 200 square feet will result in a \$6,000 saving, just in the bricks and mortar. This, of course, can be accomplished. I think the reports we are hearing today from the building business says that the future is for smaller housing, and that we can go into other types of housing, not just "stick-built" homes.

In summary, this is the backdrop against which we comment for the necessities of that lower group. What then is that lower group, and what are their rights? Unfortunately, they fall below the

constitutional mandates of Mount Laurel II, technically. What must occur for that group are other activities, such as through direct subsidy. The most humble and the poor must be addressed more specifically than the Court has indicated in Mount Laurel. The indications of fair share -- what is the fair share? Not that they want to choke the municipality with unwanted houses, but reaching that fair share to that 40%, and then requiring that it be accomplished. To look in some way following the job market -- I have statistics in my statement which indicate the employment shift, and how this can logically be tracked in an effort to determine where housing should be built.

Then, of course, we come to the State Guide Plan. Now, there is no question that the origination of the Plan was not for the purpose of substituting land use for the localities. It was done for another reason, but the Court adopted it. They adopted it because it made a reasonable presentation as to where growth areas should be and where the housing development should be. And, they did adopt it. So, they gave it significance beyond, perhaps, what the originators of the Guide Plan thought it would have. They raised it to the constitutional dimension of the Plan. Should it be updated? Of course, and the Court has indicated that it should be updated by 1985. Why? Because circumstances change and, as circumstances change, it requires, perhaps, a change of direction. But, we should have a continuing governmental presence as to where this growth should logically be, as circumstances change. So, it requires a look.

Must it be the Guide Plan? Well, the Guide Plan, or vehicles similar to it, but it must contain the components. Why? What occurs if you do away with it? Well, if you do away with it, the Court has already said what would occur. It would, unfortunately, go back to what it did before when considering developing communities, and communities today under rational planning are in environmental areas, are in sensitive and fragile environmental conditions, or in agricultural areas, or in pinelands, and may again have to go through the cost of defending themselves to prove they are not in a developing area, as circumstances change. And, it will introduce, again, confusion into the area, which can only be addressed on a case-by-case

basis by the Court. Will the Court do that? I think it is clear. They said they are putting steel behind what they say, and will intercede judicially to the full extent of their ability to do so, or words to that effect.

That means we do not have the luxury of a lot of options. We either have to update the Guide Plan, or a vehicle similar to it, or resort once again to a developing community concept, but no longer is there the option of doing nothing that will result in a restriction of available and affordable housing for low and moderate-income people.

So, it is not a dramatic thing I'm saying. It is a recognition and a realization of what it is the Court has said, and we indicate that as clearly as we can. What are the factors that go into the conservation area, the growth area, the agriculture and the limited growth? It all makes sense, in our opinion, and there is already legislative direction that the Guide Plan be produced and maintained. But, of course, it may require a little more clarity as to what it will mean, the significance of it, in this total area.

In conclusion, since we are primarily concerned with the State Development Guide Plan, most of what I have said was to try to focus, or to give the background for the reasons why I say what I say, and I strongly believe that government should ensure that it is updated.

There are other recommendations. The State, in addition to updating the State Development Guide Plan, should establish municipal fair share allocations, so that developers in municipalities do not waste money in protracted legal battles over fair share because that, of course, is always in the factors. While the municipalities never lose their responsibilities for dealing with their indigenous poor, the allocations will be with respect to their regional fair share, as dictated to by the Mount Laurel II decision. Perhaps a uniform construction code, which has proven to be extremely helpful to developers. A uniform subdivision code could likewise be of major benefit to developers seeking to provide lower-income housing.

The irony is that Mount Laurel II could have been avoided by prompt legislative or executive action in response to Mount Laurel I, which was decided in 1975. I believe that if State and local

government now work together in implementing Mount Laurel II, we can preclude the need for Mount Laurel III, and make affordable housing a reality, instead of the impossible dream which it is today for far too many of our New Jersey residents. New Jersey has one environment; it has one economy. I think we have to work in unison, to make sure that all of our citizens participate in a fair share of the land, goods and services of this State. If we do that in good faith, we will all be working in the public interest, and that is basically our concern.

I thank you for the opportunity to make these comments here today.

SENATOR STOCKMAN: Thank you very much, Mr. Public Advocate. I want to congratulate you on your statement. I have some questions I would like to ask so we can have an exchange on where we are, and I want to preface this exchange by a couple of comments. As I said in my statement, I believe there is a tremendous temptation, because of the politics mixed up in this issue, to look backward and engage more in faultfinding and accusations than in searches for some compromise positive results and solutions to what are clear problems. I hope I will not fall into that; I hope this Committee does not fall into that. I think it is a volatile situation. It is fascinating that we would talk about updating the Guide Plan, and I know your feeling is it should be updated. The answer is of course, but we find problems in terms of the Legislative and Executive Branches getting to work and doing it.

I would like to ask you some questions about that, some of the implications of your statement, and some of the questions on my mind. I would like to say at the outset that I am not doing it to put you on the spot, but I think I am going to put you on quite a spot in the course of doing this. I think that is inevitable, because I think the challenge of your job is an incredible one, and one that is designed for constantly being put on the spot. I think it is the genius of the office that was designed and that you have helped. You may remember you were here awhile back in another setting, and we got into some exchanges where we had some differences at that time, I think both of us seeking the public interest and the public good in another delicate area. We are here again today in that regard.

I want to ask you in a freewheeling way, to the extent you will stay here and answer, or tell me you don't think it is appropriate to answer because of litigation involved, all in an attempt to try to elevate this issue into a public forum for public debate, because I think that is the only way we are going to get results. So, with that long-winded introduction, and admitting that some of these questions may be tough, I would like to ask them. I would like to start, incidentally, by saying that, certainly, the Legislative Branch, of which I am a part, has not shown any great profiles in courage in coming to grips with this issue, and I as a part of the Legislature have to, frankly, acknowledge that.

We are here today with a Supreme Court decision, and one of the things that troubles me, and I would like to ask you about this. It is one of the issues, certainly, that is surfacing, whether you are concerned, whether you see some danger in terms of a lack of response to this Court decision, not only in terms of the merits of the immediate issue, the housing issue, but in terms of a healthy relationship between the branches of government. I know as a lawyer that is one of the things that struck me. I am not sure it is as troublesome among some of my colleagues in the Legislature. But, I am struck with a decision that is a unanimous decision of our Supreme Court which does not seem to engender much movement or response from either the Executive or Legislative Branches to this point. I'm wondering whether you see any dangers or risks in that, if I have made myself clear on that question?

COMMISSIONER RODRIGUEZ: Dangers or risks -- I think I lost the triggering phrase. Dangers or risks in what?

SENATOR STOCKMAN: Okay. In terms of a situation where we have one branch of government, the Supreme Court of New Jersey, in the use of fundamental fairness and constitutional mandate directions, almost directing, not quite directing us, what, if any, implications are there to a failure on the part of the Executive Branch, let's say, or the Legislative Branch, to come to grips with this? I mean, if there is a failure, arguably it will have impact on this moderate and low-income housing issue itself, but what about its impact on the relationship of those branches of government?

COMMISSIONER RODRIGUEZ: I think that right after the opinion came down, it was very clear that the various branches of government sensed a strain against the Court and that, I think, is unfortunate, because what the Court in dealing-- See, I do not consider this to be a real aggressive forward step in a sense that they meddled. They spoke from eight years of frustration.

SENATOR STOCKMAN: That is what I was going to ask you. You do not see this as, for instance, judicial overactivism?

COMMISSIONER RODRIGUEZ: No. I don't think they would win a prize for being overactive for an eight-year history that demonstrated the frustration.

SENATOR STOCKMAN: Now, I can't resist this, but it has come to my attention that someone in high office was quoted as suggesting that it struck him as a matter of judicial overactivism. You have suggested just the contrary. I wonder whether you have discussed that with, or whether that has put a strain on your relationship with that individual. I am referring to Tom Kean, the Governor.

COMMISSIONER RODRIGUEZ: No, not at all.

SENATOR STOCKMAN: You take issue with him though, I gather, in the sense that to the extent he suggests this is judicial overactivism, if anything, you might be restless with the question of whether it wasn't overdue in coming. Is that a fair statement?

COMMISSIONER RODRIGUEZ: Well, I think to make it clear, the reaction of many, and it is not a reaction that is an illogical one, in my opinion. In something as delicate as land and the rights of people, to take so long that finally the Court has to put it in the constitutional dimension, rather than it be dealt with as we are saying now by those in authority, to state the policy of the State and not leave it to the Court. But, the Court had no alternative. So, seeing the opinion, and reading it, and having concerns, for instance, about home rule, having concerns about what is the local responsibility, a Court saying, you know, the land belongs to the State, and when it belongs to the State, it belongs to all the people. You are only delegated the responsibility of dealing with it, but only if you do it in a constitutional manner. We are now saying it is unconstitutional the way it is being handled, and we suggest this path. It is

unprecedented. Because it is, it does lead to that kind of reaction, but I think in calm retrospect, we now see the borders of what the activities have to be and we have to work within them.

It hasn't caused any strain, because I recognize it to be a legitimate concern of many when a court acts. The Supreme Court of the United States is accused of that constantly, but I think when you see what caused it, you can put it in greater perspective. There is no question that this Court demonstrated total frustration.

Now, another interesting point is that you are dealing with a young court. You are dealing with a court that says it will implement. That means it is not a matter of dramatic shift in the composition of that court. It will be around for many years, so I think the constitutional mandate, its clarity, will be there for many years. We now have to work within that mandate.

SENATOR STOCKMAN: Have there been discussions within the Cabinet, for instance, in which you would participate, or perhaps remove yourself arguably because of the litigation nature? Have there been discussions of the Mount Laurel decision and what, if any, action the Executive Branch should take in response to that decision?

COMMISSIONER RODRIGUEZ: I know they clearly have a concern about Mount Laurel and that the governmental response should be. What it is -- I have not engaged in those conversations for a very specific reason. Mount Laurel II is now the law of the cases of many of our clients in Morris County, and I have to be sure that I do not compromise the rights that have been established in Mount Laurel II. Should the future incorporate a better way of bringing it up to date, of course our hope would be that we have resolved the issues in Morris County so that there isn't a case in court. Imagine my involving myself in a conversation about how to alter lines which could affect the rights of clients within the growth areas now of Mount Laurel. So, because of the delicacy of the litigation-- Incidentally, not that there is any absence of legislative presence in even that suit. The safest ground for me as an advocate for the rights of my client, is not to engage in that conversation at this time, except to be clear, which I have in every public appearance I have made, that Mount Laurel II must be complied with because it now has raised the needs of the

housing condition to a constitutional dimension. I think if you have monitored the press, I have been unalterably stating what I believe to be the law in the case of Mount Laurel, because that is what must be applied to my clients.

SENATOR STOCKMAN: Joe, I don't doubt that; I just wondered if you had had an opportunity to try to persuade some of your brethren within the Administration on that. I gather your answer is that, because of the peculiar posture you are in, they have excused you, and you have excused yourself -- may be a better way to put it -- from any discussions with the Governor or other Cabinet members on what ought to be done to implement this decision. Is that a fair statement of what has been happening?

COMMISSIONER RODRIGUEZ: Yes, because I think the Governor has acknowledged publicly that he respects my position, because I have an ethical and moral responsibility to my clients. I think that pretty much puts it at where we are. He respects my position and, of course, I recognize what his is.

SENATOR STOCKMAN: Do you suggest any -- well, let me ask this. Has the thought occurred, or has discussion ever ensued within your Department to attempt a -- and now I'm reaching into my old lawyer's hat and I am on very weak ground -- but, I remember the old concept of mandamus, the requirement in action that could compel public officials to respond to their duties -- if, as you say, the Supreme Court has put steel teeth into this fundamental mandate and directed that the Guide Plan, the logical instrument, be updated, was there any thought given within your Department to bringing an action in the nature of mandamus against, let's say, the Department of Community Affairs, which at least to now has had the responsibility for that Guide Plan, to require that they, in fact, update it?

COMMISSIONER RODRIGUEZ: No, not at this time, because, see, the law of the case is still at least until 1985. I would not want to be part of a mandamus that might alter a growth line that could affect the rights of the clients who I now have in court, who are relying on where the growth areas are for a demonstration of what the fair share should be.

SENATOR STOCKMAN: Well, how about this -- I think I follow you. Hypothetically, suppose the Administration were -- and I don't think it has reached this point yet -- but, I must tell you frankly that in the exchanges I have had, particularly with Commissioner Renna, there is very substantial evidence that, at the moment at least -- and we'll hear further testimony, I'm sure, on this -- there is no active effort at updating the Guide Plan. Suppose the Administration were to publicly state, for whatever reason, good or bad, in the public interest or not, that they would not respond to the Guide Plan, that they would do nothing to deal with the Guide Plan through 1985, would you consider, would there be a legal basis to consider some sort of legal action in the form of mandamus, or supplemental proceeding to the Mount Laurel II, to force them to do something on this?

COMMISSIONER RODRIGUEZ: You see, at that point, if they said they were not going to do anything, I would assume that a mandamus would suggest that if we did not get the changes from them, they would not occur. That would also suggest to me total inaction by the Legislature. I think the safest route then would be to aggressively represent the rights of my clients within Mount Laurel II. You know, to seek a mandamus -- we would continue to use the law of the case. Now, what if this was 1986 and the case was over, and there were other clients seeking affordable housing, we would be in the developing community area. Would there be some consideration at that time? I think circumstances and opportunity would have to dictate that. It would be difficult for me now to consider mandamus, because our total involvement has been with the negotiation of the Morris County case, and the implementation of this at this time, which has been an eight-month process, which is very short.

What might our position be in the future? I think we would have to reanalyze it, but the answer cannot be that nothing will be done, because I do not think the Court would permit that.

SENATOR STOCKMAN: Well, certainly if by 1985 no action of any consequence has been taken to update the Guide Plan, or to put into place an alternate mechanism to provide the answers to these questions the Court is groping with, I guess you would agree with me that it means the Court, on a case-by-case basis, is going to have to develop

this area of land use. Do you agree with me that it is not the responsibility it was designed for in the courts, and could produce a lot more problems than we have already?

COMMISSIONER RODRIGUEZ: Sure, now that we understand again what the Supreme Court did in order to meet that eventuality, putting the three judges, one sitting in the north, one sitting central, and one sitting south. You see, maybe my thought is that if these three judges are dealing with the concept on an ongoing basis, that if you do not do a Guide Plan-- I don't know whether the mirror image of the Guide Plan would always be within their minds, and with the evidence presented they would move and alter to meet circumstances. So, I think there will always be the forward movement. See, I do not see it being that if you do not get a mandamus there will be no action. I see the avenue for action with three judges, then zoning the State, the very thing that people complain against. There would be such a retreat if that were to occur, that by default the three judges would zone the State.

So, it will be done, and as an advocate of those who are seeking affordable housing, I always see that the avenue is there. So, the thought of mandamus never, you know, entered my mind in that respect, because I do not see the door as ever being closed to the movement for affordable housing.

SENATOR STOCKMAN: But, if the courts are really not, by their own acknowledgment, well equipped without input by the Executive and Legislative Branches to do the job, doesn't that almost suggest that from a constitutional point of view, constitutional design, they shouldn't do the job, and that if the other branches can, they should be made to. You said earlier in your testimony, and that is my clouded, but nevertheless my understanding to the extent I have it, that the Guide Plan is in place. While it may not have been specifically intended for this, it has authority, it has legislative authority and direction, and it is there. If that be so, why not insist, in the absence of clear and active endeavors to replace it, to put more pressure on something being done with it?

COMMISSIONER RODRIGUEZ: Pressure -- I think -- see, in eight years since Mount Laurel I, there is a lot of fault to go around, and I

do not know where the pressure should be. I would think though, that if-- See, we have also made a suggestion to the Court that in certain public interest matters, there be an awarding of counsel fees, to open the availability of persons in this condition, to perhaps represent themselves. I think the Court would get itself in position to do it readily, through experts and several mechanisms they have available now. They will do it, but it will be costly. The fact that they will do it and it will be costly, and it will raise concern by municipalities, I think this issue in a short time will reach the same public relations status that the auto insurance did, and there will be a demand from the citizenry, which then will trigger action either by the Legislature and, if there is an action by the Executive, by the Executive. I do not think we are going to be totally alone in this battle in the future, because I see if it comes to that, that there will be other avenues of change. So, I hope we never get to the point where we have to mandamus the Executive Branch, because if it comes to that, we do not have the legislative ability to mandamus the Legislature. I would like to be sure we are mandamus everyone who has the ability and who is not doing it, including the Department of Community Affairs, instead of just selecting one and saying, "You are the reason for inaction." I think it will be a governmental failure, and we will all have to share the blame, and the loser will be the person without the affordable house. So, I hope we never get to that. We are trying to defuse that kind of a feeling, get beyond it, and say, "Let's plan rationally."

Now, we do not want to ghettoize, we do not want to knock down trees and build houses and put sewer lines through the pinelands, but let's do it reasonably so that everyone has a fair share. I think that is such a reasonable approach that we should get on with it, rather than attempting to divide with litigation.

SENATOR STOCKMAN: Joe, let's turn to the Legislative Branch for a minute, because as you say, there is plenty of room for spreading responsibility around. You must be aware of a resolution that was introduced not long ago and co-signed by nineteen members of the Senate, which calls for a question on the ballot to propose a constitutional amendment which would significantly pare down and

overrule in some substantial measure the findings of the Supreme Court in Mount Laurel II. Are you aware of that?

COMMISSIONER RODRIGUEZ: Yes.

SENATOR STOCKMAN: Is it fair to say you are not enthused about that particular piece of legislation?

COMMISSIONER RODRIGUEZ: I am not enthused with that piece of legislation, because I think what it is really doing is challenging the constitutional dimension the Court has stated. And, until you can really quarrel and show that the Court was wrong in its demonstration of fairness, I think that kind of an effort is counterproductive to what really are the needs of the State.

SENATOR STOCKMAN: Why do you think it is that nineteen members of the Legislature would be so distressed over what we are dealing with, frankly, which you have articulated as being, in your opinion, really common sense, a patient decision based on fundamental fairness? Why do you think it is that that many members of the Legislature seem greatly distressed and see what is happening here in Mount Laurel as a threat, obviously, to fundamental notions, ideas and feelings they have, and that they hold closely? Why is that?

COMMISSIONER RODRIGUEZ: I hope it is because they do not totally understand Mount Laurel II, but I think the syndrome is when similar to, as I said earlier, when we all campaign and put in our rhetoric -- and when I say rhetoric, I don't mean to demean the campaign rhetoric -- but, you know, we are all for senior citizens, we are all for the poor, we are all for greater safety for senior citizens and the law, and mandatory sentences. We do not want judges to be weak-kneed, but then when someone suggests we are going to build a big prison, I can suggest to you there are twenty-one Senators saying, "Not me, Lord." You see, it is that kind of a syndrome.

SENATOR STOCKMAN: It would probably be forty.

COMMISSIONER RODRIGUEZ: Probably forty? But yet, we all recognize the need. I think there is a fear because of a lack of understanding. I hope it is not because there is an insensitivity to the need. The Court has said there is a need, but again, it could be the emotional reaction. The emotional reaction is, "Look, we can take care of our own affairs, why do we need the Court?" I can suggest to

you that the Court would be very happy if everyone took care of their own affairs, because then there would not be Mount Laurel III.

