J O I N T P U B L I C H E A R I N G

before the

SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE,

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE,

and

ASSEMBLY COUNTY GOVERNMENT COMMITTEE

on

SENATE, No. 3100
(Comprehensive and Balanced Housing Plan Act)

Held:
Assembly Chamber
State House
Trenton, New Jersey
May 28, 1975

COMMITTEE MEMBERS PRESENT:

Senate County and Municipal Government Committee
Senator Martin L. Greenberg (Chairman)
Senator Thomas G. Dunn

Assembly Municipal Government Committee
Assemblyman Vincent O. Pellecchia

Assembly County Government Committee
Assemblyman Richard Van Wagner
Assemblywoman Jane Burgio
Assemblyman Walter J. Kozloski

* * * *

I N D E X

INDEX (Continued)

* * * *

SENATE, No. 3100

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1975

By Senator GREENBERG

Referred to Committee on County and Municipal Government

AN ACT concerning the determination of the housing needs of counties and municipalities and the making of housing allocations and provision of appropriate site loactions therefor, amending the "Municipal Planning Act (1953)," (P. L. 1953, c. 433) and R. S. 40:55 -32 and making an appropriation therefor.

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

1. (New section) This act shall be known and may be cited as the "Comprehensive and Balanced Housing Plan Act."

2. (New section) The Legislature hereby declares it to be in the interests of the general health and welfare of the residents of New Jersey for the State to increase to the maximum extent possible and feasible, the opportunities for all its residents to secure, consistent with their choice and means, adequate housing in a safe and healthy environment, within convenient access of places of employment, recreation and necessary community facilities. The Legislature therefore declares it to be the objective and policy of the State to encourage greater diversity and the better distribution of housing opportunities throughout the State, consistent with environmentally sound and well planned community development and the efficient use of the natural resources of each community and the State.

The Legislature, however, finds that existing local land use controls are not infrequently exercised in a manner that serves to limit the number of appropriate site locations available for the construction of certain types of dwelling units within many communities, notwithstanding the evident need for such housing within these communities and in the region at-large. The net effect of such policies has been not only to reduce the housing opportunities for a significant segment of the State's population, but has also contributed to the shortage of safe, sanitary and reasonably priced housing in the State. Innumerable State housing enactments amply

attest to the serious nature of the housing shortage in New Jersey.

The foregoing problems have been compounded and rendered more acute by the emergence of new industrial and commercial complexes outside already established population centers, which has resulted in a growing disjunction between the location of expanding employment opportunities and that of residential opportunities.

The Legislature therefore finds it necessary to establish a new planning framework within which local units of government rationally plan for the housing needs of their residents, while simultaneously acting as responsible partners and instrumentalities of the State in helping the State meet its responsibilities to all of the residents of New Jersey.

3. (New section) For purposes of this act, unless the context clearly requires a different meaning:

a. "Commissioner" means the Commissioner of the Department of Community Affairs.

b. "Advisory council" means the Advisory Council on Housing and site Location.

c. "Housing needs" means the number and types of safe and sanitary housing necessary to meet the needs of all segments of the population.

d. "County housing guidelines" means the number and types of housing or dwelling units recommended by the commissioner as being necessary to meet the 5-year housing needs of the county generated by developments within and without the county;

e. "Provisional housing allocations" means the 5-year housing allocations recommended to the county board of chosen freeholders by the county planning board;

f. "Housing allocations" means the 5-year housing allocations for the county, and each municipality situated therein, approved or adopted by the county board of chosen freeholders, or certified or promulgated by the commissioner, as may be appropriate.

g. "County housing allocation" means the number and types of housing or dwelling units allocated to the county as necessary to meet the housing needs generated by developments within and without the county.

h. "Municipal housing allocations" means the municipality's share of the county housing allocation, consisting of the number and types of housing or dwelling units, deemed necessary to meet the existing and anticipated needs generated by developments within the municipality, and by developments without the municipality, having an immediate and substantial impact on the housing needs of said municipality.

i. "Balanced or increased housing opportunities" means the provision of an adequate mix of housing types, for both sale and rental, for persons of all incomes, ages, and family size, residing or working or as would seek to reside or work in said county or region.

j. "Types of dwelling units" means the structural types and purchase price or rental costs of dwelling units.

k. "Survey report" means the report containing the findings of, and county and municipal housing allocations made by the county board of chosen freeholders.

l. "Developer" means any person, association, corporation or public agency seeking to construct, reconstruct or rehabilitate, or seeking to sponsor such construction, reconstruction or rehabilitation, of any building or structure which is to be sold or rented, or offered for sale or rental, as dwelling units for one or more persons or family units.

m. "Local body" means the governing body, the municipal planning board, or the zoning board of adjustment, as the case may be, which has the authority for making land use decisions within a municipality.

n. "Land use regulations" means the master plan, official map ordinances, zoning ordinance, subdivision ordinance, planned unit development ordinance, site plan ordinance, or other land use regulations of a municipality.

o. "Housing development program" means the program prepared by each municipality for implementing its 5-year housing allocation.

4. (New section) The Commissioner of Community Affairs shall immediately undertake to ascertain the housing needs and formulate housing goals for the State for a 15-year period from the effective date of this act, and for every 15 years thereafter, on the basis of which the commissioner shall calculate and shall make available to the county planning board of each county in the State, within 6 months of the effective date of this act, three 5-year housing guidelines for each county for the said 15-year period. The sum of the three 5-year county housing guidelines distributed to each county planning board through the secretary of the county planning board and the clerk of the county board of chosen freeholders, shall constitute the county's share of the 15-year State housing goals based upon the commissioner's assessment of the county's existing and projected housing needs. The county housing guidelines shall also include a regional housing need factor, which factor shall reflect the housing impact of regional developments and trends, insofar as

such developments and trends are deemed to have an immediate and appreciable effect on the county's housing needs. Every 5 years from the effective date of this act, the commission shall review and make available to each county planning board an updated and, if necessary, revised county housing guidelines based upon the commissioner's assessment of developmental trends within and, insofar as may be necessary, without each county, as well as of each county's progress toward meeting its certified housing allocations; except that, the commissioner shall, every 15 years from the effective date of this act, prepare and transmit to each county planning board new three 5-year county housing guidelines based upon a comprehensive review and, insofar as necessary, reformulation of the State housing needs and goals and county housing guidelines for the ensuing 15 years.

The county's housing guidelines shall indicate the numbers and types of dwelling units necessary to meet the commissioners' assessment of the county's existing housing needs, and the impact of ongoing and anticipated developments on such housing needs. Every county housing guidelines transmitted to the county planning boards shall be accompanied by copies of all relevant data and methodologies used by the commissioner to arrive at the State's 15-year housing needs and goals and the county's housing guidelines.

5. (New section) The commissioner shall, in addition to such other duties and responsibilities as may be prescribed elsewhere in this act, be empowered to:

a. Prepare, adopt and promulgate, within 120 days of the effective date of this act (i) standards and guidelines for the determination of municipal allocations by county planning boards and county boards of chosen freeholders, and (ii) rules and regulations relating to the form, content, procedures or standards of evaluation for the survey reports to be submitted by the counties;

b. Prepare and prescribe, within 9 months of the effective date of this act, standards and guidelines for the housing development programs to be adopted by municipalities;

c. Identify and delineate high density and high growth areas in the State and determine their impacts on regional housing needs, on the basis of which determinations the commissioner shall derive the regional allocations for each county;

d. Identify areas of critical housing needs throughout the State, as evidenced by (i) the existence of a significant net deficit within a given area between existing and prospective housing needs and

demands and the availability of sufficient, suitable housing opportunities, including replacement housing, for those persons residing or working or who would seek to reside or work in said areas, and (ii) a high development potential as defined in paragraphs e. and f. of this section;

e. Prepare standards for determining feasible and desirable density levels or the dwelling unit or other developmental capacity of different types of locations, and recommend models of alternative patterns, levels and distributions of long-range growth, insofar as may be consistent with State, interstate or regional landuse and growth plans and policies, and as would assure more efficient uses of the major natural resources of the State;

f. Identify and delineate geographical areas with high development potential based upon proximity or accessibility to major employment centers, the availability of vacant, developable or redevelopable land, and proximity or accessibility to major employment centers, recreation facilities, school, transportation and parking facilities, public facilities, and open spaces, adequate to meet any projected densities for such areas and as may be consistent with appropriate environmental standards or considerations;

g. Compile, collate and disseminate to counties and municipalities information on Federal and State housing and other related programs, and to disseminate to counties and municipalities such information regarding density levels, site locations and designs, housing designs and other related matters as may serve to preserve and enhance the market value of dwelling units and the quality of their environment;

h. Coordinate all public housing programs and the policies and programs of all departments, agencies or other instrumentalities of the State relating thereto, insofar as may be necessary and possible to better effectuate the objectives of this act;

i. Make available to the counties such planning assistance as shall be proper and available for the implementation of this act, including the preparation and publication of model zoning and subdivision ordinances so as to encourage more innovative and flexible land use policies; and

j. Make such recommendations from time to time to the Governor and Legislature as will contribute to the attainment of the housing goals of the State and the objectives of this act.

6. (New section) In developing standards and guidelines for the municipal allocations to be made by the counties, as well as in preparing county housing guidelines, the commissioner shall take into account the following factors:

a. The location of major employment centers, particularly in areas where an imbalance or net deficit exists between existing and prospective employment opportunities and the availability of sufficient and adequate dwelling units to satisfy the housing needs generated thereby;

b. The nature, quality and distribution of existing housing supply, needs and demands, including possible replacement housing, by types of dwelling units and economic categories, and the need to broaden housing opportunities for all segments of the population of the county and region;

c. The availability of vacant or readily developable or redevelopable land and the development or dwelling unit capacity of such land as potential housing site locations;

d. The geographical proximity and accessibility of the prospective housing site locations to public transportation, major employment centers and high growth areas;

e. The availability and capacity of existing and planned community facilities; and

f. The relative fiscal capacity of each county or municipality, as may be appropriate.

7. (New section) All departments, agencies and other instrumentalities of the State shall render whatever cooperation may be necessary, possible and desirable to assist the commissioner in fulfilling his responsibilities under this act, including the expeditious processing and approval of any applicaitons for review, certification, grants, or other assistance submitted by any public or nonpublic applicant when such processing or approval serve to meet, in whole or in part, the housing allocations for any area in which a critical housing need exists and for which appropriate land use regulations and housing development programs have been adopted and certified in a manner hereinafter provided. Expeditious treatment shall also be accorded to any applications which serve to meet the housing allocations for any municipality having adopted certified land use regulations and housing development programs. The planning and implementation of capital improvement projects by any department, agency or instrumentality of the State or of any county and any State or county land use or land development policies shall be, to the maximum extent feasible, coordinated with properly certified county housing allocations and municipal land use and housing development programs, or any amendments adopted thereto, pursuant to section 26 of this act. The commissioner shall assist any such State or county department, agency or

other instrumentality thereof in developing their plans accordingly.

8. (New section) Immediately upon enactment of this act, there shall be established within the Department of Community Affairs, an Advisory Council on Housing and Site Location, whose membership shall consist of the Commissioners of the Departments of Community Affairs, Environmental Protection, Transportation and Labor and Industry, and the State Treasurer and chairman of the State Housing Council, or their duly designated representatives, and eight additional members who shall be appointed by the Governor with the advice and consent of the Senate. Of the eight members so appointed, two shall be elected municipal officials, two shall be elected county officials, two shall be consumer representatives, one shall be a representative of the building trades, and one shall be a representative of the building industry. The Commissioner of Community Affairs shall serve as chairman of the council. The council shall elect a vice chairman from among its members and a secretary who need not be a member.

The terms of office of the elected officials shall be for 4 years or for the tenure of their elected office, whichever is the lesser amount. The terms of office of the four appointed nongovernmental members shall be for 4 years; except that, of the four such members first appointed, one shall be for a term of 1 year, one for 2 years, one for 3 years and one for 4 years. All appointed members shall serve until their respective successors are appointed and shall qualify. Any vacancy occurring in the appointed members of the council prior to the expiration of the term of office, shall be filled in the same manner as the original appointment, and said appointee shall serve for the unexpired term and until a successor is appointed and shall qualify.

The members of the advisory council shall serve without compensation, but shall be reimbursed for any expenses actually and necessarily incurred in the performance of their duties as hereinafter set forth and within the amounts made available by appropriation therefor.

The Department of Community Affairs shall provide housekeeping, secretarial and consultant services to the council.

9. (New section) The advisory council is empowered to consider, hold public hearings, request information or submit recommendations to the commissioner on:

a. All rules, regulations, requirements, standards and guidelines prior to their adoption by the commissioner pursuant to the provisions of this act;

b. The commissioner's estimates of State housing needs and goals, the possibilities of and suggested means for producing the amounts and types of dwelling units needed to realize said goals, and the problems connected therewith;

c. Any inventory made by the commissioner of vacant land or developable land and any assessment of the development potential such or any other land resources within the State;

d. Any summary and analysis by the commissioner of landuse and development policies within the State and their immediate or potential impact on the provision of adequate and sufficient housing to meet the State's needs; and

e. Such other matters as may be submitted to the advisory council by the commissioner or as may relate to the provisions of this act.

10. (New section) In accordance with such standards, guidelines and other requirements as may be specified in rules and regulations adopted by the commissioner pursuant to the provisions of this act, the planning board of each county shall, as soon as practicable, and within sufficient time to enable the board of chosen freeholders to comply with the provisions of section 14 of this act, complete a comprehensive survey of the housing needs of the county. The housing survey shall contain:

a. An inventory of the quantity and quality of the current housing stock within the county, including data on the types, distribution, location, costs, vacancy rates, conversion rates, rehabilitation needs and replacement rates of existing dwelling units;

b. Current and projected transportation, demographic, and economic data, including the distribution of population and employment opportunities by areas and economic categories;

c. The level and distribution of current and projected needs and demands for housing, as to numbers and types of dwelling units, by numbers, size of households and incomes of persons currently residing or employed within the county, or as may reasonably be expected will seek to reside or to be employed within the county as a result of anticipated developments within and without the county in the next 5 years; and

d. The net deficiency between currently available housing, as to the numbers and types of dwelling units, and the existing and projected need and demand for such housing in each municipality, and as would be necessary and practicable to provide increased housing opportunities within the region and the county.

11. (New section) For the purposes of assisting the county planning board and the county board of chosen freeholders in the

discharge of their duties and responsibilities under this act, there is hereby created in each county a municipal advisory board consisting of the mayors of all municipalities in the county. Any member of the municipal advisory body shall have the right to participate in the deliberations of the county planning board or the county board of chosen freeholders on any matters considered by such bodies in accordance with the provisions of this act, but said members shall be without the right to vote, though the municipal advisory board shall be afforded an opportunity to append any recommendations, adopted by a majority vote of all of its members, to any survey, report or findings that are required to be prepared and filed by the county planning board or the county board of chosen freeholders under this act. Nothing in this act shall be construed as restricting the right of any member of the municipal advisory board from publicly commenting on any such survey, report or findings.

12. (New section) On the basis of the housing survey and upon due consideration of the commissioner's housing guidelines for the county, the county planning board shall determine the housing needs of the county and each municipality situated therein, and shall make provisional 5-year housing allocations therefor. During the preparation of the housing survey and provisional housing allocations, any municipality may make available to the county planning board or to the municipal advisory board such data, information or other pertinent documentation as the municipality shall deem advisable and useful.

13. (New section) Upon completion of the housing survey and specification of the provisional housing allocations, the county board of chosen freeholders shall schedule and hold public hearings in at least two different municipalities of the county, but no public hearing may be held within 21 days from the date of transmission, by delivery or certified mail, of a copy of the housing survey and provisional housing allocations to the municipal clerk and secretary of the planning board of each municipality in the county. A copy of the housing survey and provisional housing allocations shall be on file and available for public inspection in the office of the municipal clerk. Notice of the date, time and place of each public hearing shall be given by publication in a newspaper of general circulation in the county at least 10 days prior to the holding of the hearing.

14. (New section) After conclusion of the public hearings, the county board of chosen freeholders shall review the testimony rendered thereat and such other materials and data submitted to it

for the purpose of adopting a survey report which shall contain the findings of and the county and municipal housing allocations made by the board of chosen freeholders, and such other information as may be required by the commissioner. Each municipality and any interested persons shall have 10 days from the publication of said allocations in a newspaper of general circulation in the county to submit comments, data or other pertinent information to the board of chosen freeholders who shall transmit to the commissioner such comments, information or data, along with a copy of the housing survey and survey report. The first county housing survey and survey report under this act shall be submitted to the commissioner within 1 year of the effective date of this act, and every housing survey and survey report thereafter shall be submitted to the commissioner within 6 months of the receipt of a copy of the county's housing guidelines by the clerk of the county board of chosen freeholders and the secretary of the county planning board. The commissioner may extend the time for submitting the housing survey and survey reports, provided that a request for such extension is received by the commissioner at least 20 days prior to the date designated for submission.

15. (New section) The commissioner shall evaluate each county housing survey and survey report in terms of, but not limited to, the following criteria:

a. The comprehensiveness and accuracy of the housing survey;

b. The compatibility of the survey report and housing allocations with the housing survey, and with such rules, regulations, standards, guidelines or requirements as may be adopted or promulgated by the commissioner;

c. The adequacy of the survey report and county housing allocation in light of the commissioner's recommendations thereon, and the suitability and equity of the municipal housing allocations; and

d. The compatibility of the housing survey and housing allocations wtih State, regional and insofar as practicable, interstate land use and land development plans, policies and programs.

16. (New section) The commissioner may propose amendments to the survey report and county and municipal housing allocations and such amendments shall be binding upon said county and municipalities; provided, however, that prior to final certification by the commissioner of the survey report and allocations, at least 30 days shall be afforded to any of the parties concerned or to other interested persons for the purpose of filing exceptions to the proposed amendments. Before certification of any survey report and housing

allocations, or the adoption of any amendments thereto, the commissioner shall solicit the opinions and recommendations of other concerned agencies of State Government.

17. (New section) Upon certification of the county survey report and housing allocations, the board of chosen freeholders shall, by resolution or ordinance as may be appropriate, adopt the certified survey and county and municipal housing allocations, along with any amendments thereto adopted by the commissioner. If the board of chosen freeholders fails to adopt the county and municipal housing allocations within 30 days of their certification by the commissioner, the commissioner shall have the power to adopt and promulgate said certified housing allocations which shall be binding on the county and municipalities concerned.

18. (New section) If the board of chosen freeholders of any county fails to submit a housing survey and the survey report and housing allocation for said county to the commissioner pursuant to the requirements of section 14 of this act, or if the housing survey or the survey report or housing allocations are manifestly inadequate in assessing or providing for the housing needs of the county, the commissioner shall, after consulting with the board of chosen freeholders and planning board of said county conduct a survey of the housing needs of the county, if such is deemed necessary, and adopt and promulgate housing allocations for the county and each of the municipalities situated therein.

19. (New section) In accordance with each survey report and 5-year housing allocations certified by the commissioner, each municipality shall, within 6 months from the date of adoption or promulgation of each county survey report and housing allocations pursuant to sections 17 and 18 of this act, prepare and submit for review to the county planning board such changes in its master plan, zoning ordinances, subdivision ordinances, official map ordinances and building code regulations. Each municipality shall, within said time, also prepare and submit for review to the county planning board a housing development program that would allow the municipality to realize the housing allocation set by the county, or the municipality's planned or projected growth rates, whichever may require the greater number of dwelling units; except that, in the case of the first municipal land use regulations and housing development program prepared pursuant to this act, said regulations and program may be submitted for review by the county planning board within 1 year from the date of adoption or promulgation of each county survey report and allocation, or within such additional time as the commissioner may allow.

20. (New section) The municipal housing development program shall minimally include a statement of the policies, objectives, standards, plans or projects, as may be appropriate, for:

a. The long term land use development plans, including targeted density levels and the types and intensity of current or planned uses, for the municipality;

b. The 5-year land development plan for meeting the municipality's 5-year housing allocation;

c. The location or locations of the housing sites designated for development, redevelopment or rehabilitation in order to meet the municipality's housing allocation;

d. The environmental impact of the planned land uses and density levels within the designated site location or locations and the compatibility of such uses or densities with existing or planned uses in adjoining areas within or immediately outside the municipality;

e. The existing or projected distribution of numbers and types of dwelling units within the designated site location or locations;

f. The availability and sufficiency of existing and planned neighborhood and community facilities and services, both public and private, for meeting the needs of the existing population within the designated site location or locations, and the delineation of a 5-year capital improvement program, including the scheduling, location and financing of specific projects, for the provision of such facilities and services as may be necessary to cope with the projected growth in population;

g. The delineation of satisfactory circulation patterns within the designated location or locations and the accessibility of said location or locations to other areas within the municipality and to major employment centers within and without the municipality, and the preparation of a capital improvement program, including the scheduling and financing of specific projects, as may be necessary to improve existing circulation patterns;

h. An estimate of the costs of and the preparation of a plan for financing the foregoing capital improvements and public services to cope with the anticipated population growth;

i. The monitoring of conditions and needs within the designated site location or locations so as to prevent the deterioration of the quality of the social, physical and natural environment and to preserve the market values of dwelling units in said location or locations, as well as in areas adjacent thereto; and

j. The periodic reexamination of the methods, objectives and achievements of each phase of program activities.

21. (New section) Upon completion of the land use regulations and housing development program pursuant to sections 19 and 20 of this act, the municipality shall submit said proposals for review to the county planning board. The county planning board shall thereupon evaluate said proposals to determine whether or not the land use regulations are unnecessarily restrictive or would unduly hamper implementation of the municipality's housing allocation. The county planning board shall further ascertain, in accordance with the need for sound community development, whether the housing development program submitted by the municipality:

a. Assures an adequate number of appropriate site locations for the numbers and types of dwelling units necessary to meet the municipality's housing allocation and that the types of dwelling units to be provided at said location or locations would be feasible to construct or to maintain;

b. Contains an appropriate plan of land development—including the scheduling, location and financing of such capital improvements and public services, and when necessary, a program of land acquisition for the designated site location and locations for the municipality, as may be necessary to cope with the anticipated population growth;

c. Contains adequate considerations of and, if necessary, proper safeguards against any adverse effects that the proposed levels of development on the site location or locations may have on the quality of the physical environment, in accordance with appropriate environmental rules, regulations and standards;

d. Designates site location or locations that are or shall be readily accessible to major employment centers and to the commercial, recreational, cultural and social facilities and services of the municipality; and

e. Avoids excessive concentrations of low income dwelling units or subsidized dwelling units.

22. (New section) The county planning board shall, within 60 days of the receipt of the municipality's land use regulations and housing development program, inform the governing body of said municipality of the planning board's findings and preliminary recommendations thereon. The governing body shall then have 30 days from the date on which it was informed of the county planning board's findings and recommendations, if such findings or recommendations are found to be adverse, (1) to amend its land use regulations or housing development program, as may be appropriate, in accordance with any or all such recommendations,

and to inform the county planning board of the nature and extent of its compliance thereto, or (2) to reject such findings and recommendations and to transmit to the county planning board such additional information, materials or data as the governing body may deem useful and necessary.

23. (New section) The county planning board shall forthwith prepare and transmit to the commissioner its final findings and recommendations, and its comments on the municipality's actions or inactions pursuant thereto, along with copies of the municipality's land use regulations, housing development program and such other materials, information or data as shall be submitted for such purposes by the municipality.

24. (New section) The commissioner shall, in accordance with the factors set forth in sections 20 and 21, and such standards and guidelines as may be adopted by the commissioner pursuant thereto, review and evaluate the land use regulations and housing development program of the municipality, and the findings and recommendations of the county planning board thereon. The commissioner may:

a. Grant unqualified approval to the municipality's land use regulations and housing development program;

b. Grant qualified approval to the municipality's land use regulations or housing development program, subject to the municipality's adoption and retransmittal to the commissioner, within 30 days of such qualified approval of such amendments as may be required by the commissioner; or

c. Reject either the land use regulations or housing development program, or both, as substantially failing to meet the housing allocations of the municipality.

If the commissioner rejects the municipality's land use regulations or housing development program, or if a municipality fails to transmit through the county planning board land use regulations and a housing development program, the commissioner shall either prepare or may cause the county planning board to prepare, subject to the commissioner's directions, appropriate land use regulations or a housing development program, as may be appropriate, for said municipality. The commissioner shall immediately upon their preparation transmit the land use regulations or housing development program to the municipal governing body for formal adoption. If the governing body fails to formally adopt by ordinance said land use regulations or housing development program ordinance within 30 days of their transmittal, the

commissioner shall adopt and promulgate said land use regulations or housing development program prepared by or for the commissioner which shall be binding on said municipality.

25. (New section) Any two or more municipalities situated within the same county may, by agreement, formulate and adopt a single set of land use regulations and a single housing development program, which regulations and program shall meet all the requirements of this act for the combined area of the cooperating municipalities. A copy of all agreements or contracts entered into by any two or more municipalities pursuant to this section, including, but not limited to, such agreements concerning site locations for the numbers and types of dwelling units necessary to meet the combined housing allocations of the concerned municipalities any program of land acquisition, and any program concerning the planning, scheduling, and financing or provision of necessary capital improvements and public services, shall be submitted to the county planning board and to the commissioner for review and evaluation pursuant to the provisions of sections 21 through 24 of this act. In addition to those criteria by which the commissioner is authorized to review and evaluate land use regulations and housing development programs prepared and submitted pursuant to this section, the commissioner in reviewing and evaluating any land use regulations and housing development program prepared and submitted pursuant to this act, shall base his determination on the effectiveness of such regulations and program in meeting all the requirements of this act for the combined area of the participating municipalities.

26. (New section) In addition to such housing allocations as may be assigned to the municipalities of the State, each municipality shall prepare an assessment of the housing impact for any industrial commercial or other development including that of a public entity, which, individually or in conjunction with other simultaneous and related developments, creates 100 or more full-time employment opportunities previously unavailable within the municipality, where the housing needs generated by any such development or developments were not anticipated in the county housing survey and housing allocations. Said municipality shall also prepare such amendments to its land development regulations and housing development program as may be appropriate for satisfying the additional housing needs so generated, and such amendments shall be submitted to the county planning board for its review and approval.

27. (New section) The county planning board shall advise and provide such technical assistance to the municipalities within said

county as may be agreed upon and made available by the governing body of said county for the purpose of assisting municipalities in meeting their obligations under this act. In addition, the governing body of the county may, in accordance with the provisions of the Interlocal Services Act, P. L. 1973, c. 208 (C. 40:8A–1 et seq.) enter into a service contract with one or more municipalities situated within said county for the purpose of preparing or helping to prepare the land development regulations or housing development program of any contracting municipality.

28. (New section) The county planning board shall, as part of each five year review and revision of the housing survey and housing allocations, summarize and critically evaluate the efforts of the county and the municipalities situated therein to achieve the housing allocations made for the preceding 5-year period, and shall recommend such measures as may additionally be necessary and appropriate to fulfill said allocations. Such summaries, evaluations and recommendations shall be public documents and shall be made availablbe to the commissioner at the time of the submission for certification of each up-dated 5-year survey report and housing allocations.

29. (New section) The commissioner is authorized to make grants to the governing body of any county or municipality, subject to the availability of funds appropriated therefor, for discharging any of the study, survey, review or planning responsibilities with which the county or municipality may be charged under the provisions of this act. The commissioner shall prescribe procedures for applying for and the terms and conditions for receiving the grant. The State's contribution shall, however, at no time exceed 50% of the total cost of all such undertakings by any county or municipality, or by two or more municipalities, pursuant to this act. Any county or municipality may be reimbursed for any work previously completed that accords with the terms and conditions for receiving said grant.

30. Section 11 of P. L. 1953, c. 433 (C. 40:55–1.11) is amended to read as follows:

11. In scope the master plan may cover proposals for: (a) the use of land and buildings—residential, commercial, industrial, mining, agricultural, park, and other like matters; (b) services—water supply, utilities, sewerage, and other like matters; (c) transportation—streets, parking, public transit, freight facilities, airports, and other like matters; (d) housing—residential standards, slum clearance and redevelopment, *adequate site locations to satisfy the housing needs of the community*, and other like matters; (e) con-

servation—water, forest, flood control, and other like matters: (f) public and semipublic facilities—civic center, schools, libraries, parks, playgrounds, scenic sites, historic sites, fire houses, police structures, hospitals, and other like matters: (g) the distribution and density of population; (h) other elements of municipal growth and development.

The master plan may include in its scope areas outside the boundaries of the municipality which the planning board deems to bear an essential relation to the planning of the municipality. The studies in connection with the master plan shall be conducted wherever possible with the cooperation of adjacent planning agencies.

31. R. S. 40:55–32 is amended to read as follows:

40:55–32. Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, flood, panic and other dangers; promote health, morals or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population; *provide adequate site locations to satisfy the housing needs of the community.* Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.

32. There is hereby appropriated to the Department of Community Affairs the sum of $3,500,000.00 for the administration of this act and for grants to the governing bodies of counties and municipalities pursuant to section 29 of this act.

33. This act shall take effect immediately.

STATEMENT

Innumerable studies on such diverse subjects as the property tax, housing, land use and land development amply attest to the unfortunate consequences of some of the existing uses of zoning powers in the State. Some of these consequences have given rise to a considerable body of litigation concerning the legitimate and proper uses of municipal zoning powers. As a result of such legal controversies, the State courts, rather than the State Legislature, have recently become the principal public forum for deciding land-use policies in the State, a role which the courts are, by their nature, ill-equipped to perform.

This bill reasserts the State Legislature's authority and responsibility for providing a clear and coherent body of principles and standards that would assure that local zoning powers are used in support of the State's efforts to meet its obligation to provide for the health, safety and welfare of all of the citizens of New Jersey.

This bill declares it to be an objective of State policy to increase, to the maximum extent possible, the opportunities for all residents of New Jersey to secure, consistent with their means and needs, decent housing in a safe and healthy environment, and within convenient access to places of employment and community facilities.

In accordance therewith, there is hereby created a planning framework which will allow municipalities to rationally plan and prepare the necessary sites for the location of adequate numbers and types of housing to meet the diverse needs of all segments of the population.

The main provisions of the act are as follows:

1. The State Department of Community Affairs shall, every 5 years, prepare 5-year housing guidelines for each county in the State, based upon 15-year projections on the housing needs and goals of the State.

2. Each county shall undertake a study of the housing needs of the county and, utilizing the findings of the county study and the State housing guidelines, and after consultation with the concerned municipalities, make housing allocations for the county and for each of the municipalities located therein.

3. The Commissioner of Community Affairs shall review, adopt or amend, and certify the county and municipal allocations prepared by each county.

4. Each municipality shall, thereupon, amend its land use regulations, if necessary, and prepare a housing development program which would accommodate the construction of new housing units or the rehabilitation of existing units, in such numbers and types as would permit each municipality to realize its housing allocation.

5. The county planning board will review the land use regulations and housing development program of each municipality, and shall submit such regulations and program, along with its recommendations thereon, to the Commissioner of Community Affairs.

6. The Commissioner will review, adopt or amend, and certify the municipal land use regulations and housing development program, or in the absence of the presentation of satisfactory proposals thereon, shall prepare or cause to be prepared the necessary land use regulations and housing development program for adoption by the municipality.

SENATOR MARTIN L. GREENBERG (Chairman): Good morning. We have a list of names of those who have indicated that they wish to testify in connection with S-3100. If you are here to testify and have not as yet so indicated, please see Mr. Caramalis, who is seated to my right.

My name is Martin Greenberg, and I am the chairman of the Senate County and Municipal Government Committee. Seated at my far left is Assemblyman Walter Kozloski, who is a member of the Assembly County Government Committee. Seated to his right is Assemblywoman Jane Burgio, who is also a member of that committee, and to my immediate left is Assemblyman Richard Van Wagner, who is the chairman of the Assembly County Government Committee. To my immediate right is Assemblyman Vincent Pellecchia, who is the chairman of the Municipal Government Committee in the Assembly, and to his right is an aide to the Senate Committee, Dan Siegel. Senator Thomas Dunn will be joining us shortly.

In late 1974, the Senate, by Resolution, charged the Senate County and Municipal Government Committee with the responsibility of looking into the housing needs of the citizens of this State and relating those needs to our existing land use regulations. The bill before us is a response to that directive.

Senate bill 3100, the Comprehensive and Balanced Housing Plan Act, which is the subject of this public hearing, has as its basic objective the maximization of housing opportunities for all residents of the State, insofar as such opportunities have been unduly and unreasonably constricted by excessively restrictive land use regulations adopted by the municipalities of this State.

Ample documentation of the relationship between land use regulations and the construction of certain housing types exists not only in the professional literature, but in such Department of Community Affairs publications as "Land Use Regulation: The Residential Land Supply," 1972, and "An Analysis of Low and Moderate-Income Housing Need in the State," 1975.

The resultant problems spawned by restrictive land use regulations are well recognized. They have been officially recognized and have been the subject of several past executive pronouncements and legislative bills. The spate of recent court rulings, culminating in the New Jersey Supreme Court decision in the Mount Laurel case, have only served to further dramatize the need for remedial action by the State Legislature.

The courts have placed all of the concerned parties on notice that the burden of proof will henceforth rest on each municipality to convincingly show, when challenged, that its land use regulations are not drawn as to deliberately or unreasonably exclude particular segments of the population from residency therein. The purpose of the allocation bill is to take up the court's challenge by providing legislative direction and guidance to the municipalities of the State as to what constitutes a reasonable and good-faith effort to meet both the housing needs of persons residing or working within their community and a fair share of the housing needs of the region.

Parenthetically, these committee hearings will serve as a public forum for continuing and broadening the public dialogue on the many issues raised in Mount Laurel and other recent zoning decisions. It is only by coming to grips with these related issues that we can begin to create the planning mechanism, and provide the necessary direction therefor, for halting judicial

encroachments on, and the erosion of, municipal land use powers, while simultaneously encouraging more rational and responsible planning by municipalities.

It is my firm belief that only by some such legislation can we maintain the prerogatives of home rule while, at the same time, making local governments effective and responsible partners in meeting statewide housing needs and goals.

The housing allocation bill seeks, to the maximum extent possible, to preserve and even build upon the planning and zoning powers of local communities. It does not seek to force development upon a community for development's sake, nor does it seek the construction of housing in areas where an evident need does not exist. Rather, a key objective of the bill is, instead, to better relate housing opportunities to recent shifts in the location of employment opportunities. Concurrently, the bill seeks to discourage the types of fiscal zoning practices by which some municipalities have assiduously courted favorable tax ratables while leaving to neighboring municipalities the burdens of coping with the negative spillover effects of their actions.

Accidents of geography, including demographic and location factors and pressures for development, will inevitably impose disproportionate, even unwanted, burdens on certain municipalities. But, these burdens will not be any different from those presently imposed by the operation of market forces. Indeed, it is hoped that some of the provisions of the bill will aid municipalities, threatened with engulfment by developmental pressures originating outside their boundaries, to more rationally and responsibly cope with the consequences of such developments.

I would like to reiterate that one basic purpose of this bill, as well as these public hearings, is to provide

vehicles through which state officials can enter into a constructive dialogue with county and municipal officials in order to jointly shape the legislative instruments for achieving the essential objectives of the bill. To this end, further hearings will be held in other locations within the State for the purpose of helping the Senate and Assembly Committees to gain a better sense of local reactions to the principle of housing allocations and for the purpose of continuing what it is hoped will prove to be a creative and fruitful dialogue.

As our first witness, I will call Mary Brooks. Ms. Brooks, will you please identify yourself and your affiliation? If you, or anyone who will subsequently testify, have a prepared statement, will you please distribute copies to the committee members and the stenographer prior to your testimony? Thank you.

M A R Y B R O O K S: I am Mary Brooks, and I am Director of Research for the Suburban Action Institute in New York City, New York. I was asked to testify today as to the general nature of housing allocation plans including the rationale behind their development and an evaluation of their performance. A significant portion of my research efforts as a city and regional planner has been devoted to the study of housing, exclusionary zoning, and, in particular, the housing allocation, or fair share, plan. I have published several reports in this area and have traveled throughout the United States in studying agencies or organizations which have in the past prepared and implemented these plans.

The housing allocation plan came about from a recognition that the provision of housing opportunities for low and moderate income households was not merely a matter of producing housing units, but was also a matter of locating those units. As

important as the rebuilding of our central cities is, it alone cannot expand housing opportunities for the masses of low and moderate income households needing expanded housing choice.

Housing opportunities represent the core of an entire package of opportunities: education, employment, recreation, home ownership, and environment, to name a few. When we speak of housing opportunities, we are talking about life styles, we are talking about economic opportunity, and we are talking about basic rights associated with equal access and decent housing. Over the past few decades, no one factor has demonstrated this more clearly than the disparity between employment opportunities and available housing. For instance, according to the Tri-State Regional Planning Commission, in 1970, of those New Jersey counties within its jurisdiction, Bergen, Morris, Union, Somerset, Middlesex, and Monmouth have housing deficits; that is, job surpluses for lower income households. That means that, in these counties - and I would suspect in other counties throughout New Jersey - there are more jobs available for the low income worker than there are housing units which he or she can afford to live in. This disparity means a loss of economic productivity, it means increased unemployment for lower income workers, it demands accepted commuting for those who do find employment, and it results in heavy burdens for those cities forced to house persons while other communities benefit from their employment.

That this disparity between jobs and housing exists is no accident. It is promulgated, at least in part, by exclusionary land use practices of municipalities throughout New Jersey. Fiscal zoning efforts which permit and encourage high ratables but discourage and exclude those land uses considered a

burden on the municipal budget have resulted in excessive land zoned for, and uses given over to, industrial and commercial space and virtually no opportunity for the construction of lower cost housing. More specifically, these practices have resulted in virtual exclusion of multi-family housing, such as garden apartments, town or row housing, and mobile home parks. It has resulted in excessive requirements for minimum lot area, lot frontage, and building size. It has resulted in the zoning of large amounts of land for industrial and commercial use, and it has resulted in limitations in those developments which do permit multi-family housing as to the number of bedrooms permitted within the units of that development or a limitation on the number of multi-family units as a proportion of the total development. These relatively blatant devises to keep out lower and moderate income households have been coupled with more sophisticated devises, such as excessive delays in approving developments, extensive exactions required from those developments, refusal of projects because of inappropriate municipal services or facilities, such as roads, traffic controls, drainage, water, and sewer facilities, recreation space, etc. More recently, communities have made inappropriate use of review and approval procedures such as frequently exist within the Planned Unit Development process or environmental protection processes.

The housing allocation plan is an official statement of the dispersal policies throughout an area for the future development of lower income housing. It could, in fact, consider all types of future housing units. Housing allocation plans have three major dimensions: a numerical dimension

designating the number of lower income housing units to be allocated based on need, the units allocated to a region through some funding source, or some other base. Second, the housing allocation plan has a time element, a period over which the plan is to operate. Some plans allocate housing units needed over the next five years; others will apportion a percentage of the subsidized units to be allocated over the next year. The third dimension is spatial, the allocation of housing units to geographic subareas or political jurisdictions within the region. This allocation could be static, that is, in relation to the subareas' present need proportionate to the overall regional need, or it could be dynamic, that is, in relation to the opportunity for mobility, giving relatively more weight to providing units in those areas where they do not now exist.

In order for a housing allocation plan to promote housing opportunities to be inclusionary, it must be a plan that distributes a specific number or proportion of housing units throughout a jurisdiction by means of a dispersal formula that attempts both to increase the existing supply of housing in certain areas and to increase the locational opportunities of the households to be served by such units within a specific time frame.

There are some very important characteristics of housing allocation plans which I will mention only briefly, because they appear to be critical to the success of these plans.

Housing allocation plans have heretofore been most frequently developed by regional planning agencies, councils of government, or county planning agencies. To my knowledge, no State, at this time, has prepared a statewide housing allocation plan. New Jersey's might be the first.

There are two important characteristics associated with the jurisdiction of the agency or organization preparing, and responsible for, the plan: the scale, primarily because the inclusion of at least one major metropolitan center is essential for realizing a balance of housing opportunities between those areas of overconcentration and those areas of greater supportive resources. Moreover, the agency must have the capability to implement, enforce, or monitor the plan. In many instances, the A95 Review Process, for instance, has been an important implementation tool. The time limit of the plan is also important. These plans are usually short-range because the data change and must be updated. Also, the time limit serves as the basis for providing targets and guidelines for evaluation.