SENATOR STOCKMAN: I think you would agree with me, though, that you can see the dilemma for me, just figuratively me, a member of the Legislature who, let's say, may have some sympathy, or does have sympathy with what you have expressed, and who supports what you have expressed, and what you and your Department have done as a result of pursuing this litigation on behalf of people and people's rights, but the problem we have is, before we go any further, we know there are nineteen members of the Senate who are prepared to put their names on a resolution that would essentially overrule, or majorly overrule that decision. How do I go about trying to fashion a bill that is not only going to, in effect, say, "Stop, that makes no sense," but take up the cause and go forward affirmatively and respond to the Supreme Court's decision? I mean, it is almost an unfair question. That is why I get paid so much for where I am, as opposed to you where you are. But, I am really sincere about this. It is a great dilemma to me. I would be less than candid if I did not share with you and with the public in a forum like this, the fact that it is a very difficult area. It is evident that it is a very troublesome area, and to begin to build a consensus I'm looking for help.

COMMISSIONER RODRIGUEZ: See, the Court said it could not wait for a consensus. Let me be very frank. What I do not want to see, and why I said at the end of my statement that I think what we need is to work in unison, and not have the divisive finger of blame, for this very reason. It is a political problem, political in the sense that it raises a great deal of emotion.

I think the first component will be an educational process, a process to understand what the real responsibility of the State is, but not to allow it to deteriorate to a situation where if we know it has political volatility, to say if we are this branch, "The responsibility belongs here, because then they draw the political heat, and we steal their constituents." Or, "It belongs here," so that they take the political heat. Who should take the political heat? It is more important to say, "You have the responsibility because you will take the political heat." I do not want to see that kind of a discussion.

I think the discussion has to be, "How can we educate and work in unison?" and that is why I am so reticent to try to indicate where the fault should be. I think we all bear the fault, eight years of fault, but not to permit in the discussion this kind of a division.

Now, will the educational process work? I pray it will. What if it doesn't? Then our course is charted, in that we will have to continue to resort to the courts, the very thing we are being criticized for, but it is our mission. It is the oath of office I took to uphold the Constitution of the United States and of New Jersey, and the interpretations of those Constitutions. My course is charted. Will we be required to constantly seek remedies in court? I pray not. They are costly, as I keep hearing. They are divisive, as I keep hearing. They do polarize, as I keep hearing. But, I have no alternative. The alternative comes from the other branches of government, and I pray they work in unison, really. I don't know how else to put it.

SENATOR STOCKMAN: Joe, we are going to have further hearings on this subject, this Committee. My thinking is to invite other leadership people in the Administration in, the Attorney General for sure, the Commissioner of Environmental Protection for sure, the Commissioner of the Department of Community Affairs for sure. I would be delighted if the Governor at some point were concerned enough, or willing enough, to express himself or, if not he himself personally, someone very close to him in the Administration to express his opinion. I also think we should hear from some people like some of the mayors from some of the communities which have struggled with this issue, certainly some of the urban mayors, Gibson, Primas and Holland, perhaps, but, also, some of the suburban mayors. I think we have to hear too from some of the planners and some of the builders. Do you think that is a logical way to go in this educational approach? Do you have any suggestions as to other witnesses, or other directions this Committee could take to help develop that understanding and the appreciation of the need for action?

COMMISSIONER RODRIGUEZ: Not at the moment, but I think that whatever could enhance the total knowledge from which we react has to be important. You know, we first have to start with the threshold issue. Is there a housing problem, and if there is--

SENATOR STOCKMAN: Is there any doubt about that in your mind?

COMMISSIONER RODRIGUEZ: None at all; none at all.

SENATOR STOCKMAN: In that regard, is the housing problem in New Jersey getting better, getting worse, or staying the same?

COMMISSIONER RODRIGUEZ: I think everyone who has studied the issue indicates clearly that it is getting worse.

SENATOR STOCKMAN: Do you think that does propel us more and more to this troublesome possibility of two societies, separate but unequal?

COMMISSIONER RODRIGUEZ: It does. Now, there is an ingredient in there that perhaps we as a State cannot totally control, and that is the inflation rate. I think the Supreme Court makes an accommodation for that, by saying there are people who fall below the protections of this opinion, and they are the ones who will be primarily affected as you move that inflation rate. But, it is still addressing-- And, again, I try to make this as clear as I can. We are talking about 40% of the wage earners in the State who are in dignified, respected occupations, unfortunately, which do not generate sufficient income to compete in the housing market. I say, if that home is part of the American dream, let's not make its quest a nightmare. In order to avoid doing that, it requires education, and unity of governmental effort. Certainly, it should not be one to be polarized on a partisan basis, because the housing need is not on a partisan basis.

SENATOR STOCKMAN: Would you care to comment on the question of the separate, I guess separate, posture the Attorney General has on this issue, because we are talking about a constitutional mandate from the Supreme Court, and he is the chief law enforcement official, I guess, within the Administration? The Attorney General's office took the position in this Mount Laurel litigation, didn't it? You might be more familiar with that than I am.

COMMISSIONER RODRIGUEZ: Not that I am aware of.

SENATOR STOCKMAN: Were they not participants in it?

KENNETH MEISER: They were asked to submit an amicus curiae on the status of the State Development Guide Plan. They did that

subsequent to oral argument; they did not appear at oral argument. They submitted a brief only on that one narrow question.

SENATOR STOCKMAN: And, what was their position on that?

MR. MEISER: Their position was that they had statutory authorization to do a State Development Guide Plan, and they gave some of the background. They took no position on any constitutional issue, whether this is mandated, or whether it needed to be followed for future update.

SENATOR STOCKMAN: Or whether it should play a part in the Court's solution to the Mount Laurel suit.

MR. MEISER: It was a very technical brief dealing with that narrow issue they were asked to brief by the Court.

SENATOR STOCKMAN: So, throughout the history of the Mount Laurel litigation, the Attorney General's office has never taken a position supportive, specifically, of the use of the Guide Plan as an instrument for resolving the litigation problem.

MR. MEISER: We could get you a copy of their brief if you want to see it.

SENATOR STOCKMAN: Well, I appreciate that offer, and I will take you up on it, but let me ask the question again. Maybe I didn't make it clear. Is it a fact, if you know-- Perhaps I should ask you to identify yourself.

MR. MEISER: I am Kenneth Meiser from the New Jersey Public Advocate's office.

COMMISSIONER RODRIGUEZ: Ken argued the case of Mount Laurel II.

SENATOR STOCKMAN: Okay, so, Ken, I guess you have lived with this case and have a feeling for it. I am just curious whether the Attorney General at any point through the decision had taken a position with regard to the use of the Guide Plan as part of the solution of the issues in Mount Laurel, or did they stay neutral?

MR. MEISER: The brief simply described how the Plan was proposed, how it was created and what the State was using it for. They left it to the Court to determine--

SENATOR STOCKMAN: (interrupting) Whether it would be helpful -- I see. And I guess that is their continued position at this point.

Turning back to you, Joe, what is the Attorney General's position on this matter now?

COMMISSIONER RODRIGUEZ: I have not discussed it with him. I have not considered this in the prosecutorial context, to raise it in that regard.

SENATOR STOCKMAN: Well, I wasn't thinking prosecutorially, I was just curious whether you had an opinion, and I guess we should more appropriately ask him about it. You have made your position clear. He is in an independent position, I guess arguably, in this.

COMMISSIONER RODRIGUEZ: See, I never felt that I really had to make my position clear to anyone, because it is spread across the press everyday. We are in litigation, so I never felt it appropriate to discuss it beyond that.

SENATOR STOCKMAN: Do you have any opinions, or has your Department worked on anything with regard to how the Guide Plan could best be updated and refined? Is that something you have gotten into or not?

COMMISSIONER RODRIGUEZ: No.

SENATOR STOCKMAN: Do you have any opinions or views on it, for instance, whether it should be done by the Department of Community Affairs or by another-- I think your statement may have touched on this, that you don't get into that.

COMMISSIONER RODRIGUEZ: We talk about the kind of involvement information that should be gathered, but, see, when it came down in January, 1983, we quickly had to accommodate the Morris County cases within that definition. So, we have been working with the accommodations of that case, rather than projecting where it should go after we have completed it.

SENATOR STOCKMAN: So, you have no views at this time on that?

COMMISSIONER RODRIGUEZ: No.

SENATOR STOCKMAN: What, if any, implications, or impact potentially, do you see this decision having on the whole subject of the property tax and its affect on the development of the State? Do you see any correlation or relationship there? I ask that because, of course, there is a lot of distress and concern, particularly with

regard to urban communities, such as Camden, Newark and so on, and the part that the property tax structure plays in what is occurring there. Do you see any connection, any possibility that this decision, or the consequences of it, could be of value in coming to grips with, or dealing with the question of property tax reform?

COMMISSIONER RODRIGUEZ: I have not given it that kind of thought, but just sitting here quickly I can see where if you follow the rational plan the Court has talked about to those communities, if in fact they are in growth areas that would attract, because of infrastructure and a lot of other things, industry and business, that they would be rateables. They would be rateables, and an increase in housing stock should increase the tax contribution. So, I think that if expansion were to take place, unless you compound services tremendously, there should be downward pressure on property tax. The complication would be if you keep limiting and limiting and you maintain the same services. The few paying for the services tend to increase the demand for property taxes. For instance, in the City of Camden, I think with the enterprise zone legislation, if, in fact, you draw business and the business draws the housing stock, and you distribute greater housing stock in a city, there are more contributors to the tax package. That should put downward pressure for the city in general. Now, that is a quick, not thought through response, but as you raise it now-- That is what I think the Guide Plan was trying to do in recognizing fragile areas and legitimate areas of growth, that there could very well be a tax benefit, along with the expansion.

SENATOR STOCKMAN: What about the environmental implications of this decision? Again, that is not a direct issue for you, but do you have any views or feelings about the affect this Mount Laurel decision will have from an environmental point of view in terms of the future growth and development of the State?

COMMISSIONER RODRIGUEZ: Yes. I think the opinion says very clearly, that while it is stating the constitutional mandate for housing development, that at no time does it want it to infringe upon the fragile environment, and the areas that are reasonably and rationally environmental areas that should be preserved, are preserved by the very words of this opinion. That is the rational balance I'm

talking about, that no matter what mechanism you use, assuming that it is to be different in name than the Guide Plan. The mechanism so that we all know where we stand must preserve the environmental areas, because I think they are critical -- the pineland areas. It is contained in this opinion. It is a rational distribution of land, with the responsibility of a fair share need. When you really look at the opinion, it is giving you the blueprint, and all we have to do is follow it. But, it is not to raid the environment on behalf of housing. It is not to infringe on housing on behalf of the environment. But, it is to make the rational judgment on the circumstances of location, which is the safest way of doing it. They are the circumstances that come in as to how you alter in the future, the Guide Plan. What does it mean to change it? I think the circumstances of the future will dictate how it is to be changed, because if there is a shift, if there is an environmental shift, that has to be recognized in the future, and it provides for that, so that we can be comfortable that we are not raiding one another's turf with respect to environment and housing.

SENATOR STOCKMAN: Your Department, I guess, advocated to the Court that they use the Guide Plan, or that's not true, is it? Was that a decision by the Court itself, or did your Department advocate that?

COMMISSIONER RODRIGUEZ: It basically was a decision that the Court adopted. See, we were still conceptually dealing with the developing areas. It was -- refreshing is not the word -- but, it was understandable within clear guidelines, to then, rather than struggling with what your concept of developing municipalities is, which puts everybody else within gun sight, to look at a rational plan and say, "Yes, it's rational. Those who are in environmental areas we will now relieve of responsibility; those in limited growth--" It had a symmetrical constitutional purity to it, and I think that is what we are talking about, no matter what the mechanism is, whether it is the Guide Plan or some other vehicle. That kind of an approach, so that everybody approaches it knowing, so that you cut out all the litigation costs, that there is a State policy directing, logically and rationally, the projected growth that we can then live within, and municipalities know their responsibilities. So, that was refreshing.

SENATOR STOCKMAN: Are you reasonably satisfied with the Guide Plan's lines and designs?

COMMISSIONER RODRIGUEZ: Yes, we do not have any reason to quarrel with it at this time.

SENATOR STOCKMAN: Are you reasonably satisfied with their categories -- you have described those -- the broad categories they work with?

COMMISSIONER RODRIGUEZ: Yes, because I cannot think of another category that should be introduced.

SENATOR STOCKMAN: That was another question I was going to ask you. So, you feel it is a logical mechanism to work with, to deal with this problem?

COMMISSIONER RODRIGUEZ: I think the divisions of growth area, limited growth, agriculture and conservation are good subdivisions to preserve, you know, the inherent beauty of our State, and yet provide for affordable housing.

SENATOR STOCKMAN: Has your Department had any communications with, for instance, the Department of Community Affairs, in terms of trying to find out what is going on and what is or isn't happening to the Guide Plan?

COMMISSIONER RODRIGUEZ: We are aware that there were efforts, I think in 1981, to revise, but they were never fully adopted, and we are aware of what those considerations were.

SENATOR STOCKMAN: Oh, but I mean, since the decision. In other words, since January 1 when the decision was handed down, have your people kept in contact with the Department of Community Affairs to find out what, if anything, is going on with regard to the Guide Plan?

COMMISSIONER RODRIGUEZ: I'm sure -- well, I can't say that. I know we have made contact to determine, for instance, the efficacy of what they were doing in 1981, whether it was actually formally adopted or not. I'm sure that within staff there has been conversation, but it never played that important a role as far as I was concerned.

SENATOR STOCKMAN: Well, Joe, wouldn't it, as a consequence of that decision, be important to your people in the litigation to be aware of what was happening to the Guide Plan, if anything was happening to it? Now, let me be frank, all the signs I see, including

some communications which will become part of the record of this hearing, suggest that within the Department of Community Affairs essentially nothing has happened. So, that may be the answer, but I am curious to confirm that if I can through you, because it strikes me that your people would logically be in contact with that development if something were going on, by virtue of their role on behalf of litigants.

COMMISSIONER RODRIGUEZ: I'm sure that if something were going on we would be aware of it.

SENATOR STOCKMEN: And you are not aware of it?

COMMISSIONER RODRIGUEZ: I am not aware of it because, see, if something were going on, and everybody said something is going on, how long would it take for that going on to be accomplished, and how might that then affect attitudes of the litigation we're in? Well, we now don't want to talk to you because something is going on that may do this or do that. We kind of took this and said, "This is where we stand." Now, if something is going to happen, I'm sure we would like to know. We are not impressed that there is that much going on to affect our posture here.

SENATOR STOCKMAN: I'm not either.

COMMISSIONER RODRIGUEZ: You know, I don't call them to say, "What are you doing?"

SENATOR STOCKMAN: Sid Willis is here. Excuse me, Sid. We're just making a record here; this is nothing personally directed at you. I'm sorry.

COMMISSIONER RODRIGUEZ: Again, when you put the litigation in context, then you realize why we do not make an awful lot of conversation and activity, because that is the law of the case.

SENATOR STOCKMAN: All right. Senator Connors, do you have some questions?

SENATOR CONNORS: Yes.

SENATOR STOCKMAN: Senator Connors, I have been, as usual, jumping in. Please go ahead.

SENATOR CONNORS: Commissioner, it is a pleasure to discuss with you today the problems involving this Guide Plan. From your point of view -- we have heard the Chairman discuss with you the broader

concepts of it. I was in hopes today that we would come here to put this Guide Plan together from the standpoint of untangling and unraveling the mess that the State has gotten it into. I agree with you that there is a need for housing. I really wear several hats. I am a retired builder, so perhaps I should be sitting where you are sitting--

COMMISSIONER RODRIGUEZ: (interrupting) I hope my figures were accurate.

SENATOR CONNORS: --to give some testimony. I have been the elected Mayor of my municipality for the last eighteen years. I was a tax assessor five years before that; I spent three years as a Councilman; I spent six years as a Freeholder, two of them as Freeholder Director, and I am serving my first term in the Senate, so you now have some background on me.

What I am saying is this. Isn't it the Legislature's responsibility to put this Guide Plan together? Don't you feel it is the Legislature's responsibility to put this Guide Plan together? Isn't that the cry? Let me ask it a different way. Isn't that what the cry from the Supreme Court is now, to do something about it before they do something about it?

COMMISSIONER RODRIGUEZ: To be frank, I think what the Supreme Court is saying is, it does, in fact, lean heavily on the Legislature, because I think what it is seeking, in order to give the acceptability of what it demands, is to have it accomplished by the representatives of the people. If it is not the representatives of the people, it is always open to some criticism. Who is the one person to do it? Which is the court to do it? And I think to give it total acceptance, and that is what the Court is suggesting, yes, in that context, it would be best if the Legislature, as a representative of the public, could come up with a plan so that it gains acceptance in that context, and I think that is what the Court refers to when it refers to the Legislature, although it does not say it is either there or no place, you see.

SENATOR CONNORS: Well, that is a point of view I share in a way, that it is the Legislature's responsibility, and it is my point of view that the Legislature is absolutely -- and being one of them, all

right, one of forty in the house I sit in -- abdicating that responsibility, in my view, in the last two years, in the last twenty months anyway.

COMMISSIONER RODRIGUEZ: Eight years, try eight years.

SENATOR CONNORS: Well, two that I can speak directly to. The Chairman has pointed out that this is not a finger-pointing session and I was glad to hear that, although it seemed to me that in some of his remarks he was attempting to dust off his fingernail and point. You know, in addition to some of the jobs I have held, and when I say jobs, I mean businesses I have engaged in, I also possess an ocean operator's license and have sailed many, many times off the coast of Ocean County, Florida, etc. carrying passengers for hire. The reason why I bring this simple statement up is that you have to know where you have been, in order to know where you are going. All right? That is just a simple premise in navigation. If you don't know where you came from, you are never going to find out where you are now, and where you want to be down the road. If you accept that premise, I think we should look backward in deference to the Chairman's thought, we should look backward at least to know where we have been, what has happened, and what has caused this. All right?

In trying to unravel this thing, I would like to tell you a little story. Perhaps you will agree with it, perhaps you won't. I come from a county that was, and perhaps still is, but during the '60's and '70's was noted as being the foremost county in this nation in growth. All right? And, in 1967, a waste water management plan was put together for the sewerage of the entire county. It was demanded by the USEPA and demanded by NJDEP that this plan be implemented and, in fact, the figures were upgraded. So, we embarked on the largest sewer system grant that was given by the Federal government and the State government to our county, a four hundred million dollar project to the fastest growing county in the nation, that has the lowest income, or one of the lowest incomes of the twenty-one counties, and has the highest percentage of homeowner rates. We have seen, since the implementation of that plan, during which we built three mammoth sewer plants to discharge seventy-two million gallons of effluent a day into the Atlantic Ocean and sixty feet of water in excess of six thousand

feet -- we saw these interceptors built, etc. and what I'm saying, and the point I am trying to arrive at now, is the fact that all of a sudden, for an environmental reason, which I have no quarrel with at all -- we saw the Pineland Act come into effect, we saw the CAFRA Act come into effect, we saw the Wetlands Act come into effect and we saw Executive Order 71, which substantially reduced the growth rate. Now, I have no quarrel with those. My point is, in any guide plan, knowing, going back to the first premise I put on the table, that you have to know where you've been in order to know where you're going, and where you are now. The plain fact of the matter is that we are saddled in Ocean County wanting to welcome people in, and for environmental reasons, and others I'm sure, for political reasons, this is just not happening. It has been retarded substantially. Here is an area where they opened the door, so to speak, through the '60's and '70's to bring this about. I can cite some substantial improvements that could be made in any guide plan. I think we should look to the Legislature regarding some of the problems the Legislature has created. For example, and it has been quoted, to me anyway, from the Builders' Association, that probably 10% to 12% of the costs in today's building is directly attributable to the rules and regulations, the dotting of the "i's" and the crossing of the "t's," that have been implemented by the Legislature and through DCA, and this is not a criticism of DCA. But, these have escalated the costs in building.

If we accept that, and I can't really verify whether that is true or not, why is it that we have a bill called S-383, and I think you gave some testimony on it -- I sit on the County and Municipal Government Committee -- or your Department did. Here was a bill that would allow apartment buildings to be built for rental, and the only thing that was asked was, in order to indemnify the builders or the developers of these apartment buildings, that those municipalities which exercised rent control -- there could be no rent control. Certainly, one would say, "Heavens to Mergatroy, this is a bad situation. We have to have rent control," on the one side of the coin, but after hearing all the testimony on that, when an apartment building would be built for rent without rent control, it would certainly free up other areas for the less fortunate and the poor. People who wanted

to get out of the buildings they were presently in, into those new buildings that would be built, would allow the less fortunate to move into the rent controlled buildings which presently exist. A resolution was put on the floor and Senator Stockman has pointed to nineteen Senators not voting, or cosponsoring a bill that would change the Constitution with regard to the Mount Laurel II decision, but, also, that resolution was put on the floor to release that bill from the committee and to have the full Senate vote on it. My question is this. Are you aware of S-383?

COMMISSIONER RODRIGUEZ: Did you say our Department testified on that?

SENATOR CONNORS: It was either you or DCA; I could be wrong on that.

COMMISSIONER RODRIGUEZ: If it was rent control-- (Commissioner speaks to one of his staff seated behind him.) The person who would be responsible indicates to me that we did not testify.

SENATOR CONNORS: My question is, here we have a situation where a bill says, "Let us build. We have developers who want to go ahead and build apartment buildings. However, in order to secure mortgage money, etc. so we can build this building without fear of rent control, because banks won't lend us any money-- If we can do this for the period of the note that would be held on the building, this will free up other areas for people who have gained an income, but who, because of the housing shortage, won't be moving in." Isn't that a retardant? Isn't that part of this Guide Plan? If we are talking about building new housing, all right -- I'm not asking you for an endorsement on S-383, but I am asking for your thoughts on it -- that the Legislature itself is the one that is forestalling some of the problems that have existed here? Maybe it is unfair for me to ask you for a comment on that, but in my mind as a Senator, and as a person who understands a little bit about housing, because it has been my business for over twenty-five years, certainly when you say, "Okay, there will be no obligation with regard to rent control," and the rents could go astronomically high, you are still freeing up properties which are under rent control for people who have gained income, who could afford

to move in. It is a risk as far as the developer is concerned, but those monies could not be freed up for mortgage purposes unless there was such a clause put into that legislation. I think this was good legislation, but it was soundly defeated. I intend to point to some other issues.

COMMISSIONER RODRIGUEZ: See, if I may respond quickly, the issue as I see it is that you don't always translate in a direct ratio between a building without rent control being a one-for-one replacement of someone who then can move into the rent controlled unit. I think in the Task Force Report we filed on issues dealing with the homeless, which I say are those who fall outside the Mount Laurel II opinion, we make recommendations with respect to what should be in place to deal with the present housing stock as people move out.

SENATOR CONNORS: We're talking about a mixture then.

COMMISSIONER RODRIGUEZ: Now, how can Mount Laurel affect this? Mount Laurel really, if you look at it carefully, says, "Once you have taken care of your regional fair share need, you can go ahead and build anything else you want." Do you see? But, what comes first? I think what comes first is the allocation of your fair share, then there would be no impediment to building condominiums at \$300,000 a unit. But see, you can't do that and say, "Circumstances might provide." If you have the mechanism to be sure there is a translation to accommodate, then I think you are really still working within the Mount Laurel concept.

SENATOR CONNORS: Well, earlier on you mentioned the fact that when the Supreme Court came down with Mount Laurel I, it was only because there was no Guide Plan, and the situation was getting worse -- if I interpreted your words correctly -- and then Mount Laurel II came down, only because somebody, whether it was the Legislative Branch or the Executive Branch, was not doing anything about it. The indicators are there; the warning signals are up, and constitutionally the Supreme Court is going to do something about this by 1985, in case we don't do anything about it. "We" could mean the Legislative Branch or the Executive Branch. But, again, and to use the words of the Chairman, the finger pointing, I think, should come back to us, the Legislative Branch. The Legislature keeps adding bill after bill after bill, which

ties the hands of the housing industry, in my humble opinion. We talk about mobile homes. Let's start to unravel this big mess we have now. We have people in mobile homes, and there are bills right now, who are crying for space, and yet, not through zoning so much, but through problems which exist presently in mobile home parks. For example, there is a bill I know is in the hopper, that is just crying for approval, or for review, that says that any mobile home owner in a park can put up his own "For Sale" sign in the window of his mobile home so he can sell it. And do you know, Commissioner, there are mobile home contracts that forbid this, and that will kick the people out? People live in fear and in terror that they are going to be kicked out. And did you know, Commissioner, that not only that exists, but the people in my district have called this to my attention and said, "Let us at least have what we consider a constitutional right to put a "For Sale" sign in our own windows, without paying a commission to the guy who owns the mobile home park." And yet, those bills, in my humble opinion worthy bills, have been totally ignored for political purposes, again in my humble opinion.

COMMISSIONER RODRIGUEZ: We are aware of an ordinance that prevents an adult from having a child for fear of eviction from a mobile home.

SENATOR CONNORS: These are terrible things.

COMMISSIONER RODRIGUEZ: And, we are involved, so we are aware of that. But, see, the rational land distribution and location is a rational responsibility of, let's say, the Legislature. You could take care of all of that. Mount Laurel provides for that. It says, "Plan rationally." And, you can fold in all this confusion within that rational plan. The condominiums -- do you put people out because they are senior citizens? We are fighting that. Of course, the Legislature suggested a change about how old the spouse should be if a senior dies, to be protected. All of that could be approached in a very rational way. You can accommodate all of these ad hoc responses to local problems, which could be confusing the master plan.

SENATOR CONNORS: Wouldn't this be in a Guide Plan that the State would put together? I'm not saying specifically, "A mobile home owner shall have the right to put a "For Sale" sign in his own window."

COMMISSIONER RODRIGUEZ: I don't know whether the Guide Plan would cover the "For Sale" sign, but it will certainly cover the location and the permissibility of a mobile home in a geographic area.

SENATOR CONNORS: But, those kinds of bills that have a positive reaction on that would start to grant relief, at least from my point of view.

COMMISSIONER RODRIGUEZ: I think what you could do in looking at a Guide Plan, is look at all the things that put the pressure on the value of the land. And, if you look at the Mount Laurel I opinion, what is it that the Court reacted to that was putting economic pressure on the land? You had to build in so many square feet. If you were going to do that, the builder had to build a school or contribute to a library. He had to contribute to the fire department. He had to contribute, and where is he going to get the money? He has to drive up the costs.

SENATOR CONNORS: Absolutely.

COMMISSIONER RODRIGUEZ: And they were saying that the driving up of the costs was the exclusion, you see? Now, I have the flip side of that in Atlantic City. There is no exclusionary zoning in Atlantic City. The economy is the bulldozer. So, we are losing time, and that is why we need the reinvestment tax credit. But, that whole thing should be approached so we don't get pressured on both ends of the spectrum.

SENATOR CONNORS: Well, that is one of the things I had in my notes, Commissioner. I pointed to the example of Ocean County, which was told to build this mammoth sewer plant, and then stop -- stop its growth.

COMMISSIONER RODRIGUEZ: See, that would not happen if the Plan was given prima facie value for a period of time, which Mount Laurel accommodates. Now, look at the beauty. How can you really do this in an economy that is tight? You cannot continue to tax the taxpayer. That is one of the things we fear. The Court said, "Look for subsidy." There you have a billion dollar business in Atlantic City that should legitimately be the unique tool of urban redevelopment, and it could provide a life flow to bring more houses within the affordable area. New Jersey is in a unique position to meet

this need. You see, if we all work together and look at the opportunities, the subsidy stimulation already exists. All we need is the legislation to implement it and put it in a rational program, because if you then deal with Atlantic City, and that subsidy continues in the future, as is part of many of the proposals for the reinvestment tax credit, that unique tool of urban redevelopment can then hit the Newark from Atlantic City, the Camdens, and at least for those who felt that they gave up some of their quality of life and moral arguments for the presence of the casinos for that promise, will see that promise being fulfilled to the benefit of everyone in the State, and then in the public interest, and we would not have to be concerned about with fighting it out in a costly, divisive way that would be the alternative if we don't do it.

So, I agree. You can accommodate all of that confusion with someone with the courage to state the future Plan, where, when and how, so that at least there is no barrier to that 40% income level of the State.

SENATOR CONNORS: One of the things, Commissioner, that I totally agree with in your statement here is, on Page 15, "Finally, in 1970, 85% of proposed projects received government approval in less than three months; 85% now take more than eighteen months." There is an old saying, "Time is money." These are the areas, in my view, not the primary target areas, but land use is one area where government regulation should be definitely another target of that Guide Plan to cut down these costs, to cut down the infrastructure that is required to be built. We require this, we require that, and sooner or later someone has to pay for it, and the guy who buys his home finds out that his sewer bill, in the case of Ocean County, escalated from \$40.00 -- rather \$750.00 for a million gallons treated in his municipality by a sewerage authority, up to \$2,600, and his sewer bills have tripled. No longer is that property a \$10,000 or a \$12,000 property; it now becomes, because of necessity, a higher range property.

During my time as a builder in Ocean County, there were homes built, and I built some of them, that were in the \$9,000 to \$12,000 range, and that is not twenty years ago, all right? Nine to twelve thousand dollars. Now we see that property values have escalated to

the point -- land values -- because of desirability, not so much as a deterrent to keep them out, but just because of a desire to be there, in my particular municipality it is nothing to pay, for a fifty by a hundred lot, in a resort area admittedly, but built on the mainland, up to \$75,000, for a vacant fifty by a hundred lot. Conversely, on the mainland, we have seen prices go up tremendously, but mostly because of the costs that have been assessed to the builders who have been charged, as you eloquently pointed out -- they have to build a school, they have to build a highway, they have to build a cul-de-sac that is three times the size -- I think you pointed out in here -- than what is even necessary. I think that should be one of our targets in the Guide Plan. How can government cut down its area of concern to cost less to the people?

We beat our chests with the Uniform Construction Code, and I am not out here damning the whole thing because most of it is very good. But, we beat our chests and say, "This was predicated," I think the preamble went, "to provide lower costs." No way.

COMMISSIONER RODRIGUEZ: Sure, it brings it down with pressure. Now, I've said, and not to be corny, that the function of the law should actually be a direction for those who want to follow the law. It should be clear. For those who want to abuse, it should be clear also. It should be a boundary, but it should never be an entanglement. See, housing has become an entanglement. The Court recognized the very thing you're saying. How clearly they recognized it, when they put the three judges, with the quickness with which they can order the change of ordinance so that the builder doesn't have those stored warehouse costs to put the upward pressure on the land. You see, the Court was saying, "We are not building houses with this opinion. We are trying to remove the barriers, because we think we have out there in our society the intelligence to build within the available income of the people." But, you cannot continue the barriers to put it outside the reach of so many.

I think we can do it, and that is why I am optimistic and I like to sound the tone that it calls for that unity of effort, because divisiveness -- there are enough pressures on housing with emotion and fears that it probably will never get done, and it will require the

presence of the Court in the most costly manner. I think we are at a crossroads now. You talked about, you don't know where you are going until you know where you've been. The interesting thing here is that Governor Cahill, in 1970, charted the channel. Unfortunately, we have not followed it. What we are saying now is, the warning was given to us in 1970, the Court said it in 1975, it demands it in 1983. We don't have to get hit with a stick. Let's get on with it, and that is my position.

SENATOR CONNORS: Absolutely, absolutely. Finally, just by way of a statement for the record, I am one of those nineteen Senators who signed that bill which would relieve the Supreme Court of making those decisions. I feel very strongly, because I have heard it many, many times in the house I sit in, "Let the courts decide." I want to decide that, along with my colleagues. I want to decide what the game plan is, what that Guide Plan is sensibly, and I do not like the fact that we have to use that type of legislation that would bar the courts from making those decisions, but all too often I have heard, in many of the comments, "Well, that's okay, let the courts decide," and how many decisions do we end up with where the courts decide exactly what legislative intent is all about. I think it is absolutely ridiculous, and I accept, I would hope along with my colleagues, part of the blame. I am here to roll up my sleeves and to start picking apart and giving some input, with your assistance also, and the assistance of others, into putting together a Guide Plan. I think it can be done, but it can't be done with a harangue; it has to be done with some kind of common sense, and knowing where we have been before. As you said, the channel has been charted.

COMMISSIONER RODRIGUEZ: Senator, I would like to see you do it also, but let's-- In my judgment, when we talk about the Constitution, if you would just give this consideration. The Constitution is not there for the majority. The majority does not need the Constitution. The Constitution is there for the minority. And, when it talks about inalienable rights, it says the majority can have its way until such time as it infringes on the inalienable rights. Then the constitutional purity stands for that minority. A quick example is, the entire Senate cannot vote to amputate your hand, even

though it is the majority, because the constitutional symmetry says, "Until it is so backed to inalienable rights, the Constitution must stand."

If you look to see that that is what this Court did by inaction, it backed against a right that it had to elevate under the general welfare. I say, let's understand what the Court did and, rather than entangle with basic constitutional concepts, utilize the effort to move forward to make the Supreme Court passe in the issue because it is being done. I think that is the response we should have, rather than trying to determine what an inalienable right is and the right of the Supreme Court to speak, because I like to see them around, because what has given this country its strength is that we do, despite pressures, preserve the dignity of the individual. I do not think the Court did more than that. If we accept that, let's chart the future and, if you will permit me, that has been my feeling on that legislation. I think we can exercise our efforts in another direction.

SENATOR CONNORS: I would agree with you on that score.

SENATOR STOCKMAN: There are a couple of questions, Joe, that came to my mind. Funding is always a problem for everyone, but I am particularly concerned, is your Department adequately funded in order to deal with this Mount Laurel issue? Is it putting any particular strain on your operation?

COMMISSIONER RODRIGUEZ: We could always do more with more, but with what we have, we do not plan to do less.

SENATOR STOCKMAN: Okay. This is a delicate question, but it is in my mind, and I think I would like at least some comment from you on it. Some of the members of the Legislature have actually gotten involved as litigants in this Mount Laurel litigation, haven't they?

COMMISSIONER RODRIGUEZ: Yes.

SENATOR STOCKMAN: How many legislators, how many members of the Legislature are actually litigants in Mount Laurel II?

COMMISSIONER RODRIGUEZ: Just one that I am aware of surfacely.

SENATOR STOCKMAN: Who is that?

COMMISSIONER RODRIGUEZ: Senator Dorsey.

SENATOR STOCKMAN: And, Senator Dorsey is actually a party then to the suit?

COMMISSIONER RODRIGUEZ: Well, he represents one of the parties.

SENATOR STOCKMAN: But, I also thought some of them were named litigants, and maybe that is where I am confused. I thought some of them somehow became-- Maybe they just filed an amicus brief, maybe that is what I'm thinking of.

COMMISSIONER RODRIGUEZ: They have brought actions; there was another action brought not too long ago, but they are not in the original suit itself as litigants, but as counsel.

SENATOR STOCKMAN: Oh, okay. One other thing, we have been focusing on this decision, this State's housing problems and the direction we should go. Can you speak at all to the question of what the situation is in other states, not so much from the point of view of housing problems, because those problems in those states are their problems, and we are certainly not going to get into them, we haven't been able to solve our own, but what about the converse side in terms of how other states have approached and dealt with this problem, in terms of whether other states have something similar to our State Development Guide Plan, or what other mechanism they have used effectively, if any of them have been effective in this area, to deal with it? Do you or any of your staff have any input on that?

COMMISSIONER RODRIGUEZ: Well, we certainly could make those comparisons. No other state has gone as far as New Jersey with respect to the constitutional dimension. Other states -- and we mentioned this in our statement -- I think we are forty-eighth out of fifty, with respect to density and mobile homes. We are only surpassed by Hawaii, because you can't get them out there, and Massachusetts, which has greater restrictive laws. We have been invited for comment to many of the states. I appeared in Connecticut. In most states you have a battle between urban and suburban fear. But, a lot of other states in reaching this group, are more flexible with the densities, and are more flexible with the mobile homes than we are. But, I'm sure we could make those comparisons, if they are not already done. I do not want to suggest that they are not, but I can't just go back and put my hand on a report. But, we do know from some of the reactions we've gotten throughout the fifty states, that this is a first for this kind of an opinion in the nation.

SENATOR STOCKMAN: Well, on behalf of the Committee, and I'm sure I can speak for Senator Connors, we appreciate your coming, your taking your time, and we appreciate your thoughtful statement. I'm sure Senator Connors hopes your comments are well aired by the media and become a subject of discussion for others in the State, particularly including members of the Legislature and the Executive Branch. I want to thank you again for the role you have played, and for your cooperation with this Committee.

We are going to take a recess, and then we are going to decide how to proceed with the other witnesses.

(RECESS)

#### AFTERNOON SESSION

SENATOR STOCKMAN: The next witness will be Jim Gilbert, Past President of the New Jersey Federation of Planning Officials -- correction -- Jim has stated that since Peter Buchsbaum will be very brief, very, very brief, he will concede his spot to him, so we will hear from Peter Buchsbaum first. Peter?

**PETER A. BUCHSBAUM:** Thank you, Senator Stockman. I am here as a representative of the New Jersey State Bar Association. On September 30, this past Friday, the Trustees of the State Bar Association adopted a resolution which calls on the Executive Branch, the Governor and appropriate officers of the Executive Branch, to undertake an updating of the State Development Guide Plan. It also authorizes the Chairman of the Land Use Section of the State Bar, which is me, to present the resolution to appropriate State offices, to legislators and committees, and to members of the State Legislature. So, I am testifying here on behalf of the State Bar, and specifically on behalf of the Land Use Law Section, by presenting this resolution. I have already given a copy to the staff so you will have it on record. I don't think I have to read the whole thing. The substance of it is as follows:

The Land Use Law Section from which this resolution originated is comprised of, and I think well representative of, the various segments of the Bar which are concerned with land use law. It includes municipal attorneys, developers, lawyers and some persons like myself who have a public interest background. The resolution which originated from our Section was unanimously adopted by the Section. It was supported by attorneys involved with representing municipalities in the planning and land use area, as well as by developers, lawyers and those of us who have been involved in public interest law. So, it represents a consensus of the position of people with a variety of experience.

The reason for its adoption was, first, we are concerned as lawyers, as a Section, as a Bar association, with a possible constitutional confrontation that could result if there is no action to update the Guide Plan. The Supreme Court made the Guide Plan the test of whether a municipality has to act. It also stated that to remain viable as a test, the Guide Plan had to be updated by January 1, 1985. Basically, we have a concern as lawyers that if there is no action, you will, in effect, have a confrontation between the expectations expressed by the judiciary and inaction by the Executive Branch.

We believe this is an unhealthy situation, especially where it concerns such an important policy area, and that the Executive Branch, with the cooperation of the Legislature, should take all steps necessary to avoid that confrontation.

The second concern we have as lawyers, relates to the confusion that could result. The State Development Guide Plan at least provides a clear test through its designation of growth areas, as to which municipalities have a Mount Laurel obligation to satisfy future regional needs for low and moderate-income housing. The lines for growth areas provide a delineation that tells municipalities, tells developers, tells the public that given communities have to act, and that there is responsibility in those communities. If the Guide Plan is allowed to lapse, then confusion will result. We will go back to the former test of developing communities, in which the municipalities did not have an idea as to whether they must act. Developers who owned land in a particular community did not know if they would be able to

prevail in a lawsuit. In the end you will have a great deal of expense and litigation. Maybe we lawyers gain a certain something from that, but I think in this case, and in most cases, we would prefer to see the law clear so that everyone knows what his rights are. That is our concern here.