The housing allocation plan allocates housing units to the various subjurisdictions, either based on the number of units allocated or authorized to that jurisdiction through appropriate federal and/or state agencies or based on the need for low and moderate income housing in that jurisdiction. I strongly believe that need must serve as the basis for the allocation so as to relate to actual housing needs within the State. The plan in progress under the plan can always be evaluated with respect to the housing needs that do exist and must be met. Moreover, an allocation plan should ideally take into consideration all possible means of providing that housing.

Another element of the housing allocation plan is the manner in which the units are allocated to the various subjurisdictions. Some use a percentage; others use specific numbers of units. I, again, strongly recommend the numerical allocation and would further recommend that delineations be made within

those allocations as to types of units, particularly whether units are to serve elderly or family households.

A final element of the housing allocation plan is the manner in which subjurisdictions are delineated. In most instances, these are governmental units which can be held accountable for meeting the objectives of the plan.

Most housing allocation plans utilize a formula for the distribution of the units. Eight factors have been used repeatedly in these formulas. I won't go over them because they are listed in the prepared statement that will be distributed to you. Almost all allocation plans include at least some factors for employment or employment growth. The criteria reflect physical, social, and fiscal factors. They focus on land use, socio-economic concerns, and cost-benefit interests. They clearly go beyond simple physical planning. Most criteria reflect a jurisdiction's need for lower income housing, its suitability for receiving those units, and a distributive objective for geographically dispersing housing units. The complexity of these plans requires much more analysis than is possible here. There is no evidence, however, that the more complex housing allocation plan is assured of any more success than those more straightforward in their concept.

The first housing allocation plan was developed in 1970. The termination of federal housing subsidies occurred in 1973. Only three plans were really underway during that period to permit a scant evaluation of their impact on housing opportunities. In such an evaluation, one really must look at three objectives: the degree of cooperation achieved within the various constituent jurisdictions, the quantitative increase of housing production, and the geographic distribution

of those new units. It is, of course, impossible to attribute housing activities solely to the development and implementation of housing plans, but changes did occur in those areas where the plans were implemented. I don't have time to evaluate the plans in detail, but let me say in summary that the experience suggests that suburban municipalities were responding positively to the development of a regional housing plan. On the one hand, there is little indication that the plan substantially altered the overall trends of concentrating subsidized housing for lower income households in central cities when viewed with respect to the total production of housing units. On the other hand, in each of the areas evaluated, suburban participation in low and moderate income housing development began to increase, and it is fair to assume that this trend would have continued had the federal impetus been maintained for producing such housing.

I would like to make several final comments about the nature of a housing allocation plan.

First, the Housing and Community Development Act of 1974 clearly mandates consideration of housing need not only for present lower income residents, but for residents who may now or in the future work in a community and desire to live there. Implementation of such an objective will require distributive policies with respect to lower income housing heretofore not widely adopted.

Second, the housing allocation plan must be implemented at a scale inclusive of municipalities and, perhaps, of counties. It must involve specific numerical obligations, and it cannot rely on voluntary compliance of constituent units of government. If voluntary programs worked, we would not have the

widespread housing problems we now have, forcing us into rigid allocations of opportunities.

The housing allocation plan must be implemented, and its adoption must be regarded as only the beginning of a long and difficult battle to increase housing opportunities. Nonetheless, the severe delineation of housing opportunities somehow runs amiss to basic concepts of the right of housing. While perhaps necessary, this need is indeed a sad comment.

Finally, the state role in land use matters is certainly not declining. Rather, increasing attention is being given to state control over development, and state agencies, such as Housing Finance Agencies in Departments of Community Affairs, will undoubtedly be called upon with greater frequency to be responsive to these increased demands. Statewide policies for the use of land and the opportunities present therein are absolutely essential. Particularly in those States where localities have misused their rights to regulate the use of land, States should prepare themselves for a more decisive role in this matter. There are few examples of States assuming an active role in housing matters. There are such examples as the Massachusetts Zoning Appeals Act, the California Housing Policy Law, the Minnesota Fiscal Disparities Bill, and I hesitate to mention the New York Urban Development Corporation. Yet, in retrospect, we experienced a paucity of state action with respect to housing matters. Advocates of housing rights have shied away from legislative action which may limit as well as produce.

I believe the time has come for this to change. States can no longer be negligent in their housing obligations.

(Note: much of this testimony was dependant upon Part V of a recent publication, "In-Zoning: A Guide for Policy-Makers On Inclusionary Land Use Programs," prepared by Herbert M. Franklin, David Falk and Arthur J. Levin for the Potomac Institute. The author of this statement was primarily responsible for the preparation of Part V of this publication.)

SENATOR GREENBERG: Thank you, Ms. Brooks. I should have asked you this at the outset: Would you describe for us please the functions and responsibilities of the Suburban Action Institute?

MS. BROOKS: The Suburban Action Institute is a nonprofit organization concerned about increasing housing opportunities for low and moderate and minority households. We have focused on suburban areas in the belief that solutions to housing problems in the central city and throughout metropolitan areas must be approached on a metropolitan level, and suburban areas must respond to those housing obligations, and they have, to date, not responded.

SENATOR GREENBERG: How is your organization funded?

MS. BROOKS: It is funded by contributions and support from foundations.

SENATOR GREENBERG: Have you had an opportunity to read Senate bill 3100?

MS. BROOKS: I have to say that I am not prepared to comment on the bill, and I, in fact, cannot comment on it.

SENATOR GREENBERG: Is that because you haven't read it?

MS. BROOKS: And because of the status of the organization.

SENATOR GREENBERG: I don't understand.

MS. BROOKS: Our tax-exempt status.

SENATOR GREENBERG: I understand.

Would you be kind enough to have your remarks reproduced so that they can be distributed to the committee?

MS. BROOKS: I will.

SENATOR GREENBERG: Are there any other questions? Senator Dunn.

SENATOR DUNN: You indicated that you were

invited to give testimony today. Who invited you?

MS. BROOKS: Mr. Siegel.

SENATOR GREENBERG: Assemblyman Pellecchia.

ASSEMBLYMAN PELLECCHIA: I would first like to compliment you on your presentation. You did make mention of the fact that, where changes had taken place, there were results. Can you explain some of the results of the changes that took place?

MS. BROOKS: I recently prepared an analysis of those housing allocation plans that had been in existence long enough, after the federal freeze on housing, to provide any kind of meaningful analysis. Those were: the Miami Valley Regional Planning Commission in Dayton, Ohio, the Washington, D. C. Metropolitan Council of Governments in D. C., and the St. Paul - Minneapolis Twin Cities Metropolitan Council.

ASSEMBLYMAN PELLECCHIA: Did you find anything in shifting patterns of industrial and commercial locations?

MS. BROOKS: We did not look at patterns of industrial and commercial use.

ASSEMBLYMAN PELLECCHIA: Thank you.

SENATOR GREENBERG: Thank you, Ms. Brooks.

I would like to make note of the fact that Professor David Listokin of The Center for Urban Policy Research at Rutgers University was unable to attend today's public hearing, but he has submitted a statement which will be included in the record at this point.

HOUSING ALLOCATION: OVERVIEW

Submitted by

David Listokin
Research Associate

THE CENTER FOR URBAN POLICY RESEARCH
RUTGERS UNIVERSITY
NEW BRUNSWICK, NEW JERSEY

THE GROWTH OF FAIR SHARE

Regional housing allocation plans, commonly called fair-share strategies, determine where housing -- especially low-and moderate-income units -- should be built within a region, according to such desirable criteria as broadening the economic mix in communities, and placing houses in environmentally suitable locations.

The following governmental and institutional bodies have either implemented, proposed, or are considering fair-share plans: Association of Bay Area Governments, Baltimore Area Housing Advisory Council, Capital District (N.Y.) Regional Planning Commission, Cleveland City Planning Commission, Cuyahoga Metropolitan Housing Authority, Dade County Metropolitan Planning Board, Delaware River Valley Regional Planning Commission, Denver Regional Council of Governments, Fairfax County, Va., Genesee Finger Lakes (N.Y.) Regional Planning Board, Jacksonville (Florida) Department of Housing and Urban Development, Los Angeles, the State of Massachusetts, Metropolitan Washington Council of Governments, Metropolitan Dade County Planning Department, Metropolitan Council of the Twin Cities Area, Miami Valley Regional Planning Commission, Middlesex County (N.J.) Planning Board and the State of New Jersey, Monroe County (N.Y.) Planning Council, Montgomery County (Maryland), New York State Urban Development Corporation, Northeastern Illinois Regional Housing Coalition, Pennsylvania Department of Community Affairs, Pueblo Area (Colorado) Council of Governments, Puget Sound (Washington)

Governmental Conference, Sacramento Regional Area Planning Commission, the San Bernardino County Planning Department, San Diego Comprehensive Planning Organization, San Francisco Planning Commission, Santa Clara County (California), Southeastern Wisconsin Regional Planning Commission, Southern California Association of Governments, Southern Tier Regional Planning and Development Board (N.Y.), Toledo (Ohio) Regional Housing Coalition, Ventura County (California) Human Relations Advisory Commission, West Piedmont (Virginia) Planning District Commission. Others developing or considering fair-share mechanisms have included the University of Pennsylvania's Fels Center of Government, the St. Louis Metropolitan Section of the American Institute of Planners, the New Castle (Delaware) County Planning Department, and the Summit County (Ohio) Council of Governments.

WHY FAIR SHARE?

Calls for a "regional" approach to land use and housing -- a basic tenet of fair share -- date back to the origins of modern day planning. A number of forces nurtured the ascendency of regional land use and housing planning during the 1960s and 1970s, including the growing environmental movement, increasing federal requirements for regional housing analyses, and the in number and strength of regional planning bodies.

While the growing support for and strength of regional planning helped foster the fair share approach, it was the movement to expand suburban housing opportunities that provided the major impetus for housing allocation strategies. The courts have played a significant role in this "open community" effort. Many courts have decided that localities have an obligation to consider regional housing needs and have emphasized the need for a mechanism to ascertain precisely the extent of this regional responsibility. The recent New Jersey Mount Laurel decision provides the clearest case of a court condemning present zoning standards and calling for municipalities to provide their share of the region's housing need. In its words:

> We conclude that every municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and on its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective need therefore...

The court further discussed allocation plans:

> The concept of fair share is coming into more general use and through the expertise of the municipal planning advisor, the county planning boards and the state planning agency, a reasonable figure for Mount Laurel can be determined, which can then be translated into the allocation of sufficient land therefore on the zoning map.

ANATOMY OF FAIR SHARE

The most important features of any fair share plan are:

1. Defining the allocation region -- the area within which housing is distributed -- and the allocation subarea -- the county, community or other local entities to which housing is allocated.

2. Determining the allocatable housing. What category of housing should be distributed -- all classes of housing, low- and moderate-income units, or only subsidized housing?

3. Choosing the allocation criteria. What standards should be followed to distribute the housing? Some possibilities are equal share (allocating the same amount of housing to each subarea); need (distributing housing where it is needed most); distribution (allocating housing to maximize the housing mix); or suitability (distributing units in subareas most capable of accepting housing). Combinations of these allocation criteria are possible and such mixing has been popular.

4. Determining the allocation strategy. What is the appropriate output from the fair share plans? Three strategies have been followed: a numerical approach, assigning specific numbers of housing to each subarea; a priority strategy, classifying subareas by their degree of readiness to absorb more housing and a combined approach, mixing the numerical and priority efforts.

5. Implementing the strategy. What is the extent of a locality's responsibility for fulfilling its fair share allocation? What are the best ways for insuring cooperation? What should be the penalties for noncompliance?

FAIR SHARE: TRACK RECORD

Fair share has had a mixed track record to date. The Urban Development Corporation has encountered significant problems in expanding suburban zoning opportunities. Low- and moderate-income housing has been constructed in some Massachusetts' suburban communities, but not as a consequence of the state's fair share effort. The Dayton plan encountered initial political problems, but has weathered this opposition. The Metropolitan Countil (Minneapolis - St. Paul) and Washington Council of Governments efforts have been well received by many suburban communities, and some construction of subsidized units has commenced.

Because the fair share approach to housing has just started, conclusions about its results can only be tentative, now. Another limiting factor on early evaluation is the unfortunate timing of many allocation efforts, which entered the implementation stage just when HUD imposed a moratorium on its housing subsidies.

FAIR SHARE: CONCLUSION

Fair share is an increasingly popular method to expand suburban housing opportunities. It is considered by many to be preferable to the piecemeal approach currently followed

that may cause some inequities. A regional housing allocation strategy deserves careful consideration by the New Jersey legislature. (End of Professor Listokin's statement.)

SENATOR GREENBERG: Our next witness will be Carl Bisgaier. Please identify your affiliation, Mr. Bisgaier.

C A R L B I S G A I E R: I am the Deputy Director of the Division of Public Interest Advocacy, the Department of Public Advocate, State of New Jersey. I was the trial and appellate attorney for the plaintiffs in the Mount Laurel case, and I am now representing them on the appeal which is expected to be filed before the Supreme Court and also as to implementation of the court's order in the Township of Mount Laurel.

I have prepared a brief statement. I do not

have copies of it, but I will prepare copies for the committee.

On March 24, 1975, the New Jersey Supreme Court effectively invalidated the zoning ordinances of virtually every developing municipality in the State. Although technically limited to Mount Laurel Township, the court clearly indicated that the issues presented in the Mount Laurel case were not limited to that township and that, in fact, most developing municipalities had not met their obligations under the law.

The law, as now enunciated by the court, is that all developing municipalities must act to affirmatively afford the opportunity for the satisfaction of the municipal fair share of the regional housing need for segments of the population previously excluded.

The de facto invalidation of zoning ordinances throughout the State and the court's adoption of the fair share and regional needs concepts have created a legal and planning vacuum perhaps unparalleled by any past judicial action. Essentially, the State is now in a sort of limbo since the decision, awaiting the inevitable rush of litigation and planning to fill the aforementioned vacuum. The issue is not whether it will be filled, but when and by whom.

The Mount Laurel opinion is so comprehensive as to require some extensive analysis in order to appreciate its full impact. The court swept aside and resolved numerous legal issues in enunciating its decision. The questions left unresolved will be addressed below, but first I will address what the court did resolve.

The following are just some of the questions which have been recurrent themes in zoning litigation

throughout the country: Who has standing to sue? Is a showing of economic discrimination sufficient, or must you show racial discrimination? What standard of proof must you meet to prove discrimination? Do you have to show intent to discriminate or merely that the effect is exclusionary? Who has the burden of proof - the challengers or the municipality? What provisions of zoning ordinances are invalid in terms of lot sizes, frontage, building size, bedroom limitations, multi-family uses, industrial zoning, etc.? What effect are the defenses of fiscal necessity and environmental concerns? Remarkably, much of the above is now answered or, at least, more narrowly defined.

Effectively, the court has made future zoning litigation easier from the viewpoint of the challengers. Anticipating the legal vacuum it had created, the court has provided litigants with a deadly sword while virtually decimating whatever shield developing municipalities may have used in the past.

The court determined that nonresidents have standing to sue, thus residents of Camden could sue Mount Laurel and, presumably, residents of Newark, Jersey City, Trenton, Elizabeth, Atlantic City, and others can now and will soon sue developing municipalities in their regions. The suit need not allege, nor need the challengers prove, an intent to discriminate. It is enough to allege and prove that the effect of past municipal action has resulted in exclusion. Racial discrimination need not be alleged or proved. Discrimination against income groups is sufficient. Most importantly, only a prima facie showing of exclusion is necessary; that is, once the challengers show that the effect of municipal action has been to exclude low and moderate income households, the burden shifts to the municipality to justify its ordinance and past practices.

This shifting of the burden is one of the major legal breakthroughs in the case since, in the past, litigants were forced to deal with the legal doctrine known as the presumption of validity of municipal ordinances. That presumption has all but been eliminated. A mere prima facie showing of exclusion now creates a presumption of invalidity which the municipality now must overcome. Furthermore, two significant municipal defenses have been either eliminated or narrowed. Fiscal considerations can no longer be used to justify exclusion of people. Environmental considerations cannot be used unless shown to be urgent and municipal action must be narrowly drawn to meet the specific environmental concern.

Lastly, future litigation has been made easier by the isolating of factors which would establish a prima facie case and shift the burden onto the municipality. A review of the decision will reveal how exhaustively this was done. The court found invalid or suspect 1/4 acre lot sizes for 1F homes, 75-100 foot frontage minimums, 1100-1300 foot floor space minimum requirements, bedroom limitations, under-zoning for apartments, over-zoning for industrial uses, Planned Unit Development densities of 6-7 units per acre and other contractual demands on developers. The full impact of this cannot be appreciated until it is grasped that the zoning ordinances of virtually every developing municipality in this state fall short of these standards established by the court. Mt. Laurel, in fact, attempted to defend its own practices by pointing out that it had a relatively liberal zoning ordinance. Thus, a prima facie case against other municipalities can easily be established.

My comments up to now may be taken as a sort of blueprint for one way the legal vacuum created by the decision may be filled; that is, by successful

litigation. Thus, since Mt. Laurel, ordinances in Cranbury and Holmdel have been struck down, litigation is pending against every developing township in Middlesex County and several other townships such as Mahwah and Cinnaminson throughout the State, and new litigation has been brought against several municipalities, such as Glassboro, Fairfield and Hillsborough. Litigation, of course, is a painful approach. Presumably, once the law has been clarified, others, besides the court, will act to insure compliance.

I would like to turn now to the planning vacuum. Presumably, much of the current and anticipated litigation will be successful and, perhaps, some municipalities will begin to voluntarily comply with the Supreme Court's mandate. The job to be done from a planning viewpoint is enormous. The court ordered Mt. Laurel to amend its zoning ordinance and take such other action as may be necessary and appropriate to affirmatively afford the opportunity to satisfy its fair share of the regional need for low and moderate income housing. Over $2 million of Federal and State money, not to mention vast sums of local dollars, were spent by municipalities in preparing the ordinances now on the books. We are confronted with the task of redoing it all. Regions must be isolated, housing needs determined, fair shares allocated and ordinances and other action taken to implement the plan. This is a formidable undertaking. The court was left no legal alternative but to place the burden squarely on the shoulders of each individual municipality with the suggestion that county and state planning agencies could be of some assistance. This is the issue you are confronting today. The Department of Community Affairs has begun to take some steps to respond to the Supreme Court's decision. It has released its housing needs study and, hopefully, will develop a fair-share allocation model. Other

planning agencies are also acting--such as DVRPC covering So. N.J. and Tri-State RPC covering No. N.J. DVRPC has already allocated housing units for all income groups for Mercer, Burlington, Camden and Gloucester counties. Municipal sub-allocations by these counties are being prepared. Tri-State is now considering a similar allocation for other New Jersey counties. Again, it is not a question of whether it will be done but when and by whom. Short of action by the State, each municipality will be forced to do it alone by the courts. Thus, Holmdel has been told its fair share is 2100 units, and Mt. Laurel has less than 90 days to come up with its plan. Nevertheless, the judicial solution, that is, case-by-case working and reworking of these concepts, is clearly not desirable. "Fair share" "regional need", housing allocation and sub-allocation models are planning, not legal, concepts more amenable to regional or state-wide rather than local analysis and implementation. The courts have begun to act because no alternative was present. The issue for you to resolve is whether the job will continue to be done by the courts alone or whether the executive and legislative branches of government will take the lead.

SENATOR GREENBERG: Thank you, Mr. Bisgaier. Did I understand you to say that you are still appearing in the implementation of the Mount Laurel case?

MR. BISGAIER: Yes.

SENATOR GREENBERG: On whose behalf?

MR. BISGAIER: On behalf of the Department of Public Advocate.

SENATOR GREENBERG: Does the Department of Public Advocate have a position with regard to the bill before this committee?

MR. BISGAIER: In light of the short amount of time which we had to prepare for this hearing - we were notified

about it last week - we are not now in a position to make a policy statement on the bill. We may be willing to appear at a future hearing of this committee and make such a statement.

SENATOR GREENBERG: We would appreciate your giving it a review. We do intend to have future hearings on this matter.