Finally, we are concerned for sound regional planning. We are citizens of the State, and we are concerned about its ultimate welfare and the way in which it grows. The Court adopted the Guide Plan because it felt it provided a way of designating those areas of the State which are appropriate for growth. If we go back to the old test for developing a community, it is clear that some communities which are best from an overall regional statewide standpoint left relatively undeveloped, will be required to develop in accordance with Mount Laurel, because there will be no other guidelines, no other official document that will designate the appropriate areas for growth in the State.

We do not think this is desirable, and for that reason as well, the State Bar has gone on record as endorsing the updating of the Guide Plan.

SENATOR STOCKMAN: Peter, I appreciate your appearing before the Committee, and I appreciate knowing of the position of the State Bar Association. It is interesting to me that apparently that decision was reached despite the fact that we are dealing, according to Joe Rodriguez, and I think others, with a potentially volatile political issue. I gather that the Bar Association, at least, did not get caught up in any political wrangle over this, but supported this direction. I guess that is a reflection, Peter, and I will sort of ask you too, of their respect for the Court and the fact that the Court has acted unanimously, as we talked about earlier, and as casted in constitutional terms. Would you say that is probably why you didn't find that perhaps there was a furor or a great split or divisiveness within the Bar Association over this action?

MR. BUCHSBAUM: I think that is one of the two essential reasons. There was a concern that the mandate of the Court not be trivialized, not be confronted, and we are very interested in that in the Bar Association, and in the Land Use Section.

SENATOR STOCKMAN: And these are people, incidentally -- excuse me, you had a second thought?

MR. BUCHSBAUM: The other reason is that we would like to see the law being clear.

SENATOR STOCKMAN: These are people who are really the people who work in the area of dealing with litigation over land use, or with land use applications, and so on?

MR. BUCHSBAUM: The resolution was initiated by a special subcommittee, two of whose members were lawyers whose practices almost exclusively involved representing municipalities. So, there was no question as this process developed in the Land Use Law Section that all segments of the Bar who are knowledgeable about land use have a particular interest and are in favor of updating the Guide Plan.

SENATOR STOCKMAN: I don't want to keep you here too long, Peter, because there are other witnesses, but I can't resist asking this question, or several questions in fact. The evidence is persuasive that to this point there has been no real action on the Guide Plan. You are also aware of some legislative proposals that would effectively attempt to overrule Mount Laurel in large measure. Do you have any advice or suggestions on how we, speaking figuratively, myself and other legislators, can come to grips with this problem and fashion something legislatively in that atmosphere, and in that situation?

MR. BUCHSBAUM: Well, in broad concept, Commissioner Rodriguez had a very good overall idea in his testimony which was very helpful in terms of having an educational effort, but that will take time. Specifically, these hearings with this Committee can put on record the thoughts of people who are knowledgeable in the land use area and who are concerned about the ultimate welfare of the State, concerned about how it develops, as to the need for a general State planning process. It can put thoughts on record as to what this process should consist of, how it should be conceived, in order to be most persuasive to the Legislature and to the public. I see these hearings and this Committee as developing a consensus that, number one, the Guide Plan must be updated as a matter of both constitutional requirement and for the welfare of the State and, number two,

developing a persuasive set of proposals as to how this should be done. I think that can be done through the testimony we are going to hear later, the testimony of Commissioner Rodriguez and the witnesses you will have at other hearings.

SENATOR STOCKMAN: All right, thank you very much.

MR. BUCHSBAUM: Thank you.

SENATOR STOCKMAN: Jim Gilbert, who is here from a great distance, Past President of the New Jersey Federation of Planning Officials.

JAMES GILBERT: Good afternoon. This is a first for me, I have never been in these chambers before. I haven't spent much time in Trenton. My background has been pretty much from a local point of view. I want to emphasize that I am not speaking for the New Jersey Federation here. I am told by some of the people on our Board of Directors that my views have become radicalized from my experience of the last two years, and I should be careful about a tendency toward home rule on our Board of Directors. But, I can just give you the benefit of something from someone who spent almost fifteen years on a local planning board, and who also is not totally removed from political experience.

SENATOR STOCKMAN: What planning board was that, Jim?

MR. GILBERT: The Englewood Planning Board. The thing that struck me as I got active in this organization of local planning boards and boards of adjustment, was that there is really almost no communication on the subject of comprehensive land use planning between local people and those who are in a position to have an overview and to do some leading. The attitude, on the other hand, down here in Trenton, also struck me after awhile. It seemed to be an attitude on the part of the legislators and the Administration of either complacency to the effect that, "The infrastructure will sort of limit the thing; we don't have to worry about planning," or perhaps sometimes I would run into just a general lack of awareness of planning as an important item.

The Mount Laurel decision, which I know you are quite interested in, is important, but it strikes me from a local point of view that it is just one of a number of very important land use issues

that are not being addressed because of these attitudes, here and locally. I think transportation, quality of life with regard to density and open space and agricultural land preservation are extremely important issues also, and they seem to be getting lost in here. There is no need for me to sort of recite a litany of things that are going wrong around the State, when by default, local officials are left to decide problems of massive relocations of businesses and things of that sort, and when their fall back is on a very retrogressive real estate tax system. So, I won't get into that.

The real question which I think we have to bring up and raise to the local people somehow or the other is where we want New Jersey to be in the future. Now, at the State level, the one hope for being able to deal with this, the best hope, was the Division of Planning, which was part of the Department of Community Affairs. The Division of Planning had a problem with communication; that to me is the major problem that is going on here. They were doing, I thought once I began to get a handle on it, a pretty decent job of performing their legislatively-assigned duty of putting together the State Guide Plan and working with urban areas. They were doing a relatively poor job of reaching out to the other communities in the State. That was the excuse that was used by the current DCA leadership to eliminate them. But, in fact, I attribute their demise to a couple of things, one is the fact that DCA has now become an organization that is run by political appointments, who do not have any real in-depth planning experience or appreciation of what is going on.

On the other hand, it would still be there if the Administration really cared. I was particularly struck when meeting for the first time the two gentlemen who had occupied the job of -- what do they call it on the Governor's staff -- the Director of Policy and Planning, which I realize has become a total misnomer. I met Gary Stein in my position as President of the Federation, and then I got to talk to Don Linky later, and I did not wind up blaming anyone too much because I realized there is a perception that planning is death as a political issue. I'm here to tell you that I really do not believe that. I think the real problem is communication. Our little organization is involved in educating planners, mainly, you know, in

conjunction with the Rutgers Extension School. We have sort of upgraded our act over the last couple of years, and we hope to do even better. We just received a foundation grant for the first time, so we can get staffed up a little bit more.

The real problem is reaching planners who typically, as you know, get appointed and may be on a board for three years. It is just about the time they are going off the board for one reason or another that they begin to get the slightest glimmer of what is really at stake, what is going on, and we have to reach them. The State could have played a big role there, but that is now impossible because there is no Division of Planning. There is nobody for our organization to talk to anymore. I sort of ran around looking for a new home once this group was disbanded, and I found that no one would touch us with a ten foot pole. My deduction from that was that, unless the Governor, or the Legislature, one or the other, said, "Hey, planning is a priority here, and let's do something about it," no one wanted to be involved.

I would just say parenthetically, that as a businessman, one thing that really strikes me about the lack of comprehensive planning -- and by comprehensive planning I mean comprehensive, I do not mean just the Mount Laurel decision, and I do not mean just local land use planning -- the thing that strikes me is that we have a State of six million people. That is about the same size as Sweden, but we do not have a comprehensive planning staff. We do not have one full-time comprehensive planner in a State of six million people -- it is just unbelievable -- and in a State where from both sides, both parties, I am constantly hearing about the need to address economic problems and so forth. It strikes me as odd that when you look at a country like Japan, which is giving us fierce competition in every so-called business area, they are strong believers and practitioners in planning, in a real planning process that extends to every part of their country, and to every activity.

So, what I came out with after two years were these ideas as recommendations. Number one, and this I can tell you that our Board of Directors agrees on to a man, is to reestablish the Division of Planning. Perhaps, since we no longer have any Ylvisaker around, it should be set up as some sort of a quasi-independent commission -- I

don't know -- and charge this unit with implementing comprehensive planning once again. It would mean, once again, reestablishing a coordinating committee for the various administrative departments that practice planning here, but, even more importantly, to update the State Guide Plan. We should really reach out to the communities, and reach out early, get planners early and really communicate with them. I also think that a reestablished unit like this should be charged with developing legislation for something which I guess would be considered pretty radical. I guess this is what my cohorts on the Board of Directors mean. But I feel, without any question, that there should be mandatory coordination of master plans between the State, counties and the localities. I know that out in Oregon, HUD has had its ups and downs, but it doesn't stop me from saying I think it is important and can be done without smothering economic activity, the free enterprise system, and so forth.

On Mount Laurel, as far as local reaction is concerned, I would like to say this too. I think everybody in Trenton seems to think they are experts on local home rule reaction. I really do not believe that. I think it is a communication situation. I know there are communities which have relatively progressive professional planners doing their planning for them, who have led them into conforming to the State Guide Plan and the general outlines of the Mount Laurel decisions ahead of time, and where it has not been a major problem. I think it is overblown.

I guess the last thing I would say is this. There is a tremendous need for leadership in the State. You would like to think it might come from the Legislature, but that doesn't seem to be the place for it. As far as the Administration goes, I heard the Governor talk at length within the last six months to a planning group about the importance of comprehensive planning, but actions speak louder than words, and it was only a couple of weeks before that, that the Division of Planning had been abolished. Nothing has replaced it. Leadership, I think, is the missing ingredient. I do not blame the current Administration any more than the Byrne Administration for backing away from it.

Those are the problems as I see them, and I guess if I had to pick out one thing I'm saying here, it is to reestablish a comprehensive planning unit and update the Guide Plan.

SENATOR STOCKMAN: Okay, Mr. Gilbert. Thank you for those remarks. I have a few questions if you wouldn't mind, perhaps in a give and take way, educating me a little bit, since this is a relatively new area for me to involve myself in. I am certainly not a planner like yourself. I gather you are a professional planner, is that your training?

MR. GILBERT: No, it isn't.

SENATOR STOCKMAN: You use that word then more in the sense of being part of a planning board in a local municipality?

MR. GILBERT: I am a lay planner. I am a businessman; I am a broker.

SENATOR STOCKMAN: You were not here this morning when Joe Rodriguez testified, so you may not be aware there is a resolution in our house, the Senate, signed by nineteen, I believe, Senators, which would effectively put on the Constitution a proposed constitutional amendment which itself would greatly limit and restrict the Mount Laurel decision, sort of a reversal in large part. Why do you think it is that nineteen Senators would do that, and why, as seems evident, do Governors, not only one Governor, but Governors and legislators run away from this issue? You are not in politics directly, I gather?

MR. GILBERT: No, not any more, but I started out in politics. I had a heavy dose.

SENATOR STOCKMAN: But, you have an interesting thesis that certainly hasn't reached the ears of a lot of people in elective office, namely, that this isn't as tough an issue, and you could deal with it and not get badly hurt. Why do you think that is? Is it peculiar to New Jersey?

MR. GILBERT: No, I think it is peculiar to elective politics. It has to do with the term of office of elected officials. It has to do with part-time service. Incidentally, to fill you in a little bit, I have been an active politician all my life. I used to be the Republican Chairman in Englewood, and I have always been involved in precinct level and county politics.

I think the problem has to do with the length of time people are in service. Now, there are some people who are never going to be convinced on planning, but the arguments are too good. I heard the Governor make a great case for planning, you know, back in April, up in Passaic. He made a case; he said it makes sense, and it is economically important to have good land use planning. But, there is a gap; there is a time problem. I remember discussing with the Executive Director of the League of Municipalities, how it was that the League of Municipalities took a position against what I considered an enlightened bill some years back, which was a proposal to give counties more planning powers than they have now. He told me that it had been given to this one committee, and they had gone against it. I went back and started examining what had happened. Well, I found that most of the committee members were basically receptive to this kind of thing, but it had come on them too fast, and they did not have time to examine it. Then, it was laid up too fast to the localities. There was sort of a gut visceral reaction that came back.

I remember my own reaction to the State Guide Plan the first time I saw it. It showed the density of Bergen County to be twice what it is today. I had a very negative reaction to it. About a year later, I began to see that probably there was some sense in there if you took a look at infrastructure and realized what you wanted to do with the rest of the land in the State, and what you could do. But, it took awhile for me to digest it. I think that is where the real problem is, in communication. It is also something that has to do with the cultural differences between countries like Japan, or a country like France, and a country like the United States. I don't have to go into that; I think you understand what I am talking about.

SENATOR STOCKMAN: Well, this reluctance to having more statewide comprehensive planners is probably, I suspect, not unique to New Jersey, is it?

MR. GILBERT: Not in the U.S.

SENATOR STOCKMAN: It probably is a reflection of reluctance to acknowledge the right of too much government participation in planning the future, as opposed to the role of government to sort of see that law and order prevail, and that other fundamental governmental

requirements are met, but that the planning of what it would be, maybe, is peculiarly private. I say that cautiously as a Democrat. I guess that has to be recognized as part of the reason we have gone slowly. I certainly agree that we have to do much more, personally, because I am speaking for myself.

MR. GILBERT: May I comment on that?

SENATOR STOCKMAN: Yes, I would be delighted.

MR. GILBERT: Well, I think that is as far as most of us get on this discussion in public, but I really do think there is some fine tuning needed. I think we have attempted to oversimplify this particular issue, as we do a lot of other things in the United States. I think there are lessons to be learned in other parts of the world, whether it is in France, or wherever, and I think the American people are capable, and I think the people of New Jersey, at the local level, are capable of absorbing these issues and forming a consensus we can work with, if we can find the resources and the abilities within ourselves to communicate with them on the subject.

SENATOR STOCKMAN: Let me ask you this, because I can't resist it. You have given some interesting testimony, you have expressed yourself very articulately, and you have shared the fact that you have been in politics, albeit on the Republican side. Do you have any advice or suggestions for someone like myself, in the position I find myself now, Chairman of the Senate Legislative Oversight Committee, moving into this question of the Mount Laurel decision, which, as you point out, is only part of the picture, but at the moment, is a significant part by virtue of the constitutional directive the Supreme Court has given, and certainly goes to this question of planning? We have a Governor, and this morning I made it clear I am not undertaking this venture, or involved in it, for the purpose of pointing fingers, or getting into a hassle with anyone. But, there certainly are signs, and you have somewhat expressed them, that Governor Kean at the moment does not seem to have religion, shall we say, on the subject of the Guide Plan in particular, and perhaps comprehensive planning from the State point of view. That is my dilemma, and I invite your advice or suggestions on it. How do I go about trying to accomplish something concretely as a legislator? Do I

challenge the Governor direct on and criticize him, and point out that at a time when the Supreme Court unanimously directed that the Guide Plan be the instrument for further planning development, the Department of Community Affairs was winding down that Division and, in the eight months since, things haven't happened, or do I downplay that and say, "Well, all right look, the Legislature," and it's for sure true, "has shown no profiles in courage with its involvement in this area," and try to find a way to work with him more? If so, what are the tools? In other words, how do I go about it now? I don't mean to personalize, but I have to make some decisions as Chairman of this Committee, not only in terms of what direction we take with hearings, but what direction I take with public comments and things of that sort. Do you have any advice or suggestions on this?

MR. GILBERT: Well, I can just comment. I think realistically, this Administration is not going to do anything about Mount Laurel.

SENATOR STOCKMAN: That is my fear.

MR. GILBERT: I think that for those legislators who are interested in the entire planning process, you have to take a slight side-step and take the monkey off the backs of those who feel it is on their backs, and go the route of legislation that can create a permanent planning mechanism for this State to address problems that are not as timely as this, but future problems. I am not saying we should bail out on this Mount Laurel thing, because I deplore the situation. I think to throw to three judges the right to plan for the State is ludicrous, but politically I can see why they may think it is the least of various evils. In that regard, all I can say is I think it can be pointed out to the people of the State that this is the alternative. Make it very clear to them. It is either three Napoleons, or a process that has been created and worked through with your own legislators and Governor.

But, realistically, in view of the people I've met and the attitudes I've seen expressed, I think the real hope may not involve Mount Laurel right here and now. It is setting up a planning mechanism that cannot casually be axed, the way this was. I served on the Governor's Management Review Commission, and I was assigned to DCA. I

saw the documents coming forward with the list of priorities, and planning was virtually at the bottom of a fifty-item list of priorities. You know, it is a poor reflection on the people involved, but there it is. So, I look down the line and I think it is very important to reestablish a planning unit.

SENATOR STOCKMAN: Politically, why do you think that has happened? Again, I don't want to deliberate too long because we have other witnesses, but I can't resist. I am not as knowledgeable on Tom Kean's history, but he has been in government for a long time, and he carries some very, very credible and substantial credentials. Why do you think it is that planning seems to have fallen so totally out of favor with this Administration?

MR. GILBERT: It would be strictly supposition on my part. At one point I thought I knew where the Governor stood on all these kinds of things, but I can only see the discrepancy between my original impression and what I am seeing now. What the reason is I can only speculate on, and I do not think that is worth throwing out.

SENATOR STOCKMAN: All right. It was a pleasure hearing from you, Mr. Gilbert. We appreciate your testimony, and it is a matter of record. Thank you.

MR. GILBERT: Thank you; I wish you the best.

SENATOR STOCKMAN: Our next witness will be Jim Wunsch. Jim, please identify yourself for the record.

**J A M E S L. W U N S C H:** Senator Stockman, Ms. Doverman and Mr. Frakt, I am James Wunsch, Associate Director of the New Jersey Committee of the Regional Plan Association. Regional Plan is the oldest nonprofit planning group in the nation. For more than half a century, we have been concerned with the renewal of cities and downtowns, the preservation of parks, open space and farmland, and with economic vitality and quality of life in the great metropolitan region from Trenton to New Haven. For Regional Plan, New Jersey problems have always had top priority. Indicative of that fact is the presence of the New Jersey Committee with its active, fully-staffed office in Newark.

Thank you for inviting me to testify today. This testimony concerns why we need State and regional planning in New Jersey, and

offers some suggestions, chiefly legislative, as to how such planning can be carried out most effectively.

Both statutory and case law dictate that New Jersey have State and regional planning, and clearly spell out what it should accomplish. Under legislation adopted twenty-two years ago and still on the books (P.L. 1961, c.47), a Division of State and Regional Planning was charged with the following:

To gather data and facts relevant to the development of the State;

To coordinate the development activities of various State departments;

To stimulate, assist and coordinate local, county and regional planning activities; and,

To prepare and maintain "a comprehensive Guide Plan and long-term capital improvement program for the future improvement and development of the State..."

Early this year, the New Jersey Supreme Court in the so-called Mount Laurel II decision recognized the State Development Guide Plan as a critical document. The Plan, by delineating growth areas, will assist the courts in determining whether municipalities are making adequate provision in their zoning ordinances for low and moderate-income housing. The Mount Laurel II decision stressed that the Guide Plan was so important that, "In order for it to remain a viable remedial standard, ... the SDGP should be revised no later than January 1, 1985 (and in the absence of proof of a more appropriate period, every three years thereafter.)"

Not only does the law dictate that we have State and regional planning, but also prudence says the same thing. The notion that the long-term plans of DOT, DEP, DCA, Human Services, Education and other departments should be compatible not only with each other, but also with county and municipal plans, makes common and economic sense. And, there is strong, bi-partisan support for preserving farms and environmentally sensitive areas, for rebuilding and maintaining our cities and older suburbs, for providing a choice and balance in housing, and for providing a clean, plentiful supply of water. We are now engaged in seeking to achieve the above goals through State and regional planning initiatives.

While there is wide support for State planning in general, when it is applied to specific areas it can generate bitter controversy. Certain land cannot be built on because it is environmentally sensitive; some municipalities may have to zone for more low-income housing than others. These are painful acts which can lead to litigation. But, controversy and litigation should not cause us to abandon State and regional planning. Whether we like it or not, State and regional planning is a necessity of modern society.

The problem is this: The Division of State and Regional Planning which was charged with updating the Guide Plan and with carrying out many of the State and regional planning functions outlined in the 1961 legislation, was dissolved this summer. We could spend a good deal of time debating how well that Division functioned and whether it was prudent to discontinue it. But, that discussion would be largely academic. The Division is no more, and it is my primary purpose to explain what should replace it and how we can attain a more effective level of planning.

I wish, however, to publicly recognize the services of those who worked for the Division. They diligently provided information and support to local planning bodies and prepared the 1977 State Development Guide Plan, a controversial document to be sure, but one whose significance is now a matter of record.

Before taking up the question of the appropriate entity to replace the Division of State and Regional Planning, we should consider the broader question of how we can attain effective planning generally. The process requires:

First, that land use planning and capital planning and budgeting be integrated. Land use planning, the setting aside of various areas for different uses or levels of development, must not remain separate from capital planning, where we decide how to fund and where to build schools, highways, parks and sewer systems.

No land use plan can be considered realistic which does not include a capital investment strategy. We can designate an area for growth, but if the sewer, water, and transportation infrastructure is inadequate it may not grow. And, we can set aside an area for little or no growth, but if we put a major highway through it, development

pressure may build to a point where there will be growth, no matter what the "map" says.

To take the other side of the coin, capital planning is well served by a land use component. For example, when voters are asked to approve bond issues for parks, schools, highways or other facilities, they should be advised as to how the proposed issue fits in with a statewide land use plan.

Second, that the planning agency should be independent of any particular department of State, whether DCA, DEP, DOT, or the like. The planning agency must stand as an impartial arbiter among competing departmental and local government interests.

Third, that local government and other interest group representatives be included in the State and regional planning process. One of the problems with the State Development Guide Plan was that it was largely drafted in Trenton. When it was completed, the Division of State and Regional Planning was faced with the unenviable task of "selling it" at the local level. One local planner recently told me that when the SDGP was dropped on his desk, his first reaction was, "My God, what's this, where did it come from and why do we need it?" Later, quite a bit later, he decided that the Plan was necessary and made sense. In the meantime, it had been exposed to considerable attack.

But, if local officials participate in the State planning process, will anything get done? Isn't there, inevitably, conflict between State and local interests? Of course, and there must be debate, discussion and compromise. But, plans of solid substance can emerge. Let me remind you, that local officials, through the good offices of the State League of Municipalities, were actively involved in the drafting of fair share housing bills introduced by former Senator Martin Greenberg, and former Assemblyman W. Cary Edwards. Those bills did not pass the Legislature, but they did win the endorsement of the League, which represents most of the municipalities in the State. That endorsement of sweeping legislation, which might have precluded Mount Laurel II had it been enacted, suggests that if you consult with local people, if you permit a free and wide-ranging debate on the issue, then you will be in a far better position to have a bill or plan accepted because the participants have a stake in it.

What I have said about local officials holds true for labor, business and minorities, who should also be represented in the planning process. If they are not included, then State planning will be outside of the mainstream of the political process and will remain irrelevant.

I should also add that an effective planning process will generate controversy. We should be prepared for it. Planning means making painful choices. Should we permit development here or there? Why? Some will benefit, and others will clearly lose. If we want effective planning, then we are going to have to accept debate.

An effective planning process is always going to fall short of perfection. Neat, intellectually "fine" plans will be whittled away by political considerations. That is also inevitable in democracy and we must respect the process. State planning documents, however, give us a baseline from which to start. They provide legislators and the Executive Branch with the opportunity to make informed choices as to where and how we should be allocating limited resources.

I suggest that the Legislative and Executive Branches, on a bi-partisan basis, begin drafting legislation establishing a new State Planning Commission.

That new Commission would work with, or be closely connected to, the Capital Budgeting and Planning Commission. It would be independent of any single department or agency. It would draw members from the State Legislative and Executive Branches, from local government and various interest groups. I would draft, with the assistance of its members and State departments, a new Guide Plan. It would participate in all State capital planning decisions. It would provide technical assistance to counties and municipalities in carrying out their planning functions. It would establish a process by which local plans would be coordinated with a State plan.

What I am suggesting is a bill not so very different in intent from the 1961 planning legislation. The difference here is that the new Commission would be independent of any department and would provide for broad private, as well as public sector representation. And, it would have much more clearly defined capital budgeting, as well as land use planning responsibilities.

I believe that such legislation can be passed. New Jersey has boldly established the Pinelands Commission, the Meadowlands Commission and has approved sweeping solid and toxic waste, and energy facility siting legislation. These measures, along with Green Acres and agricultural preservation laws, have served as models for other states.

Now, let's take the final step and create a mechanism to bring these and other plans into a sensible, workable, whole. It is an opportunity which should not be passed up. The Regional Plan Association, through its New Jersey Committee, stands willing to assist you in this endeavor.

Thank you for your time and consideration.

SENATOR STOCKMAN: Jim, thank you very much. It is an exciting idea that you shared with us, and we appreciate it. I would like to ask you a few questions. Obviously, I had neither seen nor heard of this suggestion before just now, so I am simply reacting to it. You are someone who has served in other capacities, and who has a greater insight into the Legislature and its behavior than most people. What do you think the reaction of the Legislature would be to such a proposal? Do you have any feelings as to what it would engender, particularly in the present mix of things we have talked about today, in terms of the Mount Laurel decision and what is or is not happening there?

MR. WUNSCH: Well, I only served with the Legislative Branch, Senator; I didn't serve with the Executive Branch. This is clearly the type of legislation which will require, as I stated in my testimony, some administrative support. I think there is no reason at this particular time to be hopeless about getting that support, in answer to a previous question. I am more optimistic than you are about the present course. As you know, Assemblyman Edwards, who is a counsel to the Governor now, previously sponsored housing legislation, which I mentioned in my piece, and there is reason to believe this Administration is listening to the planning community now, and talking. I am also optimistic that you will see one or several bills within -- certainly not now -- but surely after the elections, which you may have the opportunity to consider. But, I would certainly start a dialogue with this Administration. I think a legislative initiative alone in this area probably won't work.

SENATOR STOCKMAN: I'm sure of that.

MR. WUNSCH: But, a bi-partisan two-branch initiative will stand a fair chance.

SENATOR STOCKMAN: But, I may have heard a little birdie chirp, you know speaking figuratively, in a very positive and encouraging way. You're right, I have become a little discouraged, and I guess partisan politics may have crept into some of my thinking on this. But, having gotten more interested in this subject of planning because of Mount Laurel, because of that decision, and because of a lack of response to it, I have been particularly anxious about the Guide Plan. Frankly, I have been frustrated at the inaction, and I don't think I am telling any tales out of school. I commented to some other people that I sought to talk to the Governor about where we might be going even before these hearings started, and I do not think it is necessary that he should be criticized for not taking up my invitation to sit down and talk with me, because perhaps from his side he saw a potential political hassle that could be engendered from it. But, I can tell you that until today, I have seen no evidence of any inclination to act on the Mount Laurel decision, and I translated that into thinking there seems to be, arguably, some hostility to planning. I must tell you that to me it is fascinating that your testimony followed Jim Gilbert's testimony, which I think, if anything, I would latch onto, and it was given by, and again, I do not want to sound partisan, but it was given by an active Republican apparently, who similarly has fallen into a certain degree of discouragement or dispondency. I am delighted to hear you say -- and you didn't suggest that this is through any special connection with the Administration -- you would not be so pessimistic, and throw out an idea which-- I don't know whether Mr. Gilbert while he is still here, or afterward, might want to comment on -- certainly is an exciting idea. It strikes me as something he would be very enthused and positive about if it could come into place.

I'm not sure at the end of that long comment whether it was a question that started out as a statement, or a statement that started out as a question, but if you would care to respond I would be delighted.

MR. WUNSCH: To focus exclusively on planning, as Jim Gilbert suggested -- what Jim Gilbert was suggesting was that we are going to need a mechanism which really goes beyond the housing question. It seems to me that if you focus and create any kind of agency that focuses exclusively on housing, you are actually not doing justice by State planning, and you are really not doing justice by housing either. Also, it is a political liability. But, if you take a more ambitious approach and consider capital planning and capital budgeting, and land use planning as a whole, then I think you are onto something.

SENATOR STOCKMAN: Your proposal is certainly more ambitious. Let me ask you this. This idea of a State Planning Commission, is it relatively new, or is this something your Committee has been on record as proposing or supporting over a period of time?

MR. WUNSCH: It is a new idea, but certainly much talked about. I think you are going to hear more about this idea in the future, the idea of a commission that is maybe not in, but of, some department for legislative purposes.

SENATOR STOCKMAN: Have you had discussions?

MR. WUNSCH: I have been discussing this with members of the planning community. I think a number of people in this room are cognizant of that. I think there are people in the Administration. I think this is something that will be discussed in the future.

SENATOR STOCKMAN: Have you discussed it with people in the Administration?

MR. WUNSCH: Just informally.

SENATOR STOCKMAN: How about in the Legislature?

MR. WUNSCH: Again, informally.

SENATOR STOCKMAN: Well, that is very interesting. Let me refocus for a moment, getting back from that proposal to where we are with Mount Laurel. Are you restless about the realities of that decision and the time frame within which it mandates that one thing or another happen? If so, do you have any suggestions with regard to that?

MR. WUNSCH: Well, 1984 is almost here, and that means 1985 can't be far away. That is a healthy thing, particularly in terms of my proposal, because it will force both the Executive and Legislative

Branches, giving them that useful kind of deadline, to create a new institution to handle, I hope, not just Mount Laurel, but a lot of other things. There are a lot of other problems, dangerous problems.

SENATOR STOCKMAN: Do you think the Court would be satisfied -- or, let me put it another way. Do you think your idea, a State Planning Commission, with a much broader scope of responsibility, could be thought out, deliberated on, enacted into law, put into operation and able to be a guide for Mount Laurel litigation by January, 1985?

MR. WUNSCH: Yes, it's possible. As a matter of fact, as I pointed out here, the rudiments of this proposal are on the books now, in the 1961 legislation. Now it's true, it is a Division that they created, but the Division is no longer funded and has been disbanded, but the law is still there, "Thou shalt do the following things," and the 1961 legislation, interestingly enough, did create an organization which was to consider capital, as well as land use planning. So, it is on the books now.

SENATOR STOCKMAN: My instincts tell me -- I may be wrong on this -- that the Court would be patient and arguably would even modify the January, 1985 directive, if it saw clear evidence that, at last, the Executive and Legislative Branches of government had moved on this issue of planning and direction, particularly in the area of housing, and perhaps beyond.

MR. WUNSCH: In most of those decisions, the Court seemed to beg the Legislature to do something and, failing that, they said we have to act. That has been the whine in the judicial decisions.

SENATOR STOCKMAN: Jim, do you see any inconsistency between the suggestion, the State Planning Commission concept, and its implementation in the legislation, and support for legislation to constitutionally overrule effectively the Mount Laurel II decision?

MR. WUNSCH: I haven't seen the legislation, so I would rather not comment. On the face of it, it would seem there would be a conflict, yes.

SENATOR STOCKMAN: It may be that some people who went aboard on that, and I say this frankly, may have been acting more out of momentary frustration and/or some political considerations, who on reflection may have realized, number one, it wasn't going to happen

and, number two, it ought to be dealt with in a different way, perhaps in the way you suggested.

There are probably a lot of other questions I could ask you, and should be asking you now about this, but I think since there are other witnesses and the hour is late, we will just have to take it from there. I thank you for your presentation.

Next, I guess, we will hear from Ingrid Reed.

**I N G R I D R E E D:** Senator Stockman, thank you for inviting me to come here, and to play what I would consider a practical role in contributing some thinking to the very difficult questions that are before you.

I am here to speak from the county perspective. I don't think very many people speak on the county perspective on planning, because it is very often thought that there really isn't a role for counties. I think probably that is a real mistake, because an awful lot has happened in our world where counties are playing an important role, but somehow our thinking hasn't caught up with that. I say make a practical point in terms of State responsibility, and I am not sure if planning is exactly the right word. I think it is probably management, or probably direction. Where do we want to go, and how do we want to get there? Somehow planning seems to be a very vague, and coming from the academic world I can say, academic term, that I think in some people's minds creates an idea that you want something other than what we now have, and that, to some extent, is threatening. I think maybe we could turn that around and say, "Planning will help us get what we really want," and try to identify with those characteristics of the good life, of good management, of using your resources wisely, as opposed to making people think that planning is something different from what we now have.

Let me talk a little bit about the practical issues that are facing counties in the planning area, and how State initiative, State support, is extremely important. I think generally when we look at where New Jersey is in the 1980's, we realize that the villages we started out with in colonial times, and the highways that linked them, are no longer the case. We have all grown together; we are a web now and, to some extent, the local municipalities really cannot solve the

problems on their own, but there really isn't a good mechanism even for turning to the counties, because the counties have not had the resources nor the general public consensus to do what the law actually says they should do, and that is to make and adopt a master plan that provides for the physical development of the county.

While those links have been growing together, and the counties have been working on this in some kind of an uncoordinated way, the counties have taken on more and more responsibility for regional issues. They have the main responsibility for road planning and transportation. Some counties are involved in public transportation. Counties are key when it comes to providing for parks and recreation. They are the places where people get information about us as a demographic community. That is where the census data is; that is where the information is about who we are today.

Counties have been involved in environmental planning. They played a key role in 208 water quality planning. They have been critical in the regional perspectives on sewer planning. They have been working on water. They now have responsibility for solid waste planning. Now that we have identified agricultural preservation, it is at the county level. We can only deal with these very real hopes for the future in an area that makes sense, where people can deal with one another, and the county has gotten to be that particular area.

Counties, as they try to do their work, need a framework in which they can relate, and it only can come from the State. The State has to provide that framework of information and setting of goals that can be useful to counties as we deal with the very practical problems of modern New Jersey.

Let me go back to housing in an area where counties have been playing a role. I don't know if you recall that in the late 1970's, both Regional Planning Commissions, the DBRPC and Tri-state, came up with housing allocations. These were numbers, these were projections that went to the counties, and the counties were then to assign responsibility to the municipalities for meeting housing needs. It is an emotional issue, housing, especially low and moderate-income housing. But, as I look back on that experience, what was most critical was that every single time the numbers came up, somebody said,

"Where did you get those numbers? What do they mean? How do they relate to the other resources we have? How do they relate to what we need to do in transportation? If we have 'X' numbers, how can we handle that many? How do they relate to our need for open space? How do they relate to how we can dispose of used water, or how do we get a water supply?" There was a constant call for a context in which those numbers were generated, and in which those numbers were to be accepted. I think that just gets us right back to, what is our strategy and how are we going to use our resources and, basically, it can only come from the State providing the framework for it.

Now, as I look at the counties and the responsibilities they have either taken on or have come to them by default, I see the counties as playing a critical role if we are trying to address how we get a State management perspective of our resources. You can tell I am trying to avoid the use of the word "plan," because I somehow feel it doesn't really convey to people what we need to do. I see the counties as playing a critical role in the process of how we get to a State plan. I found the testimony today to be very interesting, as people identified the need for the State, and we question, "Why is the State role one that doesn't seem to work? Why don't people embrace it?" Well, as I see the counties playing a kind of an in-between role of coordinating the five hundred and some municipalities, the State cannot relate to each one of them, but it is absolutely critical that it does. The counties can relate to the municipalities, and the counties can also relate to the planning process. That planning process, I think, is extremely important, the process itself. It is not just necessarily people being heard, but what people I think are looking for is a clear statement of where we are today. What is New Jersey like? What are we like demographically? Where are our shortcomings? What do we need in the way of, for example, preserving agriculture and reenforcing coastal zone planning, because it has an economic goal? What are the current needs of New Jersey? Where do we stand? What are we like as a State? Unless we can agree on the picture of us, I don't think we can agree on what we need to do to make New Jersey strong and healthy.

SENATOR STOCKMAN: You must have been listening to Senator Connors, who told us that we have to know where we've been if we want to know where we are going. That was this morning, I'm sorry.

MS. REED: I didn't hear Senator Connors, but I agree with that. I think it is critically important that we agree on where we start, because if we can't agree on where we're going-- So, I see counties as playing a very important role in getting out that piece of information -- the communication that Mr. Gilbert talked about -- and then dealing with what are our goals, what is it we want to accomplish? Again, communication is critically important, and I just don't see, no matter what the configuration of the planning effort is, us being able to do that with every single municipality. Then, once you have dealt with the goals, then everyone really needs to be heard on what it is you want to do, and an important element of what you want to do is over what period of time, I go back to the housing allocation mess of where numbers were assigned, but there was never any indication given to the period of time that that program would be implemented. We do very poorly in government thinking about implementation over time, while corporations always do their strategic planning with specific time frames. I think that is one of the strongest points in the Mount Laurel decision that it was recognized that timing was important, and I hope that will be taken into consideration as we move ahead.

I guess what I want to tell you is that county planning officials, political appointees and citizen policy makers of the kind that I am, talk to each other informally and talk about the challenge, the burdens that are on counties to perform as regional agencies, as linking municipalities and being able to do their jobs better, and not having the resources of knowing what the State is going to do and the framework within which they are planning.

Planning directors, who are professionals and have staff responsibilities, are also operating in this vacuum. There is just no way that the new kinds of regional responsibilities that counties have, can be taken seriously and done well if they are not put in a framework of State management, but I also think that counties have been working on relating to municipalities. They are doing a much better job in a variety of ways. I think -- I won't say if and when -- as we

move ahead, counties can play a critical role in the process in making it workable, practical.

So, I think that is really where we are. I think you might find it interesting, Senator Stockman, that I started out -- I was appointed by a Democratic Administration, worked on issues such as flooding, wrote configuration and so on. I was reappointed by a Republican Administration, and we in Mercer County are dealing with a strategy of how we are going to manage the future. We are right now looking ahead, and you might want to use the word "planning." I think one can emphasize strongly that if government is going to be a good manager, one of the components has to be planning. Maybe if Governor Kean is serious about the kind of management initiatives he is taking in administering government, he will see that thinking strategically about where the State is going and providing that guidance for counties and municipalities, is a critical element of managing government well.

SENATOR STOCKMAN: Ingrid, thank you for your testimony. I have a couple of questions I would like to ask you, but listening to you reminds me that Harry Sayen is going to testify after you. He and I both served on the Mercer County Charter Study Commission, and were part of an effort that recognized the role counties have to play in the '80's and '90's and beyond, and subscribe to the idea that they are an important part of the picture of government, and perhaps to this regional question of planning.

I would like to ask you, Ingrid, whether you have -- I'm not sure the Mercer County Planning Board would have -- but, whether you have anything in particular to say to us about the State Development Guide Plan, and what, if anything, should be done with regard to that phase of Mount Laurel II?

MS. REED: I think -- was it Jim who mentioned the planner who found the State Guide Plan on his desk and said, "What is this?" Because you don't know something and you think something is going to be imposed on you, you say, "I don't want to have anything to do with that." Then as you think about it a bit, you begin to see that it makes some sense.