We appreciate your coming here today, and I would like you to prepare copies of your remarks for distribution to the committee members.

Does anyone have any questions? Assemblyman Van Wagner.

ASSEMBLYMAN VAN WAGNER: Mr. Bisgaier, you mentioned in your testimony the successful litigation of the Mount Laurel case and that, in effect, it struck down zoning ordinances throughout the State. You also mentioned that, in striking down these zoning ordinances, it would in all probability leave - and I use your own term - a "planning vacuum." Is that your feeling, or is it something that you feel is technically occurring as a result of cases such as Mount Laurel and litigation that is pending in other parts of the State?

MR. BISGAIER: I think in fact it has occurred. I don't think there is any question that that planning vacuum has occurred. The decision of the New Jersey Supreme Court has adopted as law in this State the concepts of fair share and regional need with regard to municipal housing allocations. The necessity now is to define, analyze, and implement those concepts. That is an enormous job. That is just one vacuum that has been created. That is either to be done by each individual municipality coming up with its own fair share, which could result in 200 or 300 models being adopted, or it could be accomplished by an agency such as the Department of Community Affairs in this State. That is one aspect of a planning vacuum.

The other aspect is that townships throughout the State now have to completely rethink what they have done in their master plans and in their zoning ordinances. Essentially, the zoning map of New Jersey has been declared unconstitutional, and it has to be redone. That creates a tremendous vacuum. That can also be done on a municipal-by-municipal basis, or it can be done on a regional or statewide basis. It is going to take a tremendous amount of analysis and work to do that job. That is pretty much the vacuum that I was referring to in terms of a planning vacuum.

ASSEMBLYMAN VAN WAGNER: In other words, almost as a natural consequence of the litigation, we may reach a conclusion at some point, after analysis, that it is virtually impossible to conform with the criteria that the court uses on a municipal basis. In other words, we may have to go to a regional or statewide analysis to determine our overall land use regulations, housing needs, etc. In your own interpretation, has this become a reality at this point?

MR. BISGAIER: Again, it has become a reality in this State that the law of this State as announced by the Supreme Court is that this must be done. That is no longer the question. The question now is this: What is the the most practical way for it to be done? My own opinion - and I think I stated it in my presentation - is that, as to its being done on a municipal-by-municipal basis, it can and will be done if it has to be done that way, but it is a much more difficult way than for one state agency with its resources to review the situation statewide and come up with an allocation model that would be consistent throughout the State.

SENATOR GREENBERG: Assemblyman Kozloski.

ASSEMBLYMAN KOZLOSKI: You stated that, in the Holmdel situation, the fair share units for that

community would be roughly 2100. Am I correct on that?

MR. BISGAIER: I believe that is what the court said.

ASSEMBLYMAN KOZLOSKI: Could you possibly clarify just how the court arrived at that figure?

MR. BUCHSBAUM: I am Peter Buchsbaum. I am on the staff of the Division of Public Interest Advocacy. I believe what Judge Furman did was simply take that municipality's share of the total employment in the county and say that was their fair share of low and moderate income housing. I don't know how much more analysis was involved in it, but I think that shows a need for action at the state level to guide both the municipalities and the courts in determining a question like this.

SENATOR GREENBERG: Assemblywoman Burgio.

ASSEMBLYWOMAN BURGIO: Did the judge decide that, or was there planning input involved? Do you know how he arrived at that decision?

MR. BUCHSBAUM: There was a dialogue between the judge and one of the planners in the case.

ASSEMBLYWOMAN BURGIO: One of the local planners?

MR. BUCHSBAUM: I don't recall. I would guess from the fact that the plan has prevailed that he was a "planner's planner." There was some planning input into the decision.

ASSEMBLYWOMAN BURGIO: But the decision was the judge's?

MR. BUCHSBAUM: The decision was the judge's. He adopted the planner's statement.

MR. BISGAIER: That case presents exactly what the problem is in doing it on a municipal-by-municipal basis. Each municipality will be doing exactly what one agency could be doing. It is no

less work to develop a fair share housing allocation model for one municipality than it is to develop such a model for the entire State in terms of the actual model which is used as opposed to the actual doing of the suballocations. Each municipality will have to do all of the work of figuring out which model to accept and all the kinds of things that Mary Brooks was talking about in her presentation.

SENATOR GREENBERG: Are there any other questions? Senator Dunn.

SENATOR DUNN: Are you working for the Department of Public Advocate?

MR. BISGAIER: Yes, I am.

SENATOR DUNN: Are you in any way associated with Bisgaier Planners?

MR. BISGAIER: Pardon me?

SENATOR DUNN: Are you in any way associated with Bisgaier Planners?

MR. BISGAIER: My father is Murray Bisgaier. He is the Director of Community Housing and Planning Associates, which is a New York firm.

SENATOR DUNN: Thank you.

SENATOR GREENBERG: Thank you, Mr. Bisgaier. We appreciate your appearing here today.

MR. BISGAIER: Thank you.

SENATOR GREENBERG: The next witness will be the Honorable Arthur J. Holland, Mayor of the City of Trenton.

A R T H U R J. H O L L A N D:

Mr. Chairman and members of the Committee. I am Arthur J. Holland, Mayor of the City of Trenton. I am pleased to appear before you to discuss legislation pending before this committee which would provide for comprehensive housing planning and promote socio-economically balanced housing patterns throughout our state.

In the wake of the landmark Mt. Laurel decision of the New Jersey Supreme Court, as with the "Botter" decision, the focus is on the Legislature to further define and help to implement the directives of the Court in a very important area of public policy affecting local governments. The Legislature's response to the Mt. Laurel decision may be painfully slow, as it has been to the Botter decision, but the need for legislative action is just as important. Senator Greenberg and the committee staff are to be commended for their foresight in preparing well ahead of the Mt. Laurel decision, what appears to be an appropriate legislative response in the Comprehensive and Balanced Housing Plan Act (S. 3100).

While the tax reform efforts of the Byrne and Cahill Administrations would have redistributed tax burdens caused by imbalances in socio-economic demographic patterns, the very redirecting of those patterns could be achieved by housing and land use reform. Indeed, as we can achieve a more balanced socio-economic distribution of households, the need for tax relief in and massive State

subsidies to central cities could diminish accordingly.

Although a primary objective of the Mt. Laurel decision and legislation to implement it is to provide better housing opportunities for lower income households, their impact could be just as beneficial to central cities by helping them to become more self-sufficient. As one such central city, Trenton does not wish to become a ward of the State, but it will inevitably become one so long as it continues to provide the only housing affordable to its region's lower income population.

In relieving Trenton of some of the burden for housing lower income households, areas outside the City need not, however, be brought "down," so to speak. The fair share concept means only that developing municipalities with their greater per capita wealth, their availability of land, and their expanding job opportunities, provide the opportunity for a reasonable percentage of their developable land to be available for lower income housing.

A necessary guideline as to what constitutes a municipality's fair share is, of course, essential. It is important that this determination, as well as where various types of housing should be located, be made by those agencies having regional planning responsibilities such as the Department of Community Affairs and County Planning Boards, in accordance with sound, planning guidelines relating housing needs to such considerations as employment

trends, the availability of land, and fiscal capacity.

The bill introduced by Senator Greenberg (S. 3100), I believe, represents a well thought out approach to implementing this goal. I would suggest, however, that any legislation calling for the preparation of housing plans take into consideration the fact that regional planning bodies, such as the Delaware Valley Regional Planning Commission (DVRPC), may be already undertaking regional analyses of local housing needs which could serve as adequately as a basis for county housing planning as that of the State's Department of Community Affairs.

Although the Supreme Court indicated that regional housing planning need not go beyond the State's boundaries, from a planning standpoint it makes little sense to ignore the realities of bi-state or tri-state urban development. Moreover, in the case of the Delaware Valley region, the DVRPC has already developed a housing allocation plan on which the four New Jersey counties either have based or will base their sub-county allocation plans.

Housing planning in the rapidly developing New Jersey portion of the DVRPC area should, therefore, be encouraged if not required, to proceed even before the issuance of guidelines by the Department of Community Affairs at a time which may postdate the enactment of legislation by up to 2 years. For municipalities outside the area of regional planning bodies or in cases where such bodies

decline to participate in regional housing planning, direction from the Department of Community Affairs is obviously essential.

The development of fair share housing allocation plans is not only a necessary first step in implementing the Mt. Laurel decision, it is in addition a potential planning guide to municipalities in preparing housing assistance plans as a part of their Community Development Block Grant applications. HUD regulations specifically require that local governments, in preparing such plans, take into consideration those households "expected to reside" within their boundaries. The kind of planning guidelines and comprehensive review proposed in S. 3100 would do much to assist local governments in estimating their future housing needs. Judging from experience so far in the preparation of housing assistance plans in the DVRPC region, very little consideration is unfortunately being given by developing municipalities to the future housing needs of lower income households other than the elderly.

The preparation and adoption of housing surveys and allocation plans will take a considerable amount of time. Even after allocation plans are made, there is no guarantee that the lower income housing units will be built. Land may be merely set aside for such housing. Moreover, construction of low cost units may not be economically feasible without State or Federal subsidies. In view of these

circumstances, the State must do more to insure the prompt construction of low cost housing within developing municipalities.

The State should, first of all, provide a mechanism for the development of such housing. In this regard, I am again pleased to note that the Byrne Administration has prepared a bill (S. 3015), which would give to the New Jersey Housing Finance Agency the authority to act as a developer of lower income housing. Secondly, the State should consider a requirement that a certain percentage of all new housing units to be built in a municipality, particularly in planned unit developments, be for lower income households until its allocation is attained. This percentage would be minimal to start, but could be increased if the size of the municipality's lower income housing allocation merited a faster rate of construction of such units.

A requirement of the sort just described may not be unrealistic economically. According to a recent analysis made by the Real Estate Research Corporation and funded by the New Jersey Department of Community Affairs, it is economically feasible, at least in Princeton Township, for rents to be set below the market for up to 35% of the units in new rental projects built without Federal or State subsidization. A requirement to provide lower income housing need not, therefore, call a halt to all housing construction.

Finally, the State should withhold grants-in-aid from municipalities which are guilty of exclusionary land use practices. In this regard, I was pleased to learn that Governor Byrne is considering implementation of such a policy insofar as the Departments of Community Affairs and Environmental Protection are concerned. Now that the law of this State with respect to exclusionary zoning has been clearly set forth, I have again urged Governor Byrne, as I did just over a year ago, to implement a policy of withholding financial support from exclusionary developing municipalities.

I have here a copy of the letter I sent to Governor Byrne just this morning.

SENATOR GREENBERG: Thank you very much, Mayor. I appreciate your coming here and sharing your thoughts with us.

I would like to go back to the point where you indicated that the impact of the Mount Laurel decision "could be just as beneficial to central cities by helping them to become more self-sufficient." Would you expand on that please?

MAYOR HOLLAND: The basic problem with regard to the old central cities in New Jersey and elsewhere is that we have a disproportionately high number of disadvantaged people. If one is poor and seeks to live in the Greater Trenton area, that person has no choice but to live in Trenton. There is no public housing in Ewing, Lawrence, or Hamilton. There is some low income housing in Lawrence. The cities are people. Our problems are related to the socio-economic characteristics of our populations. We had no problem in Trenton, Newark, Atlantic

City, Elizabeth, or any principal cities in New Jersey when our population was balanced, when we had our fair share of wealthy, middle income and moderate and low income people.

When a new plant is built - let's take Hopewell, the Windsors, and Mercer - in accordance with good zoning and planning, and given the premise that a person has the right to be able to live within a reasonable distance of his place of employment, when that plant is being constructed, there should be being constructed inclusionary housing, units for all income levels. I can see a situation, truly the American dream come true, where a person could start out in that plant, living in low income housing, and move up the ladder within the plant and move up in the housing that is constructed conveniently near that plant.

SENATOR GREENBERG: That is a part of the American dream, but my question is this: How does that benefit Trenton, for example?

MAYOR HOLLAND: In a case like that, it would help Trenton, if it attracted employees from Trenton, by easing the housing situation insofar as low income employees are concerned. They could then live--- In fact, they cannot get jobs today in such situations because of a lack of mass transit. In all of this, let's understand that comprehensive planning is required. They could live near their place of employment. I can see - and this is not unrealistic - their places being taken by people who have left the city or people, through fear or something else, have never lived in the city. I can see a kind of exchange. It is happening in Trenton now with young people coming in from the suburbs in certain neighborhoods. The key to this is a provision of housing for all income levels in all of our municipalities. There are exceptions: Teterboro is 98 per cent industrial. There are already completely

built-up bedroom communities in Bergen. But, in this fifth richest State of 567 municipalities, if we could share our problems, we wouldn't need revenue sharing, and we wouldn't even need that income tax, given proper evaluation of real estate in our municipalities. That is the long-run answer. Tax reform is the short-run answer. Given implementation of this policy over the decades, we could see this State again become self-sufficient, relatively, at least.

SENATOR GREENBERG: If there were fair share housing programs adopted in this State, the immediate impact, on the short-range basis, would be for people to be leaving the cities. Is that what you are saying?

MAYOR HOLLAND: As presented by the court and by others who have discussed it in terms largely of new town development, I would think that that would be an inevitable effect. I realize that the housing assitance plan is based on each municipality doing its own inventory and then planning to meet their needs as inventoried. Given the congestion, within the central cities, of low income people, and given the opportunity to move elsewhere, I think many of them would seek it, especially if there were employment opportunities that were developed concurrently. Of course, the whole DVRPC allocation plan is keyed to economic trends.

SENATOR GREENBERG: And that would lessen the congestion in the cities--

MAYOR HOLLAND: Yes.

SENATOR GREENBERG: --and permit, as you point out, at least consideration.

MAYOR HOLLAND: It would make the city more attractive, to begin with.

SENATOR GREENBERG: Attractive to a different socio-economic group to move in?

MAYOR HOLLAND: Yes, sir.

Senator, I cannot overemphasize the impact of the present conditions on our city. One out of every five people in Trenton is an ADC person. Twenty per cent of our households are fatherless families. Another 12 per cent is made up of people over 65 - not the kind who can afford to go to Florida in the winter. They are trying to survive on Social Security. They are mutually exclusive groups. They make up a third of our population. The wonder is that the old central cities are doing as well as they are.

SENATOR GREENBERG: Senator Dunn.

SENATOR DUNN: First of all, I would like to correct the statement that you made that the City of Elizabeth has the same problems as Trenton and the other cities. We have no problems-- (Laughter) --because we have a dynamic full-time Mayor.

MAYOR HOLLAND: I'd like to meet him some day. (Laughter)

SENATOR DUNN: The last sentence of your prepared statement is a very bold one. You are recommending "withholding financial support from exclusionary developing municipalities." You are suggesting that to the Legislature. How, in God's name, could you expect us to make a decision as to whether or not a municipality was guilty of exclusionary land use practices? We would have to take each of the 567 municipalities, make a judgment on each one, and somebody would have to set a definition of the word "exclusionary." It would be virtually impossible to even give consideration here.

MAYOR HOLLAND: I am not asking you to, Senator. Let me read my letter to Governor Byrne dated today: "Dear Governor Byrne: I was very pleased to learn in a recent news report that you are considering having the Departments of Community Affairs and Environmental Protection withhold state aid and approval of regional

sewer construction, respectively, from municipalities which zone out lower income households. Certainly in light of the Mount Laurel decision of the New Jersey Supreme Court, such a policy would seem to be not only lawful, but an obligation of the State Executive. Although I had hoped that such a policy could have been adopted in New Jersey based on the legal reasoning of the Pennsylvania Attorney General, as I indicated to you in my letter of April 30, 1974, it is my hope that your administration will now be able to assume a leadership role in helping to provide more equitable housing opportunities for our State's lower income households." This very thing has been and is being done in Pennsylvania.

SENATOR DUNN: The point that I am trying to make is this: Wouldn't some person or some agency have to make the decision that a municipality is indeed guilty of exclusionary zoning?

MAYOR HOLLAND: We are suggesting that the appropriate agencies for New Jersey would be Community Affairs and Environmental Protection in accordance with their own responsibility to implement their programs, relating implementation to the Mount Laurel decision.

SENATOR DUNN: So, you are suggesting---

MAYOR HOLLAND: I am suggesting the ultimate.

SENATOR DUNN: You would bring absolute chaos to the State of New Jersey.

MAYOR HOLLAND: I am vice chairman of the Executive Committee of the Delaware Valley Regional Planning Commission. I have been urging this kind of action - at least, nonapproval action by the DVRPC Board - for several years. We didn't get any action until Mount Laurel came down, and I think that is our reference point. Let's think of what municipalities in this State are doing.

We think of this matter in terms of "Blackness" or "Spanish speakingness." We know that, across this State,

there are municipalities in which grandparents and young married couples cannot live with their children or parents, depending on the situation. Mahwah is the classic example. It's $50,000 to buy a lot, and $50,000 to build a house on it. I don't know how many they employ now, but the Ford plant there, at one time, had about 5000 employees, and I think about 15 could afford to live in that town. What it means is that, in many municipalities in this State, only people in their most productive years can afford to live in those municipalities. That was the heart of the Mount Laurel decision. You cannot zone people out on the basis of their income.

SENATOR DUNN: You are describing various types of abuses. In almost every municipality in the State of New Jersey, at least one or two of those can be found. Are you suggesting, then, that there be absolutely no financial support given to those municipalities if, in fact, the Commissioner of the Department of Community Affairs rules that, in her opinion, the---

MAYOR HOLLAND: I think the key element in determining the judgment that is to be made in each case is motivation. For example, about two years or so ago, I was asked by the Trenton NAACP to join it in suing East Windsor Township. As a matter of courtesy, I called the Mayor of East Windsor Township, whom I hadn't met. I told him that the NAACP had asked me to join in a suit against East Windsor, because it was alleged that they were practicing exclusionary zoning. The Mayor, Jay Johnson, said, "That's not so. When we built the Twin Rivers project, we thought we were accommodating low and moderate income people, but houses which were constructed to sell for as low as $12,000 were going for $25,000 and $30,000 because of the housing market." He said, "I agree with you with regard to your attitude about the need for opening the suburbs to

low income housing." I said, "Would you say that at a meeting of the Mayors and Freeholders?" He said, "Yes." At a meeting of Mayors and Freeholders, he said it, and I wish the whole world could have been listening to Jay Johnson. Out of that meeting came a Task Force, at my suggestion, of Freeholders and Mayors to draw a fair allocation plan for low income housing for Mercer County. We drew it based on the DVRPC guidelines. There was a public hearing on it, and the Planning Board considered it at one meeting. There has been silence ever since. I urged the Board of Freeholders to move ahead and to give some leadership. They said, "Let's wait for the court to act. Let's see what they say in Madison and Mount Laurel." Mount Laurel came down, and I said, "Now is the time." There still is no answer. It is a very sensitive subject, politically, as you know.

SENATOR GREENBERG: Mayor Holland, you talked about the Delaware Valley Regional Planning Commission's undertaking of "regional analyses of local housing needs." Is that being done on a voluntary basis at this point? What authority is there for that, and what are they accomplishing?

MAYOR HOLLAND: In the Housing and Community Development Act of 1974, there is a provision that a municipality, in order to qualify for federal funds, draw a housing assistance plan. DVRPC is saying now that, unless that housing assistance plan accompanies an application, the application will be denied. DVRPC has taken such action; that is what has led to the problem in Burlington County.

SENATOR GREENBERG: Assemblyman Pellecchia.

ASSEMBLYMAN PELLECCHIA: Mayor, during your testimony, you did mention the Mahwah situation. Can you tell me if the litigation is completed in Mahwah?

MAYOR HOLLAND: I am not familiar with it. I

don't know that there is litigation in Mahwah.

ASSEMBLYMAN PELLECCHIA: There is. However, I think your point was well-taken. There were approximately 5000 employees at the Ford plant, and 1500 or so were looking for residences in Mahwah, and there was no way for them to get any kind of housing whatsoever because of the litigation that was taking place. I think that point was well-taken.

MAYOR HOLLAND: I must stress - and this is the only way we can get acceptance for what is being proposed in the bill and by me and hopefully other witnesses - that we are interested in good zoning and planning. If you are familiar with Trenton, nobody ever talked about putting a housing project in Hiltonia, which is our finest residential area. It has to be in accordance with good zoning and planning. There have to be buffer areas between low and middle and high; there has to be a commercial area and a play area, and there has to be mass transit, etc. Otherwise, we will never get off the ground except through the courts.