I think we in Mercer County found ourselves in a very similar position. Suddenly there was this State Guide Plan. We did not have

an opportunity to be involved nor to comment on it. But I think the interesting part of the State Guide Plan is that it has provided a framework. We make a reference to it. We may not exactly agree with it, but we see it as an important step in rationalizing an awful lot of government decisions, which seem to come from somewhere. I guess, as you questioned, why does the political process, as you see it at the State Legislature, back away from "planning," or "State planning?" Maybe it is because people feel that the current system serves them very well. They have access to it and they know how it works. But, an awful lot of other people out there in the municipalities and the counties that are trying to look ahead and take planning very seriously, don't see a framework, and they don't see access to shaping the future. So, I think it has been very interesting that as the county has been working on defining its strategic plan, we have made reference to the State Guide Plan. It clearly needs to be discussed further and updated, and we need to know exactly what goals are trying to be met by that Guide Plan.

SENATOR STOCKMAN: Is it a sensible framework for dealing with low and moderate-income housing problems in the State, as the Supreme Court has suggested?

MS. REED: I would not want to comment on that specific Guide Plan, but a guide plan is absolutely critical. You can't plan for housing without planning within a context of other aspects of the planning picture that support housing.

SENATOR STOCKMAN: You may not have been here, but the State Bar Association, by resolution from their people who are involved a good deal in this area, have urged that the State Development Guide Plan be updated by the Department of Community Affairs and kept up in response to the Supreme Court decision. Jim Wunsch, on behalf of the Regional Plan Association, has suggested that perhaps that is not necessarily so, and perhaps a State Planning Commission could assume that responsibility and greater responsibilities to it. Do you have a position on either of those proposals, or on another, on Mount Laurel?

MS. REED: I think it is important to go with a broader planning effort of the kind that Jim has outlined to you. I just heard his proposal for the first time today, but I think that unless

you put it in the context of a lot of input from a lot of different people, because the State of New Jersey is made up of a lot of different pieces, and identify where you are today and where you want to go, and put that State plan for direction in that context, you are not going to get the State Guide Plan accepted. The State Guide Plan is where it is, partly because nobody knew about it, and nobody really had to say yes or no to it. Today it just currently exists. If you want the State Guide Plan to be used, to be a tool for meeting certain goals, such as the right amount of housing for low and moderate-income people in the right place, you are going to have to achieve more credibility for the State Plan. You are more likely to get that, if you take the broader approach that was outlined by Jim. I think that is important.

SENATOR STOCKMAN: Thank you very much for taking the time to come to share your thoughts with us.

MS. REED: Thank you.

SENATOR STOCKMAN: That brings us to the final witness for today, Harry Sayen, President, Middlesex, Somerset and Mercer Regional Study Council.

**H A R R Y S A Y E N:** First, Senator, thank you for inviting us here. I am President, as you mentioned, of the -- for the record -- Middlesex, Somerset and Mercer Regional Study Council. We are an independent, nonprofit, regional planning and research group. Our members include individuals, corporations, institutions and municipalities who share a concern about the future use of land in central New Jersey. I think we are here to discuss our single most important heritage, which is our land.

In recent months, our region has seen an explosion of growth. Our membership is deeply concerned about the capability of our governmental institutions to manage this growth so that it becomes an asset, rather than a liability to our region.

At the time of Mount Laurel I, land use may not have been terra incognita to the Supreme Court of New Jersey, but charts were rare. Not so with Mount Laurel II. In 1980, the State Development Guide Plan was issued following years of consultation, county by county, throughout the State. The Court, on January 20, to the

amazement and delight of enlightened planners and citizens, put teeth into the SDGP with the following words:

"The State Development Guide Plan provides a statewide blueprint for future development. Its remedial use in Mount Laurel disputes will ensure that the imposition of fair share obligations will coincide with the State's regional planning goals and objectives. The SDGP represents the only official determination of the State's plan for its own future development and growth.

"The SDGP divides the State into six basic areas: growth, limited growth, agriculture, conservation, pinelands and coastal zones. While it does not purport to draw its lines so finely as to delineate actual municipal boundaries or specific parcels of land, the concept map ... makes it quite clear how every municipality in the State should be classified. By clearly setting forth the State's policy where growth should be encouraged and discouraged, these maps effectively serve as a blueprint for the implementation of the Mount Laurel doctrine."

Before going any further, I should like to kill one canard immediately. The Supreme Court is not trying to encourage or place housing where housing is not needed in a region. The Supreme Court is not trying to attract roads and industry where not wanted. The Court is attempting only to make sure that there are no zoning impediments to housing the poor in regions and municipalities where there is a need. Mount Laurel II is not a new form of blockbusting.

Again, I should like to quote the Chief Justice in this passionate section of the decision to justify the use of the SDGP:

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

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

"These costs in New Jersey, the most highly urbanized state in the nation, are staggering.... More than money is involved, for natural and man-made physical resources are irreversibly damaged. Statewide comprehensive planning is no longer simply desirable, it is a necessity recognized by both the Federal and state governments."

I just parenthetically say, if a business were ever run in this way without planning, it would never get off the ground at all, and I don't understand it.

Finally, the judges see the Guide Plan as ever changing and evermore attuned to local desires and needs. In short, a living, responsive instrument for rational land use.

Already the State Guide Plan has been used by municipalities to defend their master plans. Franklin Township in Hunterdon County has successfully fought off development in an area designated "agricultural" on the SDGP map.

So, case histories will grow and precedents will be set. Mount Laurel II will buttress the SDGP.

But, there is still a missing link. We must hear from the Governor, Thomas Kean. New Jersey's Constitution has made the office of the Governor the strongest in the fifty states. The Legislature should ask the Governor to use his leadership powers. You don't get into the hall of fame fielding the easy ones.

First, the Guide Plan must be revised to reflect the new demographic and economic realities of the 1980's. Second, there must be a clearly stated administrative process for incorporating the policies and plans of local government. Third, a procedure for coordinating the programs of State agencies toward the objectives of a revised Guide Plan must be spelled out. These are quintessentially administrative responsibilities -- gubernatorial responsibilities.

New Jersey, to have a credible future and to give predictability to builder and municipality alike, can expect nothing less from its elected political leaders. Until there is gubernatorial leadership and legislative action, we will have to burden the courts with doing the work we are afraid to do ourselves.

That is the end of my statement, but in hearing these other gentlemen I would like to make some comments. Gerry, you know I am a

political animal, and I have a standard remark that, nothing happens in the United States of America until a politician decides to act. Not a wheel turns. Four things came to my mind during the previous testimony.

SENATOR STOCKMAN: Excuse me, Harry, did you hear Joe Rodriguez? Were you here this morning?

MR. SAYEN: No, I missed him completely. I'll read about it tomorrow, I guess.

These four points come up in no particular order. Concerning communication, I think that is absolutely and totally key. You take in this region here, on Route 1, even the developers now are asking for guidance. That is something unheard of in the past. What I am saying is that with proper communication, we can show what can be done through planning to prevent, as an example, gridlock on the Route 1 corridor, particularly on the east-west part; there on that Princeton-Hightstown Road is one example. I think people are ready to embrace planning. I think they want the guidance. I think the problems of what we have had in the past, Gerry, which Ingrid kind of touched on, that counties were here to provide roads between villages -- villages cannot solve their problems anymore. They can't solve their problems on water, on garbage or on anything else. Everything has become too big, and you need a more comprehensive planning approach. So, rather than politicians running away from it-- I know Cahill ran, and he suggested to Tom Kean that he run. You don't touch home rule. I think that's baloney. I think you have to grasp the nettle now. I think the time has come with intelligent leadership, whereby a base is laid through communication of knowledge of where all this is leading us. I think politicians, instead of being drawn screaming to the chambers to vote yea or nay, will find themselves leading a strong movement, as happened in Oregon. It has happened in other states. They passed some wonderful legislation in Oregon. If you want to know more about it, just ask Sam Hamill, our Executive Director. It can be done; I am absolutely convinced of it.

The politicians end up scared of the entrenched interests, who are all mixed up in this old idea of zoning and what have you. I think the time has come where you can take leadership. After all, even Reagan has moved on a few things, and I think Kean moved on a few

things when he saw there was a ground swell. After all, he wants to be reelected. So, I am one who says, "Try to embrace the Administration." I think it is important that you work together. But, don't bury it, for God's sake. This opportunity that has come up because of Mount Laurel II comes once. It is like what we went through here in Trenton on those three buildings. That opportunity comes once, grasp it. I told you my story of Winston Churchill and the pudding. I think a politician can get a great theme here. It's the future of this State.

SENATOR STOCKMAN: Harry, what part to you think this Committee, or these hearings can play? Do you have any suggestions or ideas about participants, or the direction it might take? I will tell you frankly-- For instance, it is no secret, I think I alluded to it earlier today, when you talk about working cooperatively with the Administration, I realize and appreciate that these hearings will present a potential dilemma or embarrassment to the Administration. I do not have to say that to make it so. As a result, I attempted, through several conversations with Cary Edwards, to sit down with the Governor. I thought that might help in terms of reassuring him that I am not undertaking this effort for the purpose of embarrassing him. The issues are too important, we are going to be putting some real time and effort into it, etc. But, that effort was not responded to, and I don't say that today to, again, beat the Governor over the head. There may have been a whole variety of reasons, but it is a fact. I bring it up in the context of you suggesting to me to work cooperatively with the Administration. How can I do that? What would you suggest, not only for me, but for other members of the Legislature who are interested in this area?

MR. SAYEN: Well, I would try-- There must be, and I am not privy to all the different currents that go on there, one person near the Governor who will listen to you. Maybe it is not Cary Edwards, maybe it is not Gary Stein, I don't know. There must be one person, if you work at it, that will listen to you. I can't believe that they are that closed. If they are, then their next two years should go in a hurry. In the meantime, I think it is just very important that you and the people who believe in what has been said here today-- Maybe you got some sort of an indication from Commissioner Rodriguez. I don't

know. You said a birdie, maybe that is the route to take. I don't know, because I didn't hear him. I think that in the meantime you have to start building fires around the State. I think that is the way to do it. Use people like MSM, the Regional Plan and others who want to speak out and ask us to do things too. We would be very happy to do it, because there is not an intelligent person I know in this field who doesn't say the time is right, so it becomes a matter of not appealing to the worst interests. All they are doing right now is appealing to the worst interests, the way Reagan appeals to the worst interests when he says, you know, "Let's get the MX and bomb the hell out of them," or something. It's the same idea, the same thing.

SENATOR STOCKMAN: Well, Harry, I appreciate your observations, your candid comments. They will be made part of the record. I think we have had a very exciting and interesting first session.

MR. SAYEN: I wish you well.

SENATOR STOCKMAN: We're off and moving. I want to thank you again. Everyone has been patient. I see Sam Hamill here; I want to talk to him off the record afterward for a few minutes, and a couple of other people. I want to end this afternoon's session by thanking everyone who participated. We will take very seriously the suggestions, ideas and proposals that have been made, and we will go from there. Thank you.

(HEARING CONCLUDED)

TESTIMONY OF

JOSEPH H. RODRIGUEZ

NEW JERSEY PUBLIC ADVOCATE

PRESENTED TO THE

NEW JERSEY SENATE OVERSIGHT COMMITTEE

ON MOUNT LAUREL II AND THE

STATE DEVELOPMENT GUIDE PLAN

OCTOBER 4, 1983

WHILE I AM HERE TODAY TO DISCUSS CERTAIN SPECIFIC ASPECTS OF THE MT. LAUREL II DECISION, I WANT TO BEGIN MY REMARKS BY EMPHASIZING TO YOU OUR DEPARTMENT'S COMMITMENT TO THE OVERALL GOAL OF OBTAINING SAFE, DECENT AND AFFORDABLE HOUSING FOR OUR STATE'S LOW AND MODERATE INCOME RESIDENTS.

THIS COMMITMENT IS NOT LIMITED TO SEEKING THE REMOVAL OF ZONING BARRIERS THAT RESTRICT LOWER-INCOME HOUSING OPPORTUNITIES IN DEVELOPING SUBURBAN COMMUNITIES, OR WHAT HAS BECOME KNOWN AS THE CLASSIC MT. LAUREL PROBLEM. OUR COMMITMENT TO ADEQUATE SHELTER FOR NEW JERSEY RESIDENTS ENCOMPASSES NOT JUST OUR GROWING SUBURBS AND BEDROOM COMMUNITIES BUT OUR DECLINING CITIES; NOT JUST WORKING HOUSEHOLDS AT LOWER INCOME LEVELS, BUT THE HOMELESS, THE UNEMPLOYED AND THOSE ON PUBLIC ASSISTANCE; NOT JUST THOSE WHO DESIRE TO MOVE FROM OUR CITIES, BUT THOSE LEFT BEHIND.

THE DEPARTMENT OF THE PUBLIC ADVOCATE IS PURSUING A VARIETY OF ISSUES IN AN EFFORT TO MEET THIS COMMITMENT AND ACHIEVE THIS GOAL. FOR EXAMPLE, WE ARE VIGOROUSLY RESISTING THE DRIVE, SPURRED BY THE ADVENT OF CASINO GAMBLING, TO DISPLACE POOR AND MINORITY RESIDENTS FROM NEIGHBORHOODS IN ATLANTIC CITY, AND WE ARE SEEKING TO REQUIRE THE CASINO INDUSTRY TO MEET ITS RESPONSIBILITY TO ADDRESS THE HOUSING NEEDS OF THAT CITY'S LOW AND MODERATE INCOME RESIDENTS. WE ARE ADDRESSING THE CRITICAL NEED FOR EMERGENCY SHELTERS AND PERMANENT HOUSING GENERATED BY THE GROWING NUMBERS OF HOMELESS PERSONS IN OUR STATE. WE ARE DEFENDING, IN COURT, THE RIGHTS GIVEN BY THE LEGISLATURE TO OUR SENIOR CITIZENS AND DISABLED TENANTS TO REMAIN IN THEIR HOUSING UNITS EVEN THOUGH THEIR APARTMENT BUILDING IS CONVERTING TO A CONDOMINIUM. AND WE ARE ATTEMPTING TO REMOVE GOVERNMENTAL RESTRICTIONS WHICH BAR FAMILIES WITH CHILDREN FROM AFFORDABLE HOUSING THROUGHOUT THE STATE.

AS FURTHER EVIDENCE OF THIS COMMITMENT, JUST THIS PAST

FRIDAY, THE DEPARTMENT FILED A REPORT WITH THE ASSEMBLY COMMITTEE ON HOUSING AND URBAN POLICY CONCERNING THE SERIOUS PROBLEM OF LOW-INCOME HOUSING IN OUR URBAN COMMUNITIES. THIS REPORT INCLUDES AN ANALYSIS OF THE PROBLEM AND A SERIES OF RECOMMENDED SOLUTIONS. IN ADDITION, THE RECOMMENDATIONS INCLUDE PROPOSALS FOR LEGISLATION WHICH, IF ADOPTED AS PART OF A COMPREHENSIVE PACKAGE, WOULD MAKE EFFECTIVE USE OF THE RESOURCES OF STATE GOVERNMENT TO PROVIDE DECENT, SAFE AND AFFORDABLE HOUSING FOR THE POOR IN OUR STATE, PARTICULARLY IN THE CITIES.

IT IS AGAINST THIS BACKGROUND THAT I WISH TO ADDRESS THE SUBJECT OF TODAY'S HEARING - THE STATE DEVELOPMENT GUIDE PLAN AND THE IMPLEMENTATION OF CONSTITUTIONAL PRINCIPLES ENUNCIATED IN THE MT. LAUREL DECISIONS.

THE MT. LAUREL DECISIONS

IN 1975, THE SUPREME COURT OF NEW JERSEY DECLARED IN SOUTHERN BURLINGTON COUNTY N.A.A.C.P. V. MT. LAUREL TOWNSHIP, 67 N.J. 155 (1975), THAT MUNICIPALITIES IN NEW JERSEY MAY NOT USE THEIR ZONING AND LAND USE PLANNING POWERS TO DISCRIMINATE AGAINST THE POOR. THE COURT HELD THAT ZONING ORDINANCES THAT HAVE THE EFFECT OF DISCRIMINATING AGAINST THE POOR REPRESENT AN ABUSE OF THE MUNICIPAL ZONING POWER AND A VIOLATION OF THE NEW JERSEY CONSTITUTION. EIGHT YEARS LATER, THE SUPREME COURT REAFFIRMED AND ELABORATED UPON THIS DECISION IN ITS SECOND MT. LAUREL DECISION, SOUTHERN BURLINGTON COUNTY N.A.A.C.P. V. MT. LAUREL TOWNSHIP, 92 N.J. 158 (1983).

UNDER THE MT. LAUREL DECISIONS, EACH MUNICIPALITY IN NEW JERSEY, REGARDLESS OF ITS LOCATION OR EXTENT OF DEVELOPMENT, HAS A CONSTITUTIONAL OBLIGATION TO PROVIDE REALISTIC OPPORTUNITIES FOR THE DEVELOPMENT OF SAFE, DECENT AND AFFORDABLE HOUSING FOR ALL LOW AND MODERATE INCOME FAMILIES WHO RESIDE

WITHIN ITS BOUNDARIES. BEYOND THIS, EACH MUNICIPALITY THAT LIES PARTLY OR WHOLLY IN GEOGRAPHIC "GROWTH AREAS" DESIGNATED IN THE NEW JERSEY STATE DEVELOPMENT GUIDE PLAN FORMULATED BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS HAS A CONSTITUTIONAL OBLIGATION TO PROVIDE REALISTIC OPPORTUNITIES FOR DEVELOPMENT OF SAFE, DECENT AND AFFORDABLE HOUSING FOR ITS FAIR SHARE OF THE PROSPECTIVE REGIONAL NEED FOR HOUSING FOR LOW AND MODERATE INCOME HOUSEHOLDS.

A MUNICIPALITY DOES NOT SATISFY ITS OBLIGATIONS UNDER MT. LAUREL BY CREATING HYPOTHETICAL OR THEORETICAL POSSIBILITIES FOR DEVELOPMENT OF AFFORDABLE HOUSING. ACCORDING TO THE SUPREME COURT, THE HOUSING OPPORTUNITIES MUST BE "REALISTIC." MUNICIPALITIES MUST ELIMINATE PROVISIONS IN THEIR ZONING AND SUBDIVISION ORDINANCES THAT PREVENT DEVELOPMENT OF AFFORDABLE HOUSING, SUCH AS THOSE BARRING MULTIFAMILY HOUSING, OR REQUIRING EXCESSIVE MINIMUM HOUSE SIZES OR LOT SIZES. NO LESS IMPORTANT, MUNICIPALITIES MUST AFFIRMATIVELY EMPLOY THE FULL REPERTOIRE OF PLANNING

STRATEGIES TO PROMOTE DEVELOPMENT OF AFFORDABLE HOUSING.

THE SUPREME COURT ITSELF IDENTIFIED THREE IMPORTANT STRATEGIES THAT MUNICIPALITIES MUST CONSIDER: 1) FOSTERING DEVELOPMENT OF PUBLICLY SUBSIDIZED HOUSING, 2) OPENING OPPORTUNITIES FOR USE OF MOBILE HOMES, AND 3) ADOPTING PROVISIONS IN ZONING ORDINANCES THAT CREATE COMPELLING ECONOMIC INDUCEMENTS FOR DEVELOPERS TO CONSTRUCT AFFORDABLE HOUSING.

THE SUPREME COURT EXPRESSED GREAT CONCERN THAT COMPLIANCE WITH MT. LAUREL HAD BEEN HAMPERED BY A NUMBER OF FACTORS: UNCERTAINTY AS TO WHAT THE MUNICIPALITY'S OBLIGATION WAS; SKEPTICISM AS TO WHETHER THE COURTS WOULD ENFORCE THE OBLIGATION; AND THE EXPENSE AND DELAY OF PRIVATE LITIGATION TO COMPEL MUNICIPAL COMPLIANCE. THE SUPREME COURT TOOK A SERIES OF PROCEDURAL STEPS TO MINIMIZE THESE PROBLEMS. IT APPOINTED THREE SPECIAL JUDGES TO HEAR ALL MT. LAUREL CASES. IT REQUIRED THAT EVERY COURT DECISION UNDER MT. LAUREL SPECIFY THE HOUSING REGION, THE DIMENSION OF THE REGIONAL NEED FOR AFFORDABLE HOUSING, AND A SPECIFIC ALLOCATION OF THAT NEED TO

THE DEFENDANT MUNICIPALITY OR MUNICIPALITIES, SO AS TO AVOID ANY UNCERTAINTY CONCERNING WHAT MUNICIPALITIES WOULD HAVE TO DO TO BE IN COMPLIANCE. IT RULED THAT A DEVELOPER WHO SUCCESSFULLY CHALLENGES EXCLUSIONARY ZONING IS ENTITLED TO OBTAIN A BUILDING PERMIT FOR HIS PROPOSED DEVELOPMENT, PROVIDED THAT HIS LAND IS NOT ENVIRONMENTALLY UNSUITABLE AND THAT HE UNDERTAKES TO MARKET 20 PERCENT OF THE DWELLINGS HE CONSTRUCTS AT PRICES AFFORDABLE TO LOW AND MODERATE INCOME FAMILIES. FINALLY, THE COURT AUTHORIZED THE ROUTINE APPOINTMENT OF "SPECIAL MASTERS"--EXPERTS TO ASSIST THE COURT--TO OVERSEE THE REZONING OF MUNICIPALITIES FOUND TO BE IN VIOLATION OF MT. LAUREL.

THE MT. LAUREL DECISIONS ARE BASED ON FUNDAMENTAL CONSTITUTIONAL PRINCIPLES OF FAIRNESS AND EQUITY. AS THE SUPREME COURT ITSELF OBSERVED IN THE SECOND MT. LAUREL DECISION:

"THE DOCTRINE DOES NOT ARISE FROM SOME THEORETICAL ANALYSIS OF OUR CONSTITUTION, BUT RATHER FROM UNDERLYING CONCEPTS OF FUNDAMENTAL FAIRNESS IN THE EXERCISE OF GOVERNMENTAL POWER. THE BASIS FOR THE CONSTITUTIONAL OBLIGATION IS SIMPLE: THE STATE CONTROLS THE USE OF LAND, ALL OF THE LAND. IN EXERCISING THAT CONTROL IT CANNOT FAVOR RICH OVER POOR. IT CANNOT LEGISLATIVELY SET ASIDE DILAPIDATED HOUSING IN URBAN GHETTOS FOR THE POOR AND DECENT HOUSING ELSEWHERE FOR EVERYONE ELSE. THE GOVERNMENT THAT CONTROLS THIS LAND REPRESENTS EVERYONE. WHILE THE STATE MAY NOT HAVE THE ABILITY TO ELIMINATE POVERTY, IT CANNOT USE THAT CONDITION AS THE BASIS FOR IMPOSING FURTHER DISADVANTAGES. AND THE SAME APPLIES TO THE MUNICIPALITY, TO WHICH THIS CONTROL OVER LAND HAS BEEN CONSTITUTIONALLY DELEGATED.

THE CLARITY OF THE CONSTITUTIONAL OBLIGATION  
IS SEEN MOST SIMPLY BY IMAGINING WHAT THIS STATE  
COULD BE LIKE WERE THIS CLAIM NEVER TO BE  
RECOGNIZED AND ENFORCED: POOR PEOPLE FOREVER  
ZONED OUT OF SUBSTANTIAL AREAS OF THE STATE,  
NOT BECAUSE HOUSING COULD NOT BE BUILT FOR  
THEM BUT BECAUSE THEY ARE NOT WANTED; POOR  
PEOPLE FORCED TO LIVE IN URBAN SLUMS FOREVER  
NOT BECAUSE SUBURBIA, DEVELOPING RURAL AREAS,  
FULLY DEVELOPED RESIDENTIAL SECTIONS, SEASHORE  
RESORTS, AND OTHER ATTRACTIVE LOCATIONS COULD  
NOT ACCOMMODATE THEM, BUT SIMPLY BECAUSE THEY  
ARE NOT WANTED. IT IS A VISION NOT ONLY AT  
VARIANCE WITH THE REQUIREMENT THAT THE ZONING  
POWER BE USED FOR THE GENERAL WELFARE BUT WITH  
ALL CONCEPTS OF FUNDAMENTAL FAIRNESS AND  
DECENCY THAT UNDERPIN MANY CONSTITUTIONAL  
OBLIGATIONS."

FOR TODAY'S PURPOSE, IT IS IMPORTANT TO REALIZE THAT THERE WOULD HAVE NEVER BEEN A MOUNT LAUREL I DECISION IF THE NEW JERSEY LEGISLATURE HAD RESPONDED TO GOVERNOR WILLIAM T. CAHILL'S MESSAGE TO THE LEGISLATURE IN 1970, WARNING OF THE DIMENSIONS OF EXCLUSIONARY ZONING AND URGING LEGISLATIVE REFORM. THERE WOULD NEVER HAVE BEEN A MOUNT LAUREL II DECISION IF THE LEGISLATIVE AND EXECUTIVE BRANCHES HAD RESPONDED TO THE MOUNT LAUREL I DECISION. AS THE SUPREME COURT DECLARED IN MOUNT LAUREL II:

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 CONTROVERSY (AND ITS POLITICAL CONSEQUENCES) THAT HAS RESULTED IN RELATIVELY LITTLE LEGISLATIVE ACTION IN THIS FIELD. WE

UNDERSTAND THAT 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 ENFORCE-  
MENT 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.

IN THE REMAINDER OF THIS TESTIMONY, I WILL DISCUSS HOW  
THE IMPLEMENTATION OF MOUNT LAUREL WILL RESULT IN AFFORDABLE  
HOUSING; DISCUSS THE IMPORTANCE OF UPDATING THE STATE DE-  
VELOPMENT GUIDE PLAN, AND SUGGEST ACTION BY THE LEGISLATIVE  
AND EXECUTIVE BRANCHES THAT COULD PREVENT OR REDUCE  
FUTURE LITIGATION.

IMPLEMENTATION OF MT. LAUREL  
WOULD PRODUCE AFFORDABLE HOUSING

IN 1970 GOVERNOR WILLIAM T. CAHILL TOLD THE NEW JERSEY LEGISLATURE THAT RESTRICTIVE LAND USE PRACTICES WERE THE BIGGEST OBSTACLE IN THIS STATE TO AFFORDABLE HOUSING. TODAY, THERE ARE TWO MAJOR OBSTACLES--HIGH INTEREST RATES AND RESTRICTIVE LAND USE PRACTICES. INTEREST RATES HAVE ALMOST DOUBLED FROM 1970 to 1983. THE HIGH LEVEL OF INTEREST RATES TODAY MAKES IT EVEN MORE CRUCIAL THAT WE ELIMINATE GOVERNMENTAL LAND USE BARRIERS TO HOUSING. A FAMILY THAT TEN YEARS AGO COULD HAVE AFFORDED A SINGLE FAMILY HOME ON A HALF-ACRE TRACT MAY NOW ONLY BE ABLE TO AFFORD A CONDOMINIUM BUILT AT 12 TO THE ACRE. WHETHER THAT FAMILY CAN FIND AN AFFORDABLE CONDOMINIUM MAY WELL DEPEND UPON WHETHER THE LAND USE LAWS IN THE AREA PERMIT AN ADEQUATE SUPPLY OF SUCH HOUSING.

THE MT. LAUREL DECISION SEEKS TO MAKE AVAILABLE THE OPPORTUNITY TO PURCHASE AN AFFORDABLE UNIT. THE DIRECT

BENEFICIARIES OF THE MT. LAUREL DECISION ARE MODERATE INCOME PEOPLE WITH INCOMES OF FROM 50% TO 80% OF THE REGION'S MEDIAN INCOME AND LOW INCOME PERSONS WITH INCOMES CLOSE TO 50% OF MEDIAN.

(1) MODERATE INCOME FAMILY OF 4 (80% OF MEDIAN)

BERGEN COUNTY            \$25,200 OR LESS

CAMDEN COUNTY           \$21,750 OR LESS

MERCER COUNTY           \$23,450 OR LESS

(2) LOW INCOME FAMILY OF 4 (50% OF MEDIAN)

BERGEN COUNTY           \$16,350 OR LESS

CAMDEN COUNTY           \$14,100 OR LESS

MERCER COUNTY           \$14,650 OR LESS

AMONG THE BENEFICIARIES OF THE MT. LAUREL DECISION ARE MANY MUNICIPAL EMPLOYEES, SUCH AS POLICEMEN, FIREMEN AND SCHOOL TEACHERS, AS WELL AS SENIOR CITIZENS AND YOUNG FAMILIES.

DEVELOPERS THROUGHOUT NEW JERSEY TELL US THAT THEY CAN BUILD ATTRACTIVE CONDOMINIUMS OR MANUFACTURED HOUSING WHICH ARE AFFORDABLE TO MODERATE INCOME PERSONS, IF THEY RECEIVE FULL MUNICIPAL COOPERATION. FULL MUNICIPAL COOPERATION MEANS AUTHORIZATION OF RELATIVELY HIGH DENSITIES, ELIMINATION OF RESTRICTIVE ZONING AND SUBDIVISION PRACTICES, AND EXPEDITED REVIEW PROCESS. IN MUCH OF SUBURBAN NEW JERSEY, FOUR UNITS TO THE ACRE IS VIEWED AS HIGH DENSITY. YET IN FLORIDA, TEXAS OR CALIFORNIA, ATTRACTIVE DEVELOPMENTS ARE BUILT AT DENSITIES OF UP TO 20 TO THE ACRE. INCREASING DENSITY CAN PRODUCE A SUBSTANTIAL SAVINGS IN THE COST OF HOUSING. PURCHASERS OF HOUSING BUILT AT A DENSITY OF 20 TO THE ACRE PAY AS LITTLE AS 1/5 AS MUCH FOR THE COST OF LAND, OF SITE IMPROVEMENTS AND OF INFRASTRUCTURE AS PURCHASERS OF HOUSING BUILT AT A DENSITY OF FOUR TO THE ACRE.

THE SAVINGS FROM REDUCING OTHER LAND USE RESTRICTIONS CAN ALSO BE SIGNIFICANT. ALTHOUGH EXPERTS ACKNOWLEDGE THAT WE NEED TO DOWNSIZE OUR HOUSES JUST AS WE ARE DOWNSIZING OUR

CARS, SOME MUNICIPALITIES STILL IMPOSE HIGH MINIMUM SQUARE FOOTAGE REQUIREMENTS. ASSUMING A CONSTRUCTION COST OF \$30 PER SQUARE FOOT, A SQUARE FOOTAGE REDUCTION OF 200 SQUARE FEET WILL RESULT IN A \$6,000 SAVINGS, JUST IN BRICK AND MORTAR. MUNICIPAL ENGINEERS HAVE A TENDENCY, BROUGHT ABOUT BY A COMBINATION OF CAUTION AND HABIT, TO IMPOSE THE STRICTEST POSSIBLE STANDARDS OF SUBDIVISION CONTROLS. A GOOD EXAMPLE IS THE REQUIREMENT THAT A CUL-DE-SAC BE BUILT AT STANDARDS SIMILAR TO THOSE FOR A SIX LANE INTERSTATE HIGHWAY. THE COST OF THESE IMPROVEMENTS, LIKE THE COST OF AN UNNECESSARILY LARGE HOUSE, IS PASSED ON TO THE PURCHASER. X FINALLY, IN 1970, 85% OF PROPOSED PROJECTS RECEIVED GOVERNMENT APPROVAL IN LESS THAN 3 MONTHS; 85% NOW TAKE MORE THAN 18 MONTHS. THE COST OF CARRYING THIS LAND FOR THIS PERIOD IS, OF COURSE, ALSO PASSED ON TO THE HOME PURCHASER.

WHILE WE ARE DISCUSSING MODERATE INCOME HOUSING, SPECIAL MENTION SHOULD BE GIVEN TO REZONING TO PERMIT MANUFACTURED HOUSING -- MOBILE AND MODULAR HOUSING. THIS IS A DECENT,

INEXPENSIVE FORM OF HOUSING. MAJOR IMPROVEMENTS HAVE BEEN MADE IN THE INDUSTRY SO THAT TODAY'S PRODUCT IN MANY CASES IS INDISTINGUISHABLE FROM A CONVENTIONAL "STICK-BUILT" HOUSE. YET, BECAUSE OF NEW JERSEY'S ZONING POLICIES, SUCH HOUSING IS RARELY FOUND IN THIS STATE. ACCORDING TO THE CENSUS, WE RANK 48TH IN PER CAPITA UTILIZATION OF MOBILE HOMES -- AHEAD OF MASSACHUSETTS, WHICH HAS EVEN MORE RESTRICTIVE ZONING, AND HAWAII, WHICH CANNOT AFFORD TO SHIP IN THOSE HOMES 3000 MILES FROM CALIFORNIA.

IN SUMMARY, IF WE LET DEVELOPERS BUILD CONDOMINIUMS AND MANUFACTURED HOUSING AT HIGH DENSITIES, WITHOUT COST GENERATING LAND USE FEATURES, AND EXPEDITE THE REVIEW PROCESS, THEY CAN BUILD HOUSING AFFORDABLE TO MODERATE INCOME PERSONS.

EVEN IF DEVELOPERS RECEIVE THE MOST FAVORABLE LAND USE TREATMENT POSSIBLE, THEY CANNOT BUILD A UNIT THAT A LOW INCOME PERSON (50% OF MEDIAN OR LOWER) CAN AFFORD TO PURCHASE AT COST. DWELLINGS AFFORDABLE TO LOW INCOME FAMILIES CAN ONLY BE

PRODUCED THROUGH INTERNAL SUBSIDIZATION. THE DEVELOPER, IN EFFECT, BEARS PART OF THE COST HIMSELF OR PASSES PART OF THE COST ON TO OTHER UNITS. OVER 2 DOZEN DEVELOPERS IN THIS STATE HAVE FILED MT. LAUREL SUITS, OFFERING TO DO JUST THAT, DECLARING THAT IF THEY ARE GIVEN BUILDING PERMITS, THEY WILL PROVIDE 10% LOW INCOME HOUSING AND 10% MODERATE INCOME HOUSING. HILLS DEVELOPMENT IN BEDMINSTER, A DEVELOPMENT NOW UNDER CONSTRUCTION BY COURT ORDER IN AN AREA WHERE VIRTUALLY NOTHING SELLS FOR LESS THAN \$100,000, WILL PROVIDE HOUSING AT SALES PRICES AS LOW AS \$28,000 PER UNIT. DEVELOPERS SEEKING MT. LAUREL REMEDIES ARE ALSO FINDING NOVEL WAYS TO RESPOND TO THE LOW INCOME NEED. FOR EXAMPLE, HILLS IS PROPOSING TO MAKE A LOAN TO THE LOWER INCOME PERSONS IN AN AMOUNT EQUAL TO ITS LAND COSTS. THE LOAN WILL BE REPAYABLE OVER TIME ONLY AS THE OCCUPANTS' INCOME RISES, AND ONLY TO THE EXTENT THAT THE HOUSING COSTS DO NOT EXCEED 28% OF THE FAMILY'S INCOME.

UNFORTUNATELY, IT IS TRUE THAT MANY OF THE FAMILIES WITH THE VERY LOWEST INCOMES (WELL BELOW 50% OF MEDIAN) CANNOT

BENEFIT FROM THE DECISION IN THE ABSENCE OF SUBSIDIES. NO  
CHANGE IN ZONING BY ITSELF WILL PRODUCE HOUSING WHICH THEY  
CAN AFFORD. TO HOUSE THEM REQUIRES PUBLIC SUBSIDIES.  
TRAGICALLY, THE FEDERAL GOVERNMENT HAS CHOSEN TO DRASTI-  
CALLY CURTAIL THOSE SUBSIDIES.

THE MOUNT LAUREL LAND USE REFORMS HAVE THE POTENTIAL  
TO CREATE HOUSING FOR THOUSANDS OF FAMILIES WHO OTHERWISE  
COULD NOT AFFORD A HOME. THE CHALLENGE FOR GOVERNMENT IS  
TO IMPLEMENT THOSE REFORMS THROUGHOUT THE STATE.

MOUNT LAUREL AND FAIR SHARE

HAVING DISCUSSED THE ROLE OF ZONING AND HOUSING, I WOULD LIKE TO TURN TO THE SUBJECT OF FAIR SHARE. IN ONE SENSE, THE CONCEPT OF FAIR SHARE SHOULD BE UNNECESSARY. NO MUNICIPALITY WOULD BE ALLOWED TO RESTRICT THE NUMBER OR PERCENTAGE OF COMPACT OR SUB-COMPACT CARS THAT CAN BE OWNED IN THE TOWN; WHY SHOULD THEY BE ABLE TO RESTRICT THE NUMBER OF AFFORDABLE HOMES? ONE ANSWER TO THE AFFORDABLE HOUSING SHORTAGE WOULD BE TO PERMIT AS MANY UNITS OF AFFORDABLE HOUSING TO BE BUILT IN THE TOWN AS DEVELOPERS ARE WILLING AND ABLE TO BUILD, CONSISTENT WITH ENVIRONMENTAL PROTECTION NEEDS. SUCH AN ANSWER, HOWEVER, IS IMPOSSIBLE IN NEW JERSEY BECAUSE NO MUNICIPALITY WILL ACCEPT AN UNLIMITED AMOUNT OF HOUSING. THE GOAL OF FAIR SHARE PLANNING INSTEAD IS TO ASK THE MUNICIPALITY TO ACCEPT A REASONABLE NUMBER OF THE NEEDED LOWER INCOME UNITS -- A FAIR SHARE.

ONE BASIC GOAL OF FAIR SHARE PLANNING IS TO LINK HOUSING

WITH JOBS. IN A TEN YEAR PERIOD FROM 1972-1981, WHILE URBAN COUNTIES SUCH AS ESSEX AND HUDSON WERE LOSING JOBS, NEW JERSEY'S "SUNBELT" COUNTIES HAD TREMENDOUS EMPLOYMENT GROWTH.

	<u>1972 JOBS</u>	<u>1981 JOBS</u>	<u>CHANGE</u>	<u>% CHANGE</u>
BERGEN	292,587	347,825	+ 55,238	+19%
MIDDLESEX	183,842	243,547	+ 59,705	+32.5%
MORRIS	99,636	161,189	+ 61,553	+62%
OCEAN	41,705	62,352	+ 20,648	+49.5%
SOMERSET	57,156	82,496	+ 25,340	+44.3%
ESSEX	334,405	303,754	- 30,651	-9.2%
HUDSON	207,248	178,187	- 29,061	-14%

FAIR SHARE PLANNING STRIVES TO PROVIDE HOUSING OPPORTUNITY FOR EMPLOYEES, PARTICULARLY THE LOWER INCOME PERSONS, CLOSE TO THEIR JOBS. A MUNICIPALITY WHICH RECEIVES THE TAX BENEFITS OF INDUSTRY OR OFFICE BUILDING DEVELOPMENT SHOULD BEAR THE RESPONSIBILITY OF FACILITATING HOUSING FOR THE PEOPLE WHO WORK THERE.