ASSEMBLYMAN PELLECCHIA: The final point I wanted to make on the Mahwah situation was that approximately 700 of those 1500 workers lived in the City of Paterson, a good 18 miles away, and had to commute.

MAYOR HOLLAND: That is the best example I can think of.

SENATOR GREENBERG: Assemblyman Van Wagner.

ASSEMBLYMAN VAN WAGNER: Mayor, incredibly you made a few points right at the outset. I say "incredibly" because it is amazing that, with the turmoil and controversy over the Botter decision and the necessity for the Legislature to come up with a tax reform program, someone hasn't said it before. I don't recall anyone saying it in quite the same way as you have. You seem to imply - and I tend to agree with you - that, regardless

of what kind of tax reform approach may be taken by the Legislature, if any, there would be probably, on a long-range basis, continued need for massive injections of funds to the inner-city areas as long as the status quo remained in terms of land use and housing.

MAYOR HOLLAND: Yes, unless there is tax reform of the kind proposed by both Cahill and Byrne, which could in Trenton, for example, result in a decrease in real estate taxes by as high as 45 per cent.

ASSEMBLYMAN VAN WAGNER: But, by the same token, would you agree that, if we were to pursue first a course of housing and land use reform, we may well eventually negate the necessity for long-range---

MAYOR HOLLAND: As much as I would like to see implemented what is being studied by this committee, S-3100, the obvious first need is tax reform in order to bring fiscal relief to the old central cities and, of course, to the State itself.

ASSEMBLYMAN VAN WAGNER: I believe you indicated in your testimony that, if the patterns of housing and land use reform could be achieved, perhaps tax reform need only be approached on a short-range basis.

MAYOR HOLLAND: I guess I first started referring to tax reform on a short-term basis some years ago. I still call it "short-term."

ASSEMBLYMAN VAN WAGNER: I see a kind of self-perpetuation taking place here. There is a massive injection of funding into the urban centers which becomes, at best, an interim solution. A period of time goes by, and there is the necessity for another massive injection of funding into the urban areas.

MAYOR HOLLAND: Here is what has happened in Trenton, for example: 13 per cent inflation, a net decrease in ratables. Our employees got nothing - $100 worth of increments for those not at maximum, no cost of living,

no benefits, nothing. We are already the lowest paid employees in this area, and we have to compete with townships, school board, county, state, and federal. We have no alternative. We simply cannot go to the real estate tax. It's almost confiscatory now. Incidentally, no self-respecting Mayor likes to come here, as I do occasionally, before the Joint Appropriations Committee and ask for aid. We like to be busy doing other things, but it's going to get worse. We are relatively well-off. My wife is from Camden. There is no department store in Camden today. The State, as you know, has had to take over the fiscal management of the school system in Newark. We're in bad shape.

SENATOR GREENBERG: Yes, there are some problems. (Laughter) The question is whether or not the concept as outlined in S-3100 makes any sense in dealing with any of those problems, more specifically, the problem of providing housing for our citizens. I gather that you support the concept.

MAYOR HOLLAND: Oh, yes.

SENATOR GREENBERG: Assemblyman Kozloski.

ASSEMBLYMAN KOZLOSKI: I agree with Senator Dunn in regard to the question of withholding grants-in-aid. My opinion is that that could be interpreted as a club to beat the zoning people into submission. No one, so far, has mentioned anything about the time element.

MAYOR HOLLAND: Remember, I said, let's judge the motivation. In the case of East Windsor, once I found out that they had good intentions, I refused to join the suit.

ASSEMBLYMAN KOZLOSKI: Well, there are good intentions throughout the State of New Jersey and throughout the United States where there are similar problems. What about a time element, because this could go on forever?

In your opinion, what time limits could be given for implementation?

MAYOR HOLLAND: I think, certainly, a municipality ought to be able to draw a housing assistance plan within a matter of several months - six months at the most - and give some indication of plans to implement that proposed program. They certainly have been looking at themselves in recent years, given all the litigation.

SENATOR GREENBERG: Assemblyman Van Wagner.

ASSEMBLYMAN VAN WAGNER: Within the legislation, S-3100, would you say that it provides at least an effective vehicle for bringing together--- Let's take, as a model, Mercer County. Under the bill, in addition to the Department of Community Affairs, there would be, on a vertical basis, the development of a housing allocation plan by the county, by the City of Trenton, and, I would assume, by the DVRPC.

MAYOR HOLLAND: I was wrong when I said that the DVRCP required a housing assistance plan. They require a fair allocation plan for low income housing.

ASSEMBLYMAN VAN WAGNER: Do you see this, within the framework of the vertical process that would take place under the bill, as a feasible and effective method of handling the overall situation as it affects Mercer County, as the Mayor of the largest city in Mercer County?

MAYOR HOLLAND: Tom Ogrin is my staff person who has been working on this. He has been working with DVRPC, and he points out that DVRPC has been working closely with Mercer. In fact, DVRPC held a hearing in Mercer County on the plan, as it, with eight other counties in the Penn-Jersey area, is serviced by DVRPC. There seem to be no substantive objections to what DVRPC is proposing. There is just a natural reluctance to---

ASSEMBLYMAN VAN WAGNER: I am trying to determine

from you, as a person who has worked with several mechanisms of government, whether or not you contemplate, for example, one mechanism of government being perhaps in conflict under a bill such as S-3100.

MAYOR HOLLAND: My own feeling is that, while the need for low income housing is greatest in Trenton, we have already done far more than our fair share. If you are asking how many units Trenton should be responsible for, I would say, none. But, I have to be realistic. I think that has to be worked out. I believe Senator Greenberg, in opening this hearing, used the word "dialogue." I think we have to discuss these things.

SENATOR GREENBERG: Senator Dunn.

SENATOR DUNN: This bill and any action resulting from it will be loaded with politcal ramifications. Are you familiar enough with the bill to make a comment about the makeup of the advisory council on housing site locations?

MAYOR HOLLAND: No, I'm not.

SENATOR DUNN: It is composed of 13 members, five of whom will be State Department Commissioners, and eight to be appointed by the Governor with the advice and consent of the Senate. Theoretically, it is supposed to be a neutral type of council.

MAYOR HOLLAND: That seems like a good balance.

SENATOR DUNN: Yes, but 13 people will be in a position to almost dictate housing policies for the State. Suppose that most of the people on the council come from the suburban areas. Don't you suspect that there might be an inclination to forestall any action that would open up zoning in the suburban areas?

MAYOR HOLLAND: Governor Hughes, Governor Cahill, and Governor Byrne have all been inclined to take the approach which is reflected in S-3100. I would think that the Chief Executive would appoint a balanced advisory group.

SENATOR DUNN: I think you would have to agree that it is very important that the people appointed to the council be unbiased.

MAYOR HOLLAND: Right, and, of course, there is the advise and consent role.

SENATOR DUNN: I think you would also have to agree that finding 13 unbiased people--- For instance, those living in Princeton might be at loggerheads with those from Newark.

MAYOR HOLLAND: I know what you mean. It's like Mayors should be half White, half Black, and speak Spanish. (Laughter)

SENATOR GREENBERG: Thank you very much, Mayor.

Mr. Gershen will be the next witness. Please identify yourself, sir.

A L V I N E. G E R S H E N: Senator, I am Alvin E. Gershen, a professional planner in the State of New Jersey. I am testifying as a professional planner on behalf of myself.

I appreciate the opportunity to speak before this Committee regarding my consideration of the proposed "Comprehensive and Balanced Housing Plan Act".

Senate No. 3100 is an attempt to "establish a new planning framework within which local units of government rationally plan for the housing needs of their residents, while simultaneously acting as responsible partners and instrumentalities of the State in helping the State meet its responsibilities to all of the residents of New Jersey."(1) Essentially, however, the proposed legislation would allow the State and the Counties to formulate a specific housing allocation program without the formal input of the State's municipalities.

---

(1) Senate No. 3100, State of New Jersey, introduced March 24, 1975, by Senator Greenberg, pg. 2, lines 29 through 34.

More specifically, Senate No. 3100 directs the Commissioner of the State Department of Community Affairs to:

1. Prepare standards and guidelines for the determination of municipal housing allocations by County Planning Boards;

2. Prepare rules and regulations relating to the manner in which the survey reports submitted by the Counties will be evaluated;

3. Prepare standards and guidelines for the housing development programs to be adopted by the Municipalities;

4. Identify high-density and high-growth areas in the State and determine their impacts on regional housing needs;

5. Identify areas of critical housing needs throughout the State;

6. Prepare standards for determining feasible and desirable density levels and recommended models of alternative patterns;

7. Identify and delineate geographical areas with high development potential based upon existing development and available service and infra-structure facilities;

8. Compile and distribute relevant information on Federal and State housing programs to the Counties and municipalities of the State; and

9. Coordinate all public housing programs.

While I fully agree with the general concept of the proposed legislation, specifically that there should exist throughout the lands of New Jersey a diversity of housing opportunities to satisfy a total spectrum of housing needs, I take exception with the proposed legislation on three grounds.

1. Legislation already exists in the State of New Jersey providing the authority for the State to act now to solve the housing problems addressed in Senate Bill No. 3100; thus there is no need for additional legislation;

2. Municipalities must have a greater significant and clearly defined role in the housing allocation process; and

3. Regardless of the specific framework of municipal zoning controls, the mere act of zoning cannot insure that affordable housing will be supplied to all economic ranges. The very fact that housing produced in the private market does not fill the needs of a wide segment of New Jersey's society strongly suggests that if a housing program is to fulfill its goals then housing must be built with the assistance of State and Federal funds. A most important consideration for the State Legislature is to insure that such funds are available.

Let me elaborate briefly upon these three points:

1. Title 52, Article II, Chapter 27C-18 of the Revised Statutes of the State of New Jersey provides, among other things, that the Department of Conservation and Economic Development (the department from which was established the existing State Department of Community Affairs, which inherited these functions) shall have the authority and responsibility to:

> "c. Investigate living, dwelling and housing conditions and into the means and methods of improving such conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; make studies and recommendations relating to the problems of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income; and cooperate with any public body in action taken in connection with such problems; and engage in research, studies and experimentation on the subject of housing."(2)

These provisions not only permit, but, in my mind, require the Executive Branch of our State government to prepare studies as outlined in nine (9) points above, which form the basis of Senate 3100. When coupled with the new requirements of the

---

(2) N. J. S. A. 52:27C-18c.; Article III: Physical Planning, Housing Urban Rehabilitation.

recent Supreme Court decision, commonly referred to as "Mt. Laurel"[3], it seems to me that our executive branch of government should now be in the process of doing these studies without waiting for additional legislation to be adopted. Creative administration mandates the reading of existing laws in light of new Supreme Court decisions and acting in an imaginative and forthright way. It is not necessary for our legislative branch of government to respond with specific legislation when existing legislation, directly to the point, already exists.

2. It is my belief that municipal home rule can and must be preserved. Our State administrators should bring local units of government directly into the decision-making process even though the framework of that process may change from time to time. The recent "Mt. Laurel" decision has mandated that the framework of local land use decision-making be changed; however, that decision has not mandated that municipal Planning Boards should no longer be a viable part of the decision-making process.

3. It is clear to me that even if Senate 3100 were enacted today and its provisions were meticulously followed, or, even if that administrative process which I am advocating were pursued and concluded quickly and effectively, still not one new unit of housing would be produced. For in order to produce decent, safe and sanitary housing, whether new or rehabilitated, at costs affordable by most of our people, particularly our lower-middle-, moderate- and low-income families and elderly citizens, additional State subsidy programs must be enacted and made operative.

---

[3] Southern Burlington County N. A. A. C. P. vs. Township of Mt. Laurel, March 24, 1975.

The recent Mt. Laurel decision must be viewed as the most auspicious of any single land-use edict of government in New Jersey within recent memory primarily for two reasons:

1. The decision rendered by the Supreme Court is now the law of our State; and

2. The decision is comprehensive and far-reaching.

The housing issues raised in the Mt. Laurel decision can be reduced to the contention that there is a "presumptive obligation" for a municipality to provide the opportunity for housing production directed at the needs of a total spectrum of socio-economic levels. More specifically, the Court stated that:

1. In determining its obligation and responsibility to provide a diversity of housing, a municipality must consider the region of which it is a part; and

2. A municipality must not prevent development of housing through its laws, but must act "affirmatively" to provide housing for all socio-economic needs. That is the law in the State of New Jersey at the moment.

The Mt. Laurel finding, however, did not specify how and what a municipal jurisdiction must do to insure conformance with the decision. A number of items remain unsolved:

1. What is the region and how analytically is it defined?

2. Must every "developing municipality" provide every possible type of physical housing unit for the various socio-economic age groups?

3. Who defines the housing needs for a municipality?

4. What specific relationship, if any, between job opportunities in a municipality versus housing opportunities should be established? and

5. Isn't the "timing" of development still the whole rationale behind the concept of Planning?

On April 4, 1975, I appeared before this committee to testify on proposed Senate No. 3054, the "Municipal Land Use Law". I stated then that while we are in need of updated land use enabling legislation, we must attempt to draw together and coordinate the overall land development process rather than continue a piece-meal approach which results in a total ambiguity and lack of coordination in the statute provisions and detrimentally affects everyone associated with the planning and development process.

The basic question is what do we need to do to provide for the production of housing within New Jersey for our people. Do we need to prescribe a process of housing allocation formulation to insure that the law of our State as decided in the Mt. Laurel case, as enacted in the Statutes and as may be augmented and modified by subsequent Supreme Court Decisions, will be effectuated? The answer is, "yes". Do we need to have Senate 3100 enacted in order to proceed? The answer is, "no". It has been my view for quite a while that the New Jersey State Department of Community Affairs already has the authority to perform a study delineating the State-wide housing needs.

Let me suggest an administrative process that can be followed now, using the findings of the "Mt. Laurel" decision and existing legislation as found in Title 52, Article III, Chapter 52:27C-18 of the State's Revised Statutes. This process, which should be modified as new decisions are rendered by our courts or as new information becomes available, can be creatively and effectively handled by our executive branch without recourse to further legislation.

As an example, using the above Statute, the Department of Community Affairs can cause a housing inventory and need allocation study to be made. The information would be compiled on a state-wide basis using all of those factors necessary to ascertain state-wide trends and needs. Naturally, this state-wide analysis will have to be broken down into component regions within the State.

What would we use for "regions"? What are logical planning regions for our State and how do we arrive at concensus? This study of the State and its delineation into component regions was previously undertaken and discussed in a December 1961 publication of the State Department of Conservation and Economic Development, the forerunner of today's Department of Community Affairs. The study, entitled, "The Setting for Regional Planning in New Jersey"(4), defined regions employing data which indicated the relative importance of the various urban centers and the relative influence of the centers over outlying areas, without regard to existing political boundaries. Such data included a number of considerations including daily newspapers, weekly newspapers, retail sales, banks, hospital service areas, telephones, high schools, labor market areas, radio communications, joint chambers of commerce, traffic and transportation, and social organizations. Coupled with additional considerations such as natural features, physiographic features, productive lands, watersheds, and man-made physical elements, a summary map of suggested planning regions was formulated.

---

(4) "The Setting for Regional Planning in New Jersey", published by the State of New Jersey: Department of Conservation and Economic Development, December 1961.

Using the 1961 State study, or a modification and update of that study, it would be the State's responsibility within the Department of Community Affairs to stipulate the specific housing needs by regions after compiling state-wide housing needs. Within this process the State would consider and coordinate the following:

1. Demographic characteristics
2. Housing Characteristics
3. Physical land characteristics
4. Community facility characteristics
5. Market characteristics
6. Employment opportunities and characteristics

The state-wide housing needs study at this point would, therefore, be reduced to a regional basis. However, there are no regional governmental units in New Jersey and we would need a governmental unit in order to complete our process of fair share allocation and ultimate land use determination and zoning delineation. I would, therefore, suggest that these regional findings be broken down and reassembled on a County basis.

In other words, I am suggesting that although with one or two possible exceptions, most land areas in any one county fall within more than one region, the basic housing information gathered on a regional basis can be summarized for administrative purposes on a county basis.

The County is the most viable and logical existing governmental entity to serve as the intermediary between the gross figures established by the State and the unique ability of a municipality to deal with its own specific characteristics of land development.

Thus, the County would have the benefit of a definitive housing need study and would be responsible to implement its specific share of the overall regional housing need as determined in the study made by the State. This would be done in conjunction with the member municipalities of the County with consideration given to the same list of items as was undertaken by the State Department of Community Affairs except that these considerations would be at the local level. Added to this list, however, would be specific considerations as to the unique character differences between the municipalities within the County. Thus, it would be possible to relate the general regional trends coming from above down to the municipality to the specifics of the municipality which would rise to influence the allocation of housing within the County.

The final municipal responsibility would be to effectuate its share of the housing allocation need through its zoning provisions as reflected in modified zoning mapping and text procedures. The type of housing unit and the conceptual form of development would be determined and justified by the municipality.

What remains for us to consider is the nature of the enforcement process. What process is called for to insure that Counties and municipalities would do their "thing" in the general administrative machinery for fair share allocation? How are the findings of such a study to be enforced?

Clearly the State must have the responsibility and effective tools to insure conformance at the County and municipal levels with its original findings. It must first of all be recognized that the State's study would be the most comprehensive and most expensive study heretofore performed and that opponents of the study would find

themselves in a position of having to formulate another study of equal credibility. This is unlikely. Moreover, the study, once issued, would be used by Planning Boards, professional planners, developers, the courts, attorneys, housing advocacy groups, and other individuals and groups in their efforts on behalf of and against municipal zoning codes. We are facing a period of protracted court actions. We need, as quickly as possible, a definitive state-wide housing inventory and needs study, prepared by the executive branch of our State government for the guidance of our courts and our legislature as well as our local Planning Boards and governing bodies. The mere presence of this study would add much to the enforcement process.

The study would have defined regions. The study would have defined the concept of a "developing municipality". The study would have defined socio-economic age groups. The study would have defined housing needs. And the study would have defined the permissible "timing" of development. Albeit, some of us may quarrel with certain of the findings of such a study; but a basis for rational decision-making will have been formulated.

However, the most straightforward and effective way of insuring municipal and County compliance with the State's analysis would be for the Commissioners of the various departments of State government to withhold recommendation for Federal and State financial assistance to the local governments unless the substance of the State's regional housing analysis was agreed to and responsively effectuated by the County or municipal jurisdiction. As with the authority of the State Department of Community Affairs to undertake the housing study, this authority of the State government is already in the laws of the State of New Jersey. No additional legislation is necessary.

Under Title 52, Article IV, Chapter 27C-31, the Commissioner of Community Affairs has the following authority:

> "52:27C-31. No Federal aid unless commissioner has opportunity to recommend
>
> Notwithstanding any other legislation heretofore enacted, no Federal financial assistance may hereafter be paid to or accepted by any political subdivision, special district or ad hoc authority of this State for a public improvement project unless and until the commissioner has had a reasonable opportunity to make recommendations with respect thereto and certifies that the public body sponsoring the project has complied with the requirements of this chapter, with respect to the filing of project descriptions, correspondence, agreements and documents."(5)

This function and power was exercised as long ago as 1959 in the former "Assistance For Public Works Planning Program (702)". In a manual describing that program, it was stated that:

> "3.2 State Requirements
>
> Though the Advances for Public Works Planning is solely a Federal program for assistance, State law in New Jersey (NJSA 52:27C-28; Article 4: Public Works Reserve) requires approval by the Department of Conservation and Economic Development as to whether the application for advances complies with all pertinent State legislation and meets the approval of other interested State agencies."(6)

Clearly, then, the State government may use this existing Statute to effectuate the laws of our State, namely the findings of the "Mt. Laurel" decision.

---

(5) N. J. S. A. 52:27C-31; Article IV: Public Work Reserve.

(6) "Procedural Guide: Program of Assistance for Public Works Planning", published by the State of New Jersey, Department of Conservation and Economic Development: Division of State and Regional Planning, July, 1961, pg. 3.