A FAIR SHARE PLAN CAN BE DRAFTED WHICH GIVES MUNICIPALITIES A REASONABLE FAIR SHARE NUMBER BASED ON FACTORS SUCH AS EMPLOYMENT AND VACANT DEVELOPABLE LAND. A PREREQUISITE FOR SUCH A PLAN IS THAT THE DRAFTSMEN KNOW WHICH MUNICIPALITIES SHOULD BE EXEMPTED FROM FAIR SHARE RESPONSIBILITY, EITHER BECAUSE THEIR LANDS SHOULD BE PRESERVED FOR AGRICULTURAL USAGE, BECAUSE THEIR LANDS ARE TOO ENVIRONMENTALLY SENSITIVE, OR FOR SOME OTHER PUBLIC PURPOSE REASON. THE STATE DEVELOPMENT GUIDE PLAN WILL FURNISH THIS INFORMATION PROVIDED IT IS KEPT UP TO DATE.

MT. LAUREL AND THE STATE DEVELOPMENT GUIDE

IN THE FIRST MT. LAUREL DECISION, THE SUPREME COURT RULED THAT THE OBLIGATION TO PROVIDE HOUSING OPPORTUNITIES SUFFICIENT TO MEET A MUNICIPALITY'S FAIR SHARE OF THE REGIONAL NEED APPLIED ONLY TO SO-CALLED "DEVELOPING MUNICIPALITIES." THE CONCEPT OF "DEVELOPING MUNICIPALITY" WAS FROM THE BEGINNING AN ELUSIVE ONE. MUNICIPALITIES COULD ONLY GUESS WHETHER THEY WERE "DEVELOPING". MOST CHOSE TO ACT AS IF THEY WERE EITHER "NOT YET DEVELOPING" OR "ALREADY DEVELOPED" OR BOTH-- ANYTHING BUT "DEVELOPING." WORSE STILL, EFFORTS TO ENFORCE MT. LAUREL INEVITABLY ENTANGLED DEVELOPERS, CIVIL RIGHTS ORGANIZATIONS, MUNICIPALITIES, AND THE COURTS THEMSELVES IN ENORMOUSLY EXPENSIVE, TIME CONSUMING, AND BURDENSOME LITIGATION OVER WHETHER A MUNICIPALITY WAS "DEVELOPING."

IN THE SECOND MT. LAUREL DECISION THE SUPREME COURT, TAKING ADVANTAGE OF THE INTERVENING ADOPTION OF THE STATE DEVELOPMENT GUIDE PLAN, MADE THAT DOCUMENT THE EXCLUSIVE BASIS FOR DEFINING WHICH MUNICIPALITIES HAD A CONSTITUTIONAL

OBLIGATION TO PROVIDE HOUSING OPPORTUNITIES TO SATISFY A SHARE OF THE REGIONAL HOUSING NEED. THE SUPREME COURT HELD THAT ALL MUNICIPALITIES HAD AN OBLIGATION TO PROVIDE REALISTIC HOUSING OPPORTUNITIES FOR THEIR OWN POOR, BUT ONLY MUNICIPALITIES THAT LIE AT LEAST PARTLY IN THE SO-CALLED GROWTH AREAS DELINEATED IN THE STATE DEVELOPMENT GUIDE PLAN HAD AN ADDITIONAL OBLIGATION TO PROVIDE HOUSING OPPORTUNITIES TO SATISFY A SHARE OF THE REGIONAL HOUSING NEED.

THE DECISION GAVE NEW AND UNANTICIPATED IMPORTANCE TO THE STATE DEVELOPMENT GUIDE PLAN. THE GUIDE PLAN WAS ORIGINALLY FORMULATED IN 1977 BY THE DEPARTMENT OF COMMUNITY AFFAIRS IN RESPONSE TO THE STATUTORY REQUIREMENT THAT IT "PREPARE AND MAINTAIN A COMPREHENSIVE GUIDE PLAN AND LONG TERM DEVELOPMENT AND CAPITAL IMPROVEMENT PROGRAM FOR THE FUTURE IMPROVEMENT AND DEVELOPMENT OF THE STATE." N.J.S.A. 13:1B-15.52. THE PLAN WAS REVISED IN 1980, AND FURTHER REVISIONS WERE PROPOSED, THOUGH NOT ADOPTED, IN 1981.

THE HEART OF THE GUIDE PLAN IS THE SO-CALLED CONCEPT MAP, WHICH DIVIDES ALL THE LAND IN THE STATE AMONG FOUR CATEGORIES: GROWTH, CONSERVATION, AGRICULTURE, AND LIMITED GROWTH. BY ITS OWN TERMS THE CONCEPT MAP IS NOT AN EXACT DOCUMENT. IT IS DESCRIBED IN THE GUIDE PLAN AS CONSISTING OF "BROAD, GENERALIZED AREAS WITHOUT SITE-SPECIFIC DETAIL OR PRECISE BOUNDARIES." S.D.G.P. ii-iii. ITS ORIGINAL PURPOSE WAS TO ESTABLISH GUIDELINES FOR THE EXPENDITURE OF STATE FUNDS AND NOT TO SUPPLANT LOCAL, DETAILED COUNTY AND MUNICIPAL PLANNING.

IN FORMULATING THE GUIDE PLAN, D.C.A. CONSIDERED TEN FACTORS. FIVE OF THESE FACTORS WERE DEEMED TO REPRESENT THE SUITABILITY OF LAND FOR ECONOMIC AND RESIDENTIAL DEVELOPMENT. THESE WERE PUBLIC SEWERAGE, PUBLIC WATER SUPPLIES, EXISTING HIGHWAY AND RAIL FACILITIES, INTENSIVE EMPLOYMENT CONCENTRATIONS, AND INTENSIVE RESIDENTIAL DEVELOPMENT CONCENTRATIONS. FIVE OTHER FACTORS WERE DEEMED TO REPRESENT THE SUITABILITY OF LAND FOR CONSERVATION. THESE WERE: AGRICULTURALLY FAVORABLE

SOILS, PUBLIC OPEN SPACES, STEEP SLOPES, WETLANDS AND WATER  
SUPPLY RESOURCES. S.D.G.P. P. 28. D.C.A. MAPPED EACH OF THE  
CHARACTERISTICS ON A STATEWIDE BASIS. BASED ON THESE TEN MAPS,  
D.C.A. FORMULATED THE CONCEPT MAP. THE GUIDE PLAN EMPHASIZES  
THAT THIS WAS NOT A MECHANICAL PROCESS BUT ONE THAT INVOLVED  
PLANNING JUDGMENTS:

"THE FINAL AREA DESIGNATION, HOWEVER, WERE NOT  
MADE BY FORMULA: JUDGMENTS WERE MADE IN AN  
ATTEMPT TO ACHIEVE A SUITABLE BALANCE BETWEEN  
CONSERVATION AND GROWTH IN THE STATE AND ALSO  
TO REFLECT THE DYNAMICS OF GROWTH WHICH ARE  
MISSING FROM THE BASICALLY STATIC CHARACTER-  
ISTICS. ADDITIONAL MODIFICATIONS WERE MADE  
AS THE RESULT OF INFORMATION OBTAINED FROM  
COUNTY AND REGIONAL AS WELL AS OTHER STATE  
AGENCIES." SDGC p. 28.

GROWTH AREAS ARE AREAS WHICH, ACCORDING TO THE GUIDE  
PLAN, ALREADY HAVE A CONCENTRATION OF POPULATION AND

EMPLOYMENT, ARE NEAR TO EXISTING PUBLIC SEWER AND WATER FACILITIES, HAVE HIGHWAYS AND RAIL CONNECTIONS BUT DO NOT HAVE LARGE BLOCKS OF AGRICULTURE, PUBLIC OPEN SPACE OR ENVIRONMENTALLY SENSITIVE LANDS. THIS IS WHERE THE STATE SHOULD INVEST ITS MONEY TO PROMOTE GROWTH.

CONSERVATION AREAS HAVE ONLY LOW DENSITY DEVELOPMENT WITH LITTLE OR NO PUBLIC WATER OR SEWER SERVICE, LARGE BLOCKS OF PUBLICLY OWNED LAND, MAJOR AREAS OF ENVIRONMENTALLY SENSITIVE LAND AND LIMITED ACCESS TO MORE DEVELOPED AREAS. IN THESE AREAS THE STATE SHOULD NOT MAKE INVESTMENTS TO PROMOTE DEVELOPMENT, BUT INSTEAD SHOULD MAKE INVESTMENT TO PRESERVE EXISTING NATURAL AREAS.

AGRICULTURAL AREAS HAVE GENERALLY LOW DENSITY DEVELOPMENT WITH LITTLE OR NO PUBLIC WATER OR SEWER SERVICES, POOR ACCESS TO HIGHWAYS OR RAIL TRANSPORTATION, AND LARGE BLOCKS OF PRIME AGRICULTURAL LAND. STATE INVESTMENTS SHOULD FOCUS ON PRESERVING THESE AREAS FOR AGRICULTURAL USES.

LIMITED GROWTH AREAS ARE THOSE THAT DO NOT FALL INTO ANY OF THE OTHER CATEGORIES. ACCORDING TO THE GUIDE PLAN, THEY REPRESENT AREAS WHICH MAY BE APPROPRIATE FOR DEVELOPMENT OR OTHER PURPOSES IN THE NEXT CENTURY. IN THE MEANTIME THE STATE SHOULD PERMIT THEM TO DEVELOP AT A SLOW PACE.

THE SUPREME COURT WAS CERTAINLY CORRECT IN SEEKING TO FIND A RATIONAL SUBSTITUTE FOR THE "DEVELOPING MUNICIPALITY" STANDARD ENUNCIATED IN THE FIRST MT. LAUREL DECISION. ONE MIGHT QUESTION WHETHER FOCUSING ON GROWTH AREAS IN THE STATE DEVELOPMENT GUIDE PLAN WAS THE BEST ALTERNATIVE, ESPECIALLY SINCE THE DRAFTSMEN OF THE STATE DEVELOPMENT GUIDE PLAN APPEAR TO HAVE DRAWN THE CONCEPT MAP WITH THE EXPECTATION THAT ALL MUNICIPALITIES NOT DESIGNATED AS BEING ENTIRELY IN CONSERVATION OR AGRICULTURAL AREAS WOULD BE REQUIRED TO MEET A SHARE OF THE REGIONAL HOUSING NEED. SINCE, HOWEVER, THE SUPREME COURT DID MAKE THE STATE DEVELOPMENT GUIDE PLAN THE GOVERNING STANDARD, IT IS CRITICAL THAT THE PLAN BE REGULARLY UPDATED.

THERE ARE SEVERAL REASONS FOR THIS. FIRST, THE PLAN IS ALREADY BECOMING OUT-OF-DATE AND IS OF DIMINISHING VALUE AS A PLANNING DOCUMENT. AMONG THE CRITERIA CONSIDERED IN THE GUIDE PLAN WERE EMPLOYMENT, RESIDENTIAL DEVELOPMENT, HIGHWAYS AND PUBLIC SEWER AND WATER SERVICE. THESE ARE ALL FACTORS THAT CHANGE WITH TIME. RESIDENTIAL DEVELOPMENT AND EMPLOYMENT ARE PARTICULARLY SUSCEPTIBLE TO CHANGE. IN SOME INSTANCES, THE INFORMATION USED TO PREPARE THE 1980 PLAN WAS ALREADY OUT OF DATE THEN. FOR EXAMPLE, RESIDENTIAL DEVELOPMENT WAS MAPPED ON THE BASIS OF 1972 DATA. INDEED, D.C.A. STAFF PROPOSED REVISIONS IN 1981, WHICH WOULD HAVE SIGNIFICANTLY MODIFIED THE CONCEPT MAP IN A NUMBER OF AREAS. UNLESS THE PLAN IS KEPT CURRENT, IT WILL CEASE TO BE A VALUABLE PLANNING TOOL, AND INSTEAD WILL BECOME A OBSTRUCTION TO RATIONAL STATEWIDE PLANNING.

SECOND, THE LEGISLATURE HAS ALREADY MANDATED THAT THE STATE DEVELOPMENT GUIDE PLAN BE KEPT UP TO DATE. N.J.S.A.

13:1B-15.52, NOT ONLY REQUIRES THAT A GUIDE PLAN BE "PREPARED,"

IT ALSO REQUIRES THAT IT BE "MAINTAINED."

THIRD, AND NOT LEAST IMPORTANT, THE SUPREME COURT DECLARED IN THE SECOND MT. LAUREL DECISION THAT THE STATE DEVELOPMENT GUIDE PLAN WILL CONTINUE TO BE THE BASIS FOR DETERMINING MT. LAUREL OBLIGATIONS ONLY IF IT IS UPDATED BY JANUARY 1, 1985, AND EVERY THREE YEARS THEREAFTER. IF THE GUIDE PLAN IS NOT UPDATED, THE COURTS WILL BE PERMITTED TO FREELY DEVIATE FROM THE GUIDE PLAN. IT IS NOT CLEAR WHETHER THIS MEANS A RETURN TO THE "DEVELOPING MUNICIPALITY" STANDARD OR TO SOME OTHER, YET VAGUER STANDARD. IT IS CLEAR THAT FAILURE TO UPDATE THE GUIDE PLAN WILL ONCE AGAIN FORCE ONTO ALL PARTIES, ESPECIALLY MUNICIPALITIES, THE HEAVY COSTS AND BURDENS OF RENEWED LITIGATION ON THESE ISSUES AND WILL RE-INTRODUCE THE CONFUSION AND UNCERTAINTY THAT THE SUPREME COURT INTENDED TO ELIMINATE.

THERE IS AN URGENT NEED FOR THE GUIDE PLAN TO BE UPDATED.  
IT MATTERS LITTLE WHICH AGENCY ACTUALLY UPDATES THE GUIDE PLAN.

IT COULD BE THE DEPARTMENT OF COMMUNITY AFFAIRS, A SPECIALLY CREATED EXECUTIVE AGENCY, OR A LEGISLATIVE STUDY COMMISSION. WHAT IS IMPORTANT IS THAT THE AGENCY CARRY OUT THE TASK IN A HIGHLY PROFESSIONAL MANNER; THAT THE PROCESS BE OPEN, FAIR AND ABOVE ANY HINT OF IMPROPER POLITICAL INFLUENCE; THAT IT BE DONE WITH THE INTENT OF IMPLEMENTING MT. LAUREL PRINCIPLES, AND NOT IMPEDING THEM; AND THAT IT HAVE THE LEGAL IMPRIMATUR OF THE STATE OF NEW JERSEY.

THE TASK IS LARGE, BUT IT IS MANAGEABLE WITHIN THE 15 MONTHS THAT REMAIN. MUCH OF THE DATA COLLECTED FOR THE INITIAL GUIDE PLAN, SUCH AS INFORMATION ON WETLANDS, TOPOGRAPHY AND SOIL CHARACTERISTICS IS STILL APPLICABLE. OTHER DATA SUCH AS EMPLOYMENT DISTRIBUTION, PUBLIC SERVICE AND WATER SYSTEMS, AND HIGHWAY AND RAIL SYSTEMS ARE MAINTAINED ON A CURRENT BASIS BY OTHER STATE AGENCIES. ONLY TWO ELEMENTS OF THE TASK ARE TIME-CONSUMING. FIRST, THE ONE CRITICAL TYPE OF DATA THAT MUST BE COLLECTED ANEW IS INFORMATION ON CURRENT LAND USE. THERE IS NO CURRENT STATEWIDE INVENTORY OF WHICH LANDS ARE

DEVELOPED AND WHICH REMAIN UNDEVELOPED. IT IS FEASIBLE TO COLLECT THIS DATA, ANALYZE IT, AND INTEGRATE IT INTO A REVISED PLAN BY THE END OF 1984, BUT THIS MUST BE BEGUN PROMPTLY. SECOND, COMMENT MUST BE SOLICITED FROM THE PUBLIC AS WELL AS REGIONAL, COUNTY AND MUNICIPAL PLANNING AGENCIES THROUGHOUT THE STATE. TO CARRY WEIGHT, THE REVISED GUIDE PLAN MUST BE ACCURATELY PERCEIVED BY THE PUBLIC AND THE COURTS TO HAVE BEEN FORMULATED THROUGH AN OPEN AND RESPONSIVE PROCESS. I WOULD URGE THE LEGISLATURE TO TAKE IMMEDIATE STEPS TO SEE THAT THIS IS DONE.

## CONCLUSION

SINCE THIS HEARING IS PRIMARILY CONCERNED WITH THE STATE DEVELOPMENT GUIDE, MUCH OF MY TESTIMONY HAS FOCUSED UPON IT. I STRONGLY BELIEVE THAT GOVERNMENT SHOULD ENSURE THAT IT IS UPDATED. IN ADDITION, HOWEVER, I WOULD LIKE TO LEAVE YOU WITH SEVERAL OTHER RECOMMENDATIONS.

(1) THE STATE, IN ADDITION TO UPDATING THE STATE DEVELOPMENT GUIDE PLAN, SHOULD ESTABLISH MUNICIPAL FAIR SHARE ALLOCATIONS SO THAT DEVELOPERS AND MUNICIPALITIES DO NOT WASTE MONEY IN PROTRACTED LEGAL BATTLES OVER FAIR SHARE.

(2) THE STATE SHOULD DRAFT A SET OF MODEL ORDINANCE OR UNIFORM STANDARDS WHICH ARE DESIGNED TO IMPLEMENT MOUNT LAUREL. SIX YEARS AGO NEW JERSEY ESTABLISHED A UNIFORM CONSTRUCTION CODE WHICH HAS PROVEN TO BE EXTREMELY HELPFUL TO DEVELOPERS. A UNIFORM SUBDIVISION CODE COULD LIKEWISE BE OF MAJOR BENEFIT TO DEVELOPERS

SEEKING TO PROVIDE LOWER INCOME HOUSING.

MT. LAUREL II COULD HAVE BEEN AVOIDED BY PROMPT  
LEGISLATIVE OR EXECUTIVE ACTION IN RESPONSE TO MT. LAUREL

I. I BELIEVE THAT IF STATE AND LOCAL GOVERNMENT NOW  
WORK TOGETHER IN IMPLEMENTING MOUNT LAUREL II WE COULD  
PRECLUDE THE NEED FOR MT. LAUREL III AND MAKE AFFORDABLE  
HOUSING A REALITY INSTEAD OF THE IMPOSSIBLE DREAM WHICH IT  
IS TODAY FOR FAR TOO MANY NEW JERSEY RESIDENTS.

RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
NEW JERSEY STATE BAR ASSOCIATION

WHEREAS, the New Jersey Supreme Court in Southern Burlington County NAACP v. Township of Mount Laurel, at 92 N.J. 158 (1983) (Mount Laurel II) substantially relied on the State Development Guide Plan to determine the obligation of a municipality to provide low and moderate income housing units; and

WHEREAS, the court's use of this Plan significantly decreases confusion among municipalities, developers and the public at large with respect to the legal obligations imposed by Mount Laurel II; and

WHEREAS, the Court required that the State Development Guide Plan be updated by January 1, 1985 in order to retain its viability as a means of defining the Mount Laurel II obligation; and

WHEREAS, updating of the Guide Plan requires action by the Governor and appropriate State officers.

NOW THEREFORE BE IT RESOLVED by the Board of Trustees of the New Jersey State Bar Association that the New Jersey State Bar Association hereby goes on record in favor of the updating of the State Development Guide Plan by January 1, 1985 as set forth in Mount Laurel II; and

BE IT FURTHER RESOLVED that the New Jersey State Bar Association hereby urges the Governor and appropriate State officers to take all actions necessary and proper to fund and carry out this undertaking; and

BE IT FURTHER RESOLVED that the Chairman of the Land Use Law Section of the New Jersey State Bar Association, or his designee, is hereby

authorized to present this Resolution, and an appropriate explanatory statement to the Legislature, and members and committees thereof, and to the Governor and appropriate officers.