We do need new legislation, however, to insure that once the opportunity is provided for housing construction in the State of New Jersey that such housing will be built and that this housing is geared to the needs of all socio-economic levels. We have a collection of programs which is, generally speaking, not functioning to fulfill the particular housing need which now exists. To some extent, these programs are not functioning because there is a severe lack of funds provided for their implementation. We need a new financing system for housing delivery and this can only be accomplished by State legislative action, primarily geared to providing funds to supplement and augment Federal housing subsidy programs where they are unevenly applied to our State's problems due to their regional scope and to providing new funding mechanisms where no Federal programs now exist. It is these areas that should be most intensively investigated as to a means of trying to reduce rents and costs to satisfy the growing demand for housing for all of our families and older citizens.

SENATOR GREENBERG: Thank you, Mr. Gershen. I have a couple of questions. Of course, the existing authority to which you refer has been on the books for some time.

MR. GERSHEN: Yes, sir.

SENATOR GREENBERG: Assuming you are correct with regard to the ability of the Department of Community Affairs to initiate a study and come up with its conclusions - and I believe you are - it hasn't done so in the sense contemplated by this bill. Secondly, with regard to the enforcement process, jumping over the question of allocations for a moment, since they are not dealt with in your presentation to any real degree, what you in fact propose is the withholding of aid under the authority that you refer to on the 11th page of your statement which deals with compliance of all state legislation. I assume what you are doing is construing a

judicial decision as state legislation. That is the heart of what you are saying, I think; that is, if a court has ruled as it has in Mount Laurel, the State has the ability to deny approval because of noncompliance with that determination.

MR. GERSHEN: No. What the State Supreme Court has done, as I understand it, is to rule on the right of a municipality to use the zoning power as delegated by a specific state enabling act to the municipality. This was an act of the Legislature of this State that enables our 567 municipalities to zone. The Mount Laurel decision interprets that statute. It doesn't create a new statute, and that is the legislation I am addressing myself to. The 1944 law, which I cited, talks about state legislation, and, in this case, it would be legislation creating the right to zone as interpreted by Mount Laurel. It isn't the State Supreme Court that established the right to zone; it was a Legislature of this State that did. So, I read the statute in 1944 as meaning just that, and I think it would be a perfectly proper thing to do. However, how you administer a law is awfully important, and you obviously would not administer it to the same degree in the first year as you would in the 30th year. You would administer it with judgment; you would administer it with imagination; you would administer it with persuasion. It seems to me that you cannot ignore the law. I am not suggesting that we not adopt 3100, but that we immediately go to work on what the law says we can, should, and must do, and do it. If we then find that additional legislation is necessary to clarify something, then we would come to the Legislature and ask them to act. It's as simple as that.

I generally agree with the process outlined in 3100. That process could be adopted after public

hearings by the Department of Community Affairs, made a rule of the State, and then the procedure could be followed. It could be amended after public hearings.

SENATOR GREENBERG: Including an allocation?

MR. GERSHEN: Including a voluntary allocation which would be in compliance with the law as it exists based on Mount Laurel and subsequent decisions. The Appellate Court came out with the Wenonah decision two or three weeks ago. This further defined and refined Mount Laurel. There are other decisions now in the legal process. As these come about, and as the law gets modified and clarified, I would look to an administrative machinery to be amended to include these new decisions.

SENATOR GREENBERG: In answer to my last question, you inserted the word "voluntary." I asked, "Including an allocation?" and you said, "Including a voluntary allocation." What do you mean by that, and what do you propose if there is a refusal to comply therewith?

MR. GERSHEN: Let me take the latter first. I propose two things if there is a refusal to comply. In my formal remarks I stated that there will be a proliferation of zoning cases, court cases, some begun by public advocacy groups, some by developers, and some by other municipalities, as Mayor Holland testified to. In any event, these court cases will help tend toward municipalities having to adopt fair share allocation formulas. If one overall fair share study was conducted in the State, simply by force, all of us would be compelled to adopt it in its broad sense.

SENATOR GREENBERG: As the end result of this series of litigations?

MR. GERSHEN: No, as a continuing--- Senator, I represent some 30 municipalities. When we sit with

members of a planning board, they ask the honest questions, "How do we arrive at a fair share? What if we take our fair share, and every other municipality in our immediate area does not? What if we have low and moderate income housing, and the other municipalities don't?" Nobody has addressed these issues, and I think the State Department of Community Affairs can. If public knowledge was made available to municipal planning boards, directions would be sought and objectives accomplished, simply by having the information available.

SENATOR GREENBERG: Is that what you mean by "voluntary"?

MR. GERSHEN: All of it is voluntary, Senator. Even your bill would be voluntary, simply because, once you put the information forward, the process by which it would go back and forth, as envisioned in your administrative machinery, would still mandate a lot of voluntary compliance, because the alternative would be p r o t r a t e d court action in changing situations so as to mitigate against court decisions based upon existing information. As an example, a court case begun in 1978 would probably stretch for two or three years beyond the decennial census and would be outdated by 1981 based upon new information. Obviously, there has to be some compliance by municipalities on a voluntary basis in that sense. You just cannot mandate municipalities to take "X" number of units and then expect that it is going to happen in 567 municipalities. It just won't happen.

That is why the second thing becomes important: the skillful use of the grants of government money, state and federal money, to municipalities in furtherance of the laws of our State. I am not suggesting the use of a club and the withholding, arbitrarily, of huge sums of money just to be capricious or just to force something

down the throats of local citizens. I am suggesting that we are a law-abiding society, and, if this information was made known to all of our citizens and all our municipalities and the fear factor was removed from individual planning decisions so that we were somehow assured that all of our municipalities would take a fair share of all economic levels of housing, there would be a far greater voluntary compliance. The fear is: "If we take our fair share now and nobody else does, we will turn into an undesirable municipality." I think this is part and parcel of what we have to address ourselves to.

Senator, democracy only works if it is voluntary in the sense that there is a consensus and an agreement and a freedom of choice, not only to live the way you want, but also to have other people live among you. I think we have to try to achieve that confidence in our governmental process.

SENATOR GREENBERG: I think the overwhelming sentiment of the Legislature - and I have not polled it - is in accordance with your concept of attempting to do this on a voluntary basis. The question arises, however, what happens if they do not? When you talk in terms of the proposals in this bill, this committee and the sponsor are not wedded to the proposals in this bill. This is really for the purpose of commencing a dialogue, and it is a very, very difficult problem to solve. But assuming that there is a failure to comply or a refusal, the concepts as outlined in this bill provide for a solution to that dilemma. Just as the Legislature is presently struggling with the question of what will happen if there is an impasse in collective bargaining negotiations, for example, do you go on and on and on with litigation? We are trying to avoid that and propose some guidelines in order to avoid it. How do you solve that problem under your concept?

MR. GERSHEN: I would solve it, Senator, by causing the study that I referred to in the first part of my remarks to be made, detailed, and then publicly released. I would then wait a reasonable period of time to see what reaction there was to that study and its findings among the municipalities and the planning boards in the State. I am a great believer in that sort of process. I don't think that, just because in March of this year there was a Mount Laurel decision, in May there is a revolution in land use patterns. It "just ain't so." It won't happen. In our democratic process, I think we have to take a step at a time. If such a study was, in fact, made and released, discussed and debated, accepted in part and rejected in part, and then you asked that question of me, Senator, I would be much more enlightened and in a better position to respond. In the absence of such a study, I think all of us are guessing, and my guess is no better or no worse than anybody else's. So, I would suggest that we at least try that much, the study. I would agree with you that there may not be the sentiment in our Legislature today for the adoption of 3100, but, assuming that I am right and there is no sentiment for its adoption, my remarks would lead me and, hopefully, you to the conclusion that the process ought to be begun anyway, because the law says that it should be.

SENATOR GREENBERG: I have a number of other questions, but I would first like to know if anyone else has any? Senator Dunn.

SENATOR DUNN: Mr. Gershen, I think this was a very interesting presentation. If I understand you correctly, you are testifying that there are now, on the books, enough statutes so that, if enforced, there would be compliance with the Mount Laurel decision.

Therefore, I would respectfully suggest to this committee that somewhere along the line, during these public hearings, we get a response to Mr. Gershen's statement from the Department of Community Affairs and, perhaps, from the Attorney General. I would like to have the thinking of those two departments as to whether they agree with that premise or disagree.

SENATOR GREENBERG: Assemblyman Van Wagner.

ASSEMBLYMAN VAN WAGNER: I would also like to congratuate you, Mr. Gershen, on a very thorough analysis of what we are facing. I do find, though, that there appear to be some contradictions to some of the statements you made. The contradictions may exist only in my mind, not necessarily in your presentation. You talked about the need for defining "regions" on one hand, and on the other hand, in earlier testimony, you mentioned the fact that the regions need not conform with political boundaries. Yet, as you went on, you seemed to reach the conclusion that the best kind of political boundary to deal with, in the absence of a definition of "region," would be the county, providing a viable mechanism between the state and municipal levels of government. At some point, given a definition of "region" by the study that you propose should be done first, wouldn't the definition of "region" then negate the county as a viable, functioning planning mechanism?

MR. GERSHEN: The answer ultimately should be "sure," because counties, as I am sure you are aware, Assemblyman, were established rather arbitrarily in a different age, at a different time, to serve a different purpose. Interestingly, almost a decade and a half ago, the Department of Conservation undertook a

study which attempted to look at these five questions: What is a region? What do we mean by regional planning? What determines a planning region? Who does regional planning? Why regional planning? It came to a conclusion as to what regions were, and there were five levels of regions in New Jersey. You might recall that the court spoke, in Mount Laurel, about a regional need. So, if we have this statewide housing need, we could reduce it, if we used this definition, or series of definitions, for regions, through a regional basis. I have no problem arriving at that. With some degree of difficulty and time, it could be arrived at.

For instance, we m i g h t have 40 regions in New Jersey, setting forth clearly what their housing needs in all socio-economic groups would be. The question would then be, "How do you enforce them since there are no regional governments?" It is at that point that I would bridge the gap from regions to counties by reducing the regional data to 21 county units of government.

ASSEMBLYMAN VAN WAGNER: You are simply saying that, administratively, the counties are prepared to collate the data and disseminate it.

MR. GERSHEN: Precisely. We really don't have the time and convenience to wait for a restructuring of all government, which is nonsense. It will never happen in the next 20, 30, or 40 years.

ASSEMBLYMAN VAN WAGNER: I agree. We don't have time for much of anything at this point.

MR. GERSHEN: So, I would reduce it to a county basis, and from county, following some of the prescription in 3100, to a local basis, and let local municipalities do their thing.

ASSEMBLYMAN VAN WAGNER: Let me ask you a question.

I think we are sort of hedging on bets here, because we are not really saying what we should be saying. In effect, what I think we are saying when we begin to address ourselves to land use and zoning patterns in the manner in which we are doing it is that the day of municipal planning is coming very quickly to an end.

MR. GERSHEN: No, sir.

ASSEMBLYMAN VAN WAGNER: You don't think so?

MR. GERSHEN: No, sir.

ASSEMBLYMAN VAN WAGNER: Other than on an advisory basis?

MR. GERSHEN: No, sir. I still maintain that the municipalities can make land use plans, can make circulation plans, and can make community facilities plans.

ASSEMBLYMAN VAN WAGNER: If we are going to subject those municipal land use plans to other levels of approval---

MR. GERSHEN: We always have, traditionally. Historically, we have in this State, since the beginning of zoning in 1929. Every time we located an access or a point of egress or ingress to a major federally aided interstate highway, we made a land use decision. When we bought Round Valley and Spruce Run Reservoirs, we made a set of land use decisions. When we buy Green Acres, we make land use decisions. All of this input of state dollars and federal dollars, whether we keep Picatinny Arsenal open or closed, really impacts on land use decisions. Every level of government continually makes them, but the power to control how we privately use land, zoning, is a function of local government. When that power is abused or improperly used, we subject it to litigation, and heretofore that litigation had a presumption of

correction on the part of the municipality, and there were certain proofs that attorneys would have to engage in. Mount Laurel changes some of those presumptions; Mount Laurel changes some of the dimensions; Mount Laurel changes some of the ground rules; but Mount Laurel didn't change the fact that local planning boards---

ASSEMBLYMAN VAN WAGNER: The thing that continually troubles me about the testimony that I have heard so far is this: We have heard all of the things s a i d about the State having the process, about the State, in fact, engaging in land use planning itself, and about the courts having upheld the fact that the State has jurisdictional boundaries in which to operate. Yet, I sense that what everybody is really saying is that now what the State should really do is say to any community or municipality that is not conforming, according t o whatever definitions of "conformity" there are, "If you don't conform, this is what you are not going to get." That is what I see running through the testimony. I do see a club being used at this point.

MR. GERSHEN: You have a club every time you dispense aid in education, every time you make a sewer grant, and every time you make any grant on a state basis. You can interpret that as using a club when there are certain requirements.

ASSEMBLYMAN VAN WAGNER: But, the basis for these grants is not land use planning. The basis for a sewer grant is environmental protection, for example.

MR. GERSHEN: What is environmental protection except an exercise of the general welfare clause in our Constitution? You see, the State gave the function of zoning to municipalities. It's not a local right. It's the State's right--

ASSEMBLYMAN VAN WAGNER: I realize that.

MR. GERSHEN: --and our Legislature gave the right to zone to municipalities. The court interpreted what that right is. That's all it did. It just looked at the zoning enabling statute and made a modern interpretation of it. We may not like some of the interpretations. There are many that may disagree with some of my conclusions, your conclusions, or anybody else's conclusions, and that's what makes another court case.

ASSEMBLYMAN VAN WAGNER: Don't you think that the proper approach to offset - I think Senator Greenberg was going in this direction - the necessity of litigation and the necessity of continual interpretation by the court is the legislative process?

MR. GERSHEN: Not until we have exhausted other remedies, and that is involvement of local governments. I think my testimony was directed to a continuing involvement of local governments with the absolute understanding that the rules of the game change. There were good, honest people practicing zoning and planning in New Jersey for the last 30 years, but our practices have resulted in - and the courts have told us - exclusionary zoning. That is what they said.

ASSEMBLYMAN VAN WAGNER: That's why we're here.

MR. GERSHEN: That's why we're here, and I think it is then fair to say to municipal planning board members, to the profession of planning, to attorneys, and to citizens, "The law now says we have to use other 'rules of the road' and we are trying to preserve the involvement of local home rule in this process without taking it away in a dictatorship." One may do land use as one sees it, but, to preserve democracy, we are going to have to go back and forth, losing some, winning some, and being somewhat inefficient.

ASSEMBLYMAN VAN WAGNER: You know, it is a representative democracy.

MR. GERSHEN: Sure.

SENATOR GREENBERG: Excuse me, do we have enough time to engage in that kind of activity?

MR. GERSHEN: Senator, to me there is no alternative. As a practical matter, I think your observations and mine were correct: I don't think there is the will in this Legislature to adopt 3100.

SENATOR GREENBERG: I am not sure that is correct. Perhaps in its present form, you are right, but I'm not sure of that. It depends on what the courts continue to do over the next several months before this matter is ultimately brought to a vote in some form. If you are going to get judicial zoning, that will not satisfy anybody.

MR. GERSHEN: Senator, I don't know how the judge arrived at 2100 in Holmdel.

SENATOR GREENBERG: Nor do I.

MR. GERSHEN: He did so by listening to a professional planner like myself. He came in and said, "Twenty-one hundred." If it were 2900 or 1100, it would have been similarly irrational - correct from his point of view or mine, but similarly irrational from that point of view. I think it is obligatory on the part of the Executive in this State to produce such a study and make it part of the public record now, and then let's continue the discussion that you and I and others are having. But, let's not wait necessarily for the adoption of 3100, because I need that tool, that study, in the daily performance of my work. I suggest that every planning board member would welcome that kind of study; every judge would welcome that kind of study.

Maybe, in Holmdel, 2100 is the real number, but I would like to know what the municipality next door needs, how they are going to be treated, do we have to rely now upon a court case before every municipality in Monmouth County does their thing, and how will they do it. That is why I take the approach I do which suggests that the existing laws on the books should be enforced to give the power to the Executive to move now.

ASSEMBLYMAN VAN WAGNER: You see, it's like the dog chasing its tail. In the absence of a study, there will continue to be counter-litigations against the concepts---

MR. GERSHEN: Assemblyman, we can agree on one thing. I think everybody in this room will agree on one thing: The one place it should not be decided is solely in the courts. That is the great danger. By the Legislature not acting, and by the Executive not acting, the courts will, because you have consumer groups and advocacy groups that take municipalities into court, and they have to act. That is what I fear. I don't fear the court acting, but I fear decision-making by the judicial process rather than by the administrative process.

SENATOR GREENBERG: Assemblywoman Burgio.

ASSEMBLYWOMAN BURGIO: On the fifth page of your prepared statement, you asked, "Must every 'developing municipality' provide every possible type of physical housing . . .?" I wonder about that myself in connection with very small municipalities that may not have any industry and may be close to other municipalities that supply other---

MR. GERSHEN: In my view, clearly there were a number of municipalities exempted even in a developmental area. The Wenonah case, which came down

in the Appellate Division, was one case in point. This would pertain to the boroughs, the 400 or 600 acre municipalities, which would not take an overall number of units, if they were built for low income housing, if they themselves were not necessarily developing. There are other areas in the State that the court did exempt - not being developing municipalities. There is no guideline at all that can be universally adopted throughout the 21 counties that addresses itself to that problem. I could write a treatise and address myself to the problem and tell my 30 municipalities, "This is what I believe." Another professional planner might come up with another set of observations. All I am suggesting is that a common set of observations would be better than no observations at all. That really is the thrust of what I am saying. If Community Affairs came forward with that, which I maintain they have the legal responsibility to do, we might pick it apart and differ here and there, but basically we would be differing from something.

ASSEMBLYWOMAN BURGIO: You would have a formula to start with.

MR. GERSHEN: Precisely.

ASSEMBLYWOMAN BURGIO: What actually is the definition of "developing communities"? There are some communities that are partially developed but still have available land. They claim they are not developing anymore because their land has already been set aside for certain uses.

MR. GERSHEN: That question also ought to be addressed.

ASSEMBLYMAN VAN WAGNER: Mr. Gershen, thank you very much for your comprehensive testimony. Our next witness will be Sidney Willis, Assistant Commissioner in the Department of Community Affairs, and you might be interested in his testimony. Mr. Willis.

S I D N E Y L. W I L L I S: Members of the Legislature, my name is Sidney Willis, Assistant Commissioner in the Department of Community Affairs and a Professional Planner within New Jersey. I have a very brief statement which I would like to read. I am accompanied by Richard Ginman, who is the Director of the Division of State and Regional Planning in the Department of Community Affairs. Since, apparently, your Committee has some questions of the Department, perhaps we should make ourselves available for that following a brief introductory statement.

In our opinion, Senate 3100 is a bold and forthright effort to establish an administrative procedure, under legislative guidelines, for overcoming exclusionary zoning. No professional can disagree with the need for some substantial legislative statement in the present climate of excessive litigation and confusion in New Jersey municipalities. Maintaining the constitutionality of municipal land use regulation is a goal we all share.

Senator Greenberg and his staff are to be complimented for the great effort which has gone into this very difficult area of concern. However, the efficacy and efficiency of the procedures proposed in the present draft are in doubt in our minds. The Department of Community Affairs staff questions the practical wisdom of many of these provisions. The defects in the details of what has been proposed can be pointed out and better procedural alternatives suggested. Our most serious objection is the attempt to be so detailed in delineating the means for changing from exclusionary municipal planning and zoning to inclusionary use of these tools. The art of inclusionary planning and zoning and of overcoming exclusionary misuse of these powers is in a relatively early stage of development. There must be some substantial room for experimentation and adaptation from experience with actual situations without establishment in legislation of so detailed a procedure as to preclude

testing.

The danger in enacting S. 3100, as written, without substantial simplification is that it would lead to a mammoth set of detailed processes which could conceivably cost the State, counties and municipalities millions of dollars initially, with no real assurance that the benefits achieved would justify the expense and effort required.

If I may suggest, the Legislature would be better advised to establish a more skeletal procedure for State administrative review. The model might be the issuance of regulations by a department head or that suggested by another system of regulation of political subdivisions of the State, that of the school districts by the Department of Education and the State Board of Education, following general - and I want to stress "general" - legislative criteria.

Finally, we do feel that some progress - and I hope substantial progress - can be made under existing legislation. I believe the Governor intends to proceed, in so far as possible, administratively to assist municipalities to meet the mandate of the Mount Laurel decision. This should proceed as the Legislature grapples in a parallel way with these difficult issues.

In summary, we do need legislation, but much more flexible legislation than is suggested here, which allows for experimentation and evaluation of the results as we proceed. The state of the art in the practical conduct of the profession of planning and the practical applications of planning in municipal and county governments in New Jersey at the present time does not allow for the elaborate procedure that is now written within this bill. We are not sure what the results would be.

We will be pleased to work with your staff on your timetable, Senator, to help prepare a more workable bill which would help us to proceed along the lines that you

are suggesting.

I would be happy to try to answer any questions as to where we are and what our laws are, and Mr. Ginman will assist me.

SENATOR GREENBERG: Thank you, Mr. Willis.

A suggestion has been made by the last witness that you already have the authority to proceed with the survey contemplated by the bill. First of all, do you agree with that; and, secondly, what, if anything, have you done in that regard?

MR. WILLIS: Without having thoroughly studied Mr. Gershen's statement and the legislative citations, I still would be willing to say that we do have the authority to proceed with that kind of survey and with that kind of allocation. I would go a step farther and suggest that we have so advised the Governor from the Department of Community Affairs.

SENATOR GREENBERG: When you say "with that kind of allocation," will you explain what that means?

MR. WILLIS: The allocation study that ultimately arrives at conclusions from an over-all analysis of the needs of the State, the housing needs and the socio-economic factors, what the housing needs would be in each jurisdiction within New Jersey or perhaps only in developing jurisdictions. The precise details of that we are still looking at from a technical point of view. But that is a study and an analysis not unlike studies that have been published by the Department and its predecessor, the Department of Conservation.

I might suggest that the Department just recently published its analysis of need as a first step in that process. We did publish simply the location at the present time. We recognize it does not meet the mandate of the Mount Laurel decision in the sense that it does not project needs; but, at the present time, within municipalities,

these are the housing needs for low- and moderate-income families. That is a long way from either the definition of "housing needs" as we find in the Mount Laurel decision or in the kind of analysis that Mr. Gershen has described. But that is a tentative opening statement.

I think it is necessary to proceed in that manner as well because we need some reaction. We need municipalities to indicate where the procedure is wrong. We need other technical people to respond to what we have done.

I don't think that dropping on the State at the present time the survey and the study of the over-all needs of housing in every municipality is a wise course of action. I do believe we should be proceeding with or without additional legislation, and I do believe we are proceeding.

SENATOR GREENBERG: How long do you contemplate such a study would take?

MR. WILLIS: Senator, we have made estimates of how much time would be required to meet various steps along the way, based on the technical studies of the Division. But I think it is inappropriate for me at the present time to announce a timetable because we, ourselves, are seeking approval of that timetable by the Commissioner and the Governor.

I would like to point out, if I may, that I hope we are not sliding away from the word "survey" into the kinds of provisions that are within 3100.

SENATOR GREENBERG: What is the difference?

MR. WILLIS: On page 14, at the bottom of the page, "If the governing body fails to formally adopt by ordinance said land use regulations or housing development program ordinance within 30 days of their transmittal, the commissioner shall adopt and promulgate said land use regulations or housing development program prepared by or for the commissioner which shall be binding on said municipality."

I know of no existing authority in the Department of Community Affairs without this kind of legislation.

SENATOR GREENBERG: You don't have it?

MR. WILLIS: No. I am sure there are other aspects of this bill that are certainly not within our present legislation as well, particularly the role the counties would be expected to play, which I don't believe they would play without some additional legislation.

SENATOR GREENBERG: You are in the area now of enforcement, distinguished from ---

MR. WILLIS: Yes. Without question in my mind, the survey, the studies, analyses and publication of housing needs are an obligation of the Department of Community Affairs and should proceed even as you consider your legislation.

SENATOR DUNN: Well, it is interesting. It is obvious from Mr. Willis's comments, no matter how complimentary he wants to be, that the Department of Community Affairs opposes this piece of proposed legislation at this time as it is now worded. On the other hand, the Public Advocate strongly embraces the proposed legislation. So you have a definite conflict in thinking.

Getting back to Mr. Gershen's testimony where he makes reference to Title 52, Article II, Chapter 27C-18 of the Revised Statutes of the State of New Jersey, he claims that it is not only a responsibility but clearly an obligation of the Department of Community Affairs to conduct such a study or survey that would lead to the eventual elimination of exclusionary zoning based on the findings of the people who would conduct it.

I would like to suggest that perhaps Mr. Van Ness meet with Commissioner Sheehan and others in her department to acquaint her with this statute and, if need be, require of the Department of Community Affairs to immediately start such a study; that is, if Mr. Gershen's interpretation of the statute is correct. It seems to me

paramount that these two departments get together and guide the Legislature as to whether or not S-3100 is absolutely necessary at this time.

MR. WILLIS: Senator, if I may, the Department of the Public Advocate took no final position on the bill. I think they were quite clear in that respect.

For myself and our Department, we are not here to oppose or endorse this bill. We are here in the spirit of trying to work with your Committee in terms of what would make sense from a technical and administrative point of view if the Legislature so chooses to proceed in this area. We all have - and I think we share with your Committee - concerns as to whether the Legislature will be able to, but that is a judgment that you must make, not we. I think that we cannot simplify this discussion in terms of "Are you for it, or 'agin' it?"

We read that Mount Laurel decision and we read all of the problems of the last two decades in planning in New Jersey and we are concerned about what has been happening. And we want to see progress made in the Judiciary, if necessary, in the Legislature and in the Executive Branch. We are in that spirit, if I may say, and not to be in conflict with the Public Advocate.

Concerning Mr. Gershen's statement, I believe I have tried to be clear that in so far as the suggestions are that the Department of Community Affairs has the authority to conduct studies and surveys and to recommend what housing is needed in various parts of the State, there is no question that that legislation exists. There is lots of language going back all the way to 1944 which allows that kind of procedure. And we try to be wise in our use of the authorities and the powers that we have.

What I am trying to suggest, however, is that there is no legislation which mandates municipal compliance with the proposals that are made in so far as housing needs from

the State level or even from the county level. Whether that is necessary is something that the Legislature must deal with. We can't do otherwise in our Department than to proceed as we have been, perhaps too slowly in many people's judgment, perhaps too slowly in your judgment, sometimes too slowly in my judgment. At any rate, we are moving along, trying to work with our counties and our municipalities. But the end of the road, so far as we are concerned, is our ability to say, "Look, these are the needs; they are going to be clearly documented." I hope there will not be too much technical disagreement with the procedure, but whether the municipalities will do anything about it or not remains in our view something that we can't answer.

If the Legislature feels that they will not - and there may be grounds for that conclusion - you must then decide whether you want to proceed to make that process more mandatory.

I think that is the best I can do in explaining where we are.

SENATOR DUNN: Except, Mr. Willis, if I understood you correctly, you said that you were going to bring part of Mr. Gershen's testimony to the attention of the Governor.

MR. WILLIS: I don't remember that at all, Senator.

SENATOR DUNN: Yes, you did.

MR. WILLIS: I said that the recommendations and the conclusions of the Department in response to the Mount Laurel decision are that it is possible for us to make a study, as we have already begun to do and of which we have published the first chapter, which would indicate the housing needs of the jurisdictions in compliance with the Mount Laurel decision. We can do that. We have suggested to the Governor that that might be a valuable thing to do at the present time, and we may very well proceed in that direction. I am just not in the position to

say we will or we will not. The fact is the laws are all there. We all know the laws are there.

SENATOR DUNN: If the laws are there that require compliance with the Mount Laurel decision, why then are we wasting our time talking in terms of new legislation? I am sure that Senator Greenberg can spend his time on other important matters, without taking the time to author new legislation to comply with the Mount Laurel decision, if we already have enough laws on the books, if enforced, to mandate compliance. That is the point about which I am concerned: not only has there obviously been dereliction down through the years on the part of a lot of agencies, including municipalities, but obviously there have been some clear violations, if this premise is correct that there are enough laws already on the books. I thought I heard you distinctly say that you were going to bring this particular statute to the attention of the Governor, relative to the conduct of a survey or a study. It would seem to me that this would be the first step, to have your Department conduct such a study that would guide us in our future actions rather than putting more laws on the books that would only complicate things.

MR. WILLIS: Senator, I think if this bill were simplified, it would not complicate the process; it might assist because it would then have the further authority of the Legislature in so far as conducting the studies. But that is not so essential to your discussion of this as is the concept of the mandatory aspect of this, which is within your bill, the bill that you are contemplating. That does not exist in the law at the present time and there is no authority in the Department of Community Affairs to make this mandatory.

SENATOR DUNN: But doesn't the Mount Laurel decision make it mandatory?

MR. WILLIS: I believe it makes it mandatory for us

to advise every municipality in New Jersey as to what their fair share is of the projected needs of the region of which they are a part.

SENATOR DUNN: Under existing statutes?

MR. WILLIS: Under existing statutes.

SENATOR DUNN: Under existing powers given to the Department of Community Affairs?

MR. WILLIS: That is correct.

SENATOR DUNN: So, on that score, at least, you are in agreement with Mr. Gershen's testimony?

MR. WILLIS: Yes.

ASSEMBLYMAN KOZLOSKI: One simple question: In your opening testimony, you said within this bill there is not contained enough, in so far as experimentation and testing. Could you elaborate or clarify just what you meant by that?

MR. WILLIS: Just a simple illustration: the notion of five years. I don't know whether five years is the proper number. The DVRPC about which Mayor Holland talked projected this thing out to the year 2000. That seems an awfully long time. To make it a few years makes it technically impossible to conduct the procedure that is described here. I would like to have more flexibility if I were administrating this law. I think that the Legislature should say short-term goals and middle-term goals and long-term goals and then we will try five years. At the end of the second year, if we find it is not working, maybe we ought to make it seven years. That is what I am suggesting.

I don't think that one can reasonably come back to the Legislature to change all of those little procedures. I would rather hear from you, if I may, in terms of your policy guidance, your policy judgment, as to what you want; then we will try to work out through the public process of publishing and hearing and knowing what other people in the

field think should be done, the step-by-step procedure through administrative regulation rather than through legislation. That is all I am saying.

ASSEMBLYMAN KOZLOSKI: Thank you.

SENATOR GREENBERG: Thank you, Mr. Willis.

We want to take a luncheon break; but,if Mr. Sussna is here, we will hear him now.

MR. SUSSNA: I will try to be quite concise, Senator.

SENATOR GREENBERG: Do you want to identify yourself, please.

S T E P H E N S U S S N A: I am Stephen Sussna. I am a professional planner and a lawyer, and I do have a statement that gives a little outline of my background.

I would like, before I start reading this statement, to comment on a number of the questions and answers that have taken place within the last thirty minutes or so.

There has been some discussion concerning Title 52, Article II, Chapter 27C-18. I think, ladies and gentlemen, if you examine this with any care at all - this legislation was passed in 1944 - you will find that it is not in any shape or manner a fair housing allocation piece of legislation. Let me read it to you so that the point, I think, becomes rather obvious. You will find with a moment's reflection that it is essentially something that was passed during World War II that dealt with the issue of slum housing and blighted housing. Let me read it for you: "Investigate living, dwelling and housing conditions and into the means and methods of improving such conditions; determine where slum areas exist and where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; make studies and recommendations relating to the problems of clearing, replanning and reconstructing of slum areas and the problem of providing

dwelling accommodations for persons of low income, and cooperate with any public body in action taken in connection with such problems; and engage in research studies and experimentation on the subject of housing."

Now, I think that once there is a thorough job done in comparing this piece of legislation with the proposed S 3100, the point won't really be debatable. They are two different kettles of fish.

A couple of other comments: There has been a big to-do about big sticks being used frequently. Well, that is pure unadulterated nonsense. In Pennsylvania, you have had a situation known as the Upper St. Clair instance, where the Pennsylvania Department of Community Affairs has made an effort to restrict this very affluent community near Pittsburgh from getting some recreation funds. There is another example that could be used for Mayor Holland's discussion where one old central city with all sorts of central city problems tried to thwart a surrounding municipality.

I do have some perspective because I am Chairman of a couple of American Bar Association Planning and Land Use Control Committees and I have acted as a one-man clearing house for material of this sort. And I could, if you wanted me to, go into greater detail on some of the points that have come up during the course of the morning and afternnon in the different dialogues. But I think in consideration of the fact that we haven't had our lunch and the brevity of human existence, I had better start reading this short statement. I will distribute copies. Then we can pursue this in greater detail.

During the last twenty years, before the term "exclusionary zoning" was coined, I had the dubious distinction of working, writing, and lecturing about the evils

of large minimum lots sizes; prohibitions against apartments in suburbia; unreasonable mobile home park prohibitions; and other ills that the Mount Laurel Supreme Court decision sought to remedy. I am not telling you this because of vanity. For, the truth is that I have lost substantial sums of money by this quixotic behavior that has included the preparation of a 1969 Master Plan for Mount Laurel that advocated housing reforms in the Township's Springville area for low and moderate income people. All I am attempting to do is to briefly illustrate that I am not a "Johnny-come-lately" in this battle. And yet, I have tried not to be a professional opponent of many municipal concerns and apprehensions.

What contributions can I offer as you deliberate on this important and complex issue?

May I suggest that as a result of the Mount Laurel Court decision, there are really only four options open. These can be designated as: firstly, the Judicial Approach; secondly, Municipal Remedies; thirdly, Administrative Remedies; and, fourthly, a Legislatiave Attempt, such as manifested in S 3100.

Let's start then by a brief examination of what the judicial approach entails. Whether one is in accord with the Mount Laurel and related decisions or not, it seems to me that a fair-minded person has to acknowledge that our New Jersey courts have gone about as far as the judiciary can go on this issue. Clearly, opponents of anti-exclusionary zoning decisions would argue that the courts have gone too far. And I doubt if even the most fervent opponent of exclusionary practices would find that the Mount Laurel decision lacks in thoughtful resolve to remedy this very vexing problem.

The fault, then is not with an equivocating Supreme Court. When it finally spoke, the Court left no doubt about its position. However, in the very nature of the

judicial process, there is built in ad hockery. Although some argue that the New Jersey Supreme Court has engaged in legislative activity, there are obvious limits to its potency in this field.

For, quite properly, the courts will engage in their deliberate case-by-case approach. That is the very nature of this branch of our government. One should not be surprised by a Wenonah-type decision which took into account the fact that a small built-up community should not be equated with a municipality that has large tracts of buildable land. As far as the Mount Laurel case is concerned, the judicial approach still means that the New Jersey housing problems will be dealt with in a slow, costly, piecemeal and haphazard manner. The conflicts between the cases will cause bedevilment. Notwithstanding the Mount Laurel decision, it is likely that some New Jersey courts will continue to follow a more traditional and conservative policy where a court defers generally to the municipality's legislative value judgment inherent in a regulation's goals and means. For example, over the years I have been very much impressed by Michigan's so-called "preferred-use doctrine," whereby their courts sought to protect such controversial uses as apartments and mobile home parks from municipal exclusionary tactics. So what happened? Only recently that outlook, that approach, has been frustrated. (See: Kropf vs. Sterling Heights, 391 Mich. 139, 215 NW. 2d.79, 1974)

The inherent expenses, delays, and inconsistencies won't help those who need housing, need jobs, need business, need clarity. The judicial approach, then, won't work by itself. If we are sincere about an effective, economical, orderly and prompt remedial action, resort will have to be made to supplemental means.

Now let's consider municipal remedies. In an article that appeared in the Trenton Evening Times of May 21, 1975,

there was this comment, and I quote: "The Governor said the Supreme Court decision on the Mount Laurel zoning ordinances (sic) already has resulted in changes in local zoning without any new state legislation."

It may very well be that some municipal officials have attempted to comply with the strictures set forth by the New Jersey Supreme Court. Without disparaging the good will and good sense that exist in municipalities throughout this state, if one strives to be realistic, one has to question the aforementioned newspaper comment. How many municipalities have or will substantially and promptly dig out deeply-imbedded exclusionary practices that are rooted in the deep soil of serious social, financial, and political concern? How much foot-dragging and tokenism will there be in comparison to sincere, effective, and expeditious compliance with the spirit of the Mount Laurel decision? No one, of course, knows the answer so soon after the decision. But one does not need to be a prophet to predict that the odds are great that complete reliance on municipalities to significantly remedy on their own the housing ills that the court and a host of other reputable bodies have recognized is either imbecility or roguery. While some municipal officials will conscientiously attempt to remedy the problem - and I speak here from a perspective of having worked with a great number of municipalities in this State and in states throughout the Union - others are filled with bitter resentment.

Determined land use control dodging and opposition will make the record of school desegregation and non-compliance look feeble. For the stakes in tearing down the walls of suburban restrictionism are much higher than school desegregation. For, inclusionary land use control includes school desegregation and more that is controversial. So replete with shortcomings is an approach that would place total reliance on our municipalities to

cure this problem, that its elimination does not deserve further comment. Happily, S-3100 does provide a mechanism for significant contributions by municipalities.

Thirdly, let's consider the so-called administrative approach. Governor Byrne is reported to be considering administrative action to encourage municipalities to comply with the Mount Laurel decision. Again this story appeared in the Trenton Evening Times, May 21, 1975. We all know that the New Jersey Department of Community Affairs is involved in regional planning, and through its Housing Finance Agency, it lends money to develop low and moderate income projects throughout the State. A variety of carrot and stick measures could be devised to enforce the Supreme Court's decision, but they haven't been, and I mentioned the Pennsylvania instance pertaining to Upper St. Clair.

This talk about the use of administrative action in New Jersey disturbs me. This is not because I am against using all branches and all levels of government and private industry to speedily provide adequate housing in good environments. Resort to administrative action that seeks to bypass the legislatave process is, in my mind, a very troublesome thing. At best, it reflects administrative desperation; and, at worse, it flouts our system of government. Is so important a matter as setting up and overseeing a policy crucially important to millions of New Jerseyans to be defaulted by their Legislature? Are the choices legislative inaction or administrative fiat? F.D.R.'s first 100 days showed us the value of executive leadership and performance of legislative responsibility. The tragedy of Vietnam showed us the results of a legislature that, to a large measure, abdicated.

Within this building, legislative leadership has resulted in an environmental land use law that has been commended throughout the nation. In recent years our Legislature has passed significant flood plains, wetlands, and coastal laws. These dealt with difficult and innovative

matters. Impasses concerning taxation and housing notwithstanding, I do not believe that our New Jersey Legislature lacks the determination and skill to pass legislation that will take up its responsibilities where the Supreme Court left off, and that will establish policies and standards for the Executive Branch to administer. If I am wrong in my assumptions, then either a bad housing and economic situation will get worse, or we will witness the spectacle of an emasculated Legislature full of sound and fury but signifying nothing.

Finally, a few comments concerning the legislative attempt known as S-3100: From the perspective of one who has read housing and land use control legislation from all parts of the nation and who has been involved as a practitioner, I unreservedly testify that S-3100 is a meaningful response to a multitude of perplexing questions. An exhaustive point-by-point analysis is not necessary to convince one that this bill seeks to provide a statewide, and I might add, over-all framework that incorporates technical soundness and procedural fairness to resolve some very serious problems.

Let me just mention a few examples. I have read the legislation, although I haven't memorized it.

1. Section 4, page 3, sets forth the requirement of having the New Jersey Department of Community Affairs ascertain housing needs and formulate goals for fifteen years. This is important to a great many New Jerseyans--those people who need housing, governmental officials, builders, their suppliers, environmentalists, and many other groups. Currently, we are at sea without a rudder as to what has to be done, where it is to be done, and who is going to do it. The Federal legislation announcing a 26 million dwelling unit goal over ten years, was at the least a start in this direction. If the immorality of an unrealism based on ignorance or indifference is to be ended, we have to fully know our housing needs and how to fulfill them.

2. On page 4, section 4c, mention is made of identifying high density

and high growth areas. One does not have to be a professional planner to realize that there has to be a constant monitoring of this type of data.

3. Up and down this state, ignorance is in action concerning the setting of residential densities. Numbers are pulled out of the air in a cavalier Russian roulette fashion, when it comes to determining the number of garden apartments that should be allowed on an acre. Should it be 8 units, or 16 units, or a compromise of 12? All sorts of higgling and haggling takes place on an issue that is crucial not only for builders intent on maximizing densities for greater profit, but for those of us who are concerned with the waste and venalities resulting from sprawl and scatteration. Page 5, section 4e, of S.3100, would remedy these evils by requiring the preparation of standards for determining feasible and desirable density levels.

4. If there is sincerity about safeguarding our environmental advantages, then fair-share housing allocations will have to be in harmony with fair and competent application of pertinent standards. S.3100 on page 5, section 4f, empowers the Commissioner of the NJ Department of Community Affairs to "identify and delineate geographical areas with high development potential based upon proximity or accessibility to major employment centers, the availability of vacant, developable, or redevelopable land, and proximity or accessibility to major employment centers, recreation facilities, school, transportation, and parking facilities, and open spaces, adequate to meet any projected densities for such areas and as may be consistent with appropriate environmental standards or considerations."

I have touched briefly on provisions in the proposed legislation that deal with consultation with municipalities and counties. Those are found on pages 8 and 9 in Sections 11, 12 and 13.

One could go on and on with an account of the substantive depth and sweep of S-3100. It affords New Jersey

counties and municipalities a useful and participatory role in meeting the needs of their residents and those of all New Jerseyans. It would fill an important void, ladies and gentlemen. In my opinion, it would help implement a document approved nearly 200 years ago.

Thank you.

SENATOR GREENBERG: Thank you, Mr. Sussna. I appreciate your coming down and giving us the benefit of your views on this bill.

Senator Dunn, do you have any questions?

SENATOR DUNN: Are you Mr. Greenberg's brother-in-law?

MR. SUSSNA: No. This is the second occasion that I have had the opportunity to see Mr. Greenberg.

SENATOR GREENBERG: That's right.

I suggest that we take a break for a half hour and come back and finish the session.

(Half-Hour Recess)

SENATOR GREENBERG: We are going to resume our hearing now on a bill that is pending before the Legislature having to do with housing.

The next witness will be J. Lynch.

J O H N J. L Y N C H: Good afternoon. My name is John Lynch. I am a Professional Planner, Consultant in Planning and Housing, with over 15 years' experience in the field. I am a licensed Professional Planner, a Full Member of the American Institute of Planners, a member of the National Board of Directors of the American Institute of Housing Consultants, and immediate past president of the New Jersey Chapter of the National Association of Housing and Redevelopment Officials. I am a partner in the firm of Queale and Lynch. In the planning field, the majority of our clients are municipal planning boards, while our housing clients, for the most part, are non-profit housing corporations. Virtually all of our work is in New Jersey.

Over the last few years, ever since the historic Superior Court decisions involving the Townships of Madison and Mount Laurel, our municipal clients have become increasingly aware of the need to provide housing opportunities in some fair proportion to the housing needs of the region. With the Supreme Court's affirmation of the Mount Laurel decision, the role of local zoning as it relates to housing needs has been established.

However, even though the role of local zoning has been established in the area of housing needs there is still room for considerable debate as to the actual need in each municipality and in each county. This debate focuses on several issues when viewed locally. Assuming the best of intentions by a municipal planning board, it must make several decisions before this element of zoning can be adequately handled. The first issue is the region itself. What is the region? Is it where people live and work? Is it the county? Is it a group of municipalities? Does it cross state lines? The many problems associated with the definition of a region would be solved if the counties were defined as the region and had the responsibility for establishing housing needs for municipalities within the county. In this way the counties could deal with some of the variables that are difficult for local government to deal with, such as regional sewer plans, highway plans, job locations and other similar planning elements.

A second issue is projected levels and characteristics of the population, including family size, income, age and other factors which bear so significantly on the nature of the housing stock in the future. Determinations of these characteristics at the regional level would simplify the local zoning and planning process considerably.

A third issue is the question of how much housing is enough in each municipality? This is probably the area of greatest concern at the local level. Municipal officials consistently voice concern about the repercussions of providing housing opportunities in a zoning ordinance while those around them fail to do likewise. Many feel as though they will become the repository for regional

growth rather than a reasonable part of it. Municipal officials, in my opinion, would be much more comfortable in amending local zoning ordinances if they were convinced that the other municipalities in their area were acting with a similar level of good faith.

I raise these basic points to indicate to you my support of the concepts set forth in the bill. I feel some device for measurement of the need has to be established in a way that is fair to all of us as housing consumers while at the same time recognizing the legitimate concerns voiced by local officials. If a municipality is to provide adequate housing opportunities based on regional needs, it cannot be expected to establish the regional needs.

I would like to briefly discuss this bill from the point of view of subsidized housing. With the establishment of allocations by county and municipality, government agencies such as the U. S. Department of Housing and Urban Development and the New Jersey Housing Finance Agency would be able to process applications for specific projects with a greater sense of priority based on need than has existed to date. Certainly, the need for subsidized housing is increasing at a significant rate and there is a great probability that insufficient subsidy funds will be available to meet the need. This makes it all the more important to have a housing plan statewide so that all of us in the subsidized housing field can direct our efforts where the greatest benefit can be felt.

I have avoided discussion of specific elements of the bill. I will relate my comments to your staff.

Thank you.

SENATOR GREENBERG: Do you have a view with regard to the bill on whether or not it accomplishes the objectives you have just discussed?

MR. LYNCH: I think in the broad sense it does and I participated in some of the staff work with your Committee.

One of the things that I think is a good element of the

bill is that it provides a reasonable projection ahead in years for establishing a need. It now calls for a 15-year projection. I think it doesn't quite handle it in the way that I think it should be handled in terms of a 15-year projection. I think the 15-year projection should be made every 5 years. The way the bill is written it calls for a review of it every 5 years, but the 15-year projection is only made every 15 years.

SENATOR GREENBERG: So you would have a 15-year projection made every 5 years?

MR. LYNCH: That's right. You are constantly dealing with a 15-year look ahead because the problem in dealing with it the way you have it set forth now is that as you get toward the end of the 15-year period, you start to run out of numbers to deal with until a new set of numbers is developed.

ASSEMBLYMAN VAN WAGNER: But you would say that the bill accomplishes perhaps much of what previous testimony has pointed out has not been accomplished?

MR. LYNCH: Yes.

ASSEMBLYMAN VAN WAGNER: That was the cause of part of my confusion with regard to some of the testimony because it seemed to be contradictory. You have had more intimate knowledge of the legislation, having participated somewhat in its preparation, and have pinpointed the fact it accomplishes all the things that everybody said had to be accomplished.

MR. LYNCH: I think that is fair to say, yes.

SENATOR GREENBERG: Let me interrupt for a second. Suppose the bill dealt with this concept on a voluntary basis as opposed to a mandatory basis; what would be the effect in terms of accomplishing the results we seek to accomplish?

MR. LYNCH: At which level?

SENATOR GREENBERG: Ultimately in providing for the housing set forth in the allocations resulting from the survey.

MR. LYNCH: At the local level?

SENATOR GREENBERG: At the local level.

MR. LYNCH: I don't think the effect would be much different. If you talked about voluntary actions at the county level, I think you would have a problem because I don't think the counties are willing to act on housing allocation voluntarily. That is my observation.

SENATOR GREENBERG: Let me see if I understand you. What you are saying is that once there is a countywide adoption of an allocation for the municipalities, the rest would flow.

MR. LYNCH: I think it would.

SENATOR GREENBERG: To get to that point, you don't think a voluntary approach would be effective.

MR. LYNCH: Yes, unless you get past the county level, I don't think a voluntary approach would be effective. In other words, I don't agree with the use of the administrative mechanism, having the State set forth a formula by counties and then having the counties go forward and set forth those allocations by municipalities, because I don't think it is going to happen. You only have a few counties in the State that have the guts to go ahead and attempt to do it with a lot of repercussions within the county because it is all conjecture really on the part of the planning staff for the most part as to how great the need really is in that county. They are not working with any figures from a higher source.

ASSEMBLYPERSON BURGIO: Do you think that the municipalities would be more likely to operate on a voluntary basis than the counties?

MR. LYNCH: Yes, because they are still going to be subject to review of their actions by the courts. That

has been mentioned time and again this morning as a time-consuming process and we are burdening the courts with these actions. I don't know how you are going to get around it. You can't pass legislation which can totally avoid litigation. There is no way that I know of doing that. They may be able to set up boards of review and that kind of thing, but, assuming that the municipality doesn't agree with the board of review's finding, you are still going to end up in court. Based on my own experience, and I am now working in between 20 and 25 municipalities in the development of zoning ordinances, I would say, without exception, when we present the nature of a fair-share procedure to a municipal planning board and a municipal governing body and they understand what the approach is, they are only going to go as far as they have to go to meet their fair share. That is really one of the serious questions they ask: How far do we have to go to survive a court test? It is an unfortunate question to ask by a local official. They ask it with good reason. They don't want to be the only one who is going to end up zoning to accommodate a variety of housing types. They all feel as though they are the first one out on the end of that limb, getting ready to make that decision.

We have succeeded in working with municipalities and getting them to adopt zoning ordinances which do reflect a measure of their fair share of the regional housing need. The way we do it is: We attempt to look at the regional population projections which go down to the municipal level and convert that into housing units by projecting age characteristics and family-size characteristics, so that we can get an understanding of the nature of the housing stock. Then we zone to accommodate that housing stock. And that approach has a high level of local acceptance, as long as they feel they are not going to have to zone every last acre of their town in PUD's to accommodate

garden apartments and town houses. They feel as though they have a responsibility, they recognize the Mount Laurel and Madison decisions, and they know they are going to be taken into court if they don't do something. They want to do enough so they don't lose in court.

SENATOR GREENBERG: --- and not too much to absorb beyond their fair share.

MR. LYNCH: That's right.

SENATOR GREENBERG: Any other questions?

ASSEMBLYMAN VAN WAGNER: It would seem, if I am reading you correctly, that you would tend to steer away from the course that was mentioned, I think, by Mr. Gershen, that we simply complete a study, define some of the terms, such as "developing area," and then allow the laws that are presently in effect which have been interpreted by the courts in the Mount Laurel and Madison cases to become the implementation of a housing or zoning plan. You would tend to steer away from that and say that this kind of legislation - and I am not trying to pin you down - is probably going to serve to offset some of the local concerns that will take place which would remain unchanged under some of the recommendations that were made previously.

MR. LYNCH: That's right. I don't think that just using a study approach at the State level would work, because, as I said before, I don't think it would get past the county level. If the State tried to go all the way down to the municipal level, I think it is beyond their reach. In other words, I think it is getting down to too fine a level of detail.

ASSEMBLYMAN VAN WAGNER: That is the point I made before. I think the only way the State could step in and do this is by simply saying that the municipality will now only operate in an advisory capacity vis-a-vis zoning.

MR. LYNCH: That's right.

One other point: There was discussion this morning

about the carrot-and-stick approach of withholding State grants to municipalities that would not comply with the essence of the Mount Laurel decision or the essence of S-3100. It seems to me if you use a carrot-and-stick approach, it is not going to reach the municipalities that should be reached. The ones which are probably practicing the highest level of exclusionary zoning would be the ones who would be most able to withstand that pressure.

ASSEMBLYMAN VAN WAGNER: --- and, in fact, now receive the lowest level of funding.

MR. LYNCH: Yes.

ASSEMBLYPERSON BURGIO: They don't need the carrot.

MR. LYNCH: Right. They don't need the carrot. That is exactly right.

SENATOR GREENBERG: Thank you very much, Mr. Lynch. We appreciate your coming.

Edwin Knapp.

E D W I N H. K N A P P:

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS EDWIN H. KNAPP. I AM DIRECTOR OF PLANNING FOR THE DELAWARE VALLEY REGIONAL PLANNING COMMISSION (DVRPC), WHOSE CONSTITUENT GOVERNMENTS INCLUDE THE STATE OF NEW JERSEY, THE COUNTIES OF BURLINGTON, CAMDEN, GLOUCESTER AND MERCER, AND THE CITIES OF CAMDEN AND TRENTON; AS WELL AS THE COMMONWEALTH OF PENNSYLVANIA, THE COUNTIES OF BUCKS, CHESTER, DELAWARE AND MONTGOMERY, AND THE CITIES OF CHESTER AND PHILADELPHIA. I AM APPEARING TODAY TO SHARE WITH YOU OUR EXPERIENCE IN THE PREPARATION AND USE OF HOUSING ALLOCATION PLANS.

ON JULY 25, 1973 THE DELAWARE VALLEY REGIONAL PLANNING COMMISSION ADOPTED A REGIONAL HOUSING ALLOCATION PLAN FOR THE NINE COUNTY REGION IDENTIFIED ABOVE.

THE REGIONAL HOUSING ALLOCATION PLAN HAD ITS ORIGIN IN THE DECISION BY THE DVRPC BOARD IN OCTOBER, 1971 TO PREPARE A PLAN FOR THE ALLOCATION OF LOW AND MODERATE INCOME HOUSING NEEDED IN THE NINE COUNTY REGION. AT THAT TIME THE BOARD ADOPTED A THREE-YEAR SCHEDULE FOR PREPARATION OF A REGIONAL HOUSING PLAN. THIS CALLED

FOR DVRPC (WORKING WITH THE COUNTY GOVERNMENTS) TO ESTIMATE TOTAL HOUSING NEED AND ALLOCATE IT TO THE COUNTIES IN 1972; FOR THE COUNTIES (WORKING WITH LOCAL GOVERNMENTS) TO PREPARE SUBCOUNTY ALLOCATIONS DURING 1973; AND FOR BOTH LEVELS OF GOVERNMENT, WORKING TOGETHER, TO COMPLETE THE PLAN (INCLUDING A PROGRAM FOR IMPLEMENTATION) DURING 1974.

THEREFORE, DURING 1972, DVRPC'S STAFF AND ITS TECHNICAL ADVISORY COMMITTEE ON HOUSING PREPARED ESTIMATES OF HOUSING NEEDS UP TO THE YEAR 2000 BY FOUR INCOME GROUPS FOR THE REGION AND FOR EACH OF THE NINE COUNTIES THEREIN.

THE 1972 PROGRAM REQUIRED THE ANALYSIS OF THE 1970 HOUSING STOCK, PREPARATION OF POPULATION AND HOUSEHOLD PROJECTIONS TO THE YEAR 2000, ANALYSIS OF HOUSING NEED, INVESTIGATION AND EVALUATION OF ALTERNATIVE METHODS OF ALLOCATION, AND THE PREPARATION OF SUB-COUNTY ALLOCATION CRITERIA.

ESTIMATES WERE MADE OF THE TOTAL ADDITIONAL HOUSING UNITS NEEDED FOR THE PERIOD 1970-2000 FOR ALL HOUSEHOLD INCOME GROUPS, INCLUDING UNITS REQUIRED BY HOUSEHOLD FORMATION; REQUIRED AS REPLACEMENT FOR REMOVALS CAUSED BY DEMOLITION, FIRE LOSS, COLLAPSE, OTHER CAUSES; AND REQUIRED TO PROVIDE AN ADEQUATE VACANCY RATE.

NUMEROUS ALTERNATIVE METHODS WERE INVESTIGATED FOR ALLOCATING THIS NEED. THE RECOMMENDED PLAN GAVE THE FOLLOWING THREE FACTORS EQUAL WEIGHT:

1. PROJECTIONS OF ADDITIONAL EMPLOYMENT IN EACH COUNTY.
2. THE POTENTIAL FISCAL CAPACITY OF EACH COUNTY TO SUPPORT NEW GROWTH, AS MEASURED BY ITS RELATIVE WEALTH.
3. DISTRIBUTION OF UNITS TO EACH COUNTY, BY INCOME GROUP, IN THE SAME PROPORTION AS HOLDS FOR THE REGION AS A WHOLE.

AFTER SIX MONTHS OF DELIBERATION AND PUBLIC HEARINGS, THE REGIONAL HOUSING ALLOCATION PLAN WAS ADOPTED BY THE COMMISSION ON JULY 25, 1973, AS MENTIONED EARLIER.

SINCE ADOPTION OF THE REGIONAL HOUSING ALLOCATION PLAN, PROGRESS OF THE COUNTIES IN PREPARING SUB-COUNTY HOUSING ALLOCATION PLANS HAS BEEN SPORADIC, WITH ONLY TWO COUNTIES COMPLETING AND ADOPTING PLANS BY JANUARY, 1975.

IN MARCH, 1975 THE ISSUE OF EXISTENCE OF SUB-COUNTY HOUSING ALLOCATION PLANS WAS BROUGHT BEFORE THE DVRPC BOARD IN CONJUNCTION WITH OUR A-95 REVIEW OF COMMUNITY DEVELOPMENT BLOCK GRANTS UNDER THE PROVISION OF THE 1974 HOUSING AND COMMUNITY DEVELOPMENT ACT. AT ITS MEETING ON MARCH 27, THE BOARD ENDORSED THE APPLICATIONS OF COUNTIES (AND MUNICIPALITIES WITHIN THEM) WHICH HAD PREPARED AND ADOPTED A SUB-COUNTY HOUSING ALLOCATION PLAN REASONABLY CONSISTENT WITH DVRPC'S PLAN, AND DEFERRED ACTION ON APPLICATIONS FROM COUNTIES (AND MUNICIPALITIES WITHIN THEM) WHICH HAD NOT PREPARED SUCH A PLAN, REQUESTING THESE COUNTIES TO SUBMIT TO THE BOARD A TIMETABLE FOR THE DEVELOPMENT OF A SUB-COUNTY HOUSING ALLOCATION PLAN. AS A RESULT, ALL MEMBER COUNTIES OF DVRPC HAVE NOW SUBMITTED A SCHEDULE FOR COMPLETION OF THEIR SUB-COUNTY HOUSING ALLOCATION PLANS DURING 1975. THUS ALL MUNICIPALITIES IN THE REGION WILL BE INCLUDED IN A HOUSING ALLOCATION PLAN BY 1976.

IN THE STATEMENT OF PURPOSE OF S. 3100, IT NOTES,

"THE LEGISLATURE, ..., FINDS THAT EXISTING LOCAL LAND USE CONTROLS ARE NOT INFREQUENTLY EXERCISED IN A MANNER THAT SERVES TO LIMIT THE NUMBER OF APPROPRIATE SITE LOCATIONS AVAILABLE FOR THE CONSTRUCTION OF CERTAIN TYPES OF DWELLING UNITS WITHIN MANY COMMUNITIES, NOTWITHSTANDING THE EVIDENT NEED FOR SUCH HOUSING WITHIN THESE COMMUNITIES AND IN THE REGION AT LARGE."

THIS REFERENCE IS TO EXCLUSIONARY REGULATORY DEVICES, A TERM THAT HAS BEEN MUCH TALKED ABOUT THIS MORNING. RATHER THAN CONTINUE TO CONTEST THESE DEVICES THROUGH PROTRACTED LEGAL TESTS, MANY PEOPLE BELIEVE THAT THE PUBLIC INTEREST WOULD BE BETTER SERVED BY ADOPTION OF "INCLUSIONARY" MEASURES.

I SHOULD LIKE TO CONCLUDE MY TESTIMONY BY QUOTING FROM A RECENT PUBLICATION OF THE POTOMAC INSTITUTE, ENTITLED IN-ZONING, A GUIDE FOR POLICY-MAKERS ON INCLUSIONARY LAND USE PROGRAMS:

"MOST OF THE LITERATURE ON EXCLUSIONARY LAND USE ISSUES DEALS WITH NEGATIVE REGIONAL EFFECTS OF LOCAL EXCLUSIONARY POLICIES. SOME NEGATIVE EFFECTS ON THE LOCALITY ITSELF ALSO HAVE BEEN ASSERTED. THE OPINION OF THESE COMMENTATORS IS UNANIMOUS THAT THE PUBLIC WELFARE IS LIKELY TO BE SERVED BY ANY LOCAL INCLUSIONARY PROGRAM INTENDED TO REDUCE THOSE EFFECTS.

"WHILE NOT MEASURABLE, THESE PUBLIC BENEFITS ARE BELIEVED TO INCLUDE BETTER ACCESS TO EXPANDING JOB OPPORTUNITIES FOR LOWER INCOME WORKERS, A PRINCIPLE NOW BUILT INTO FEDERAL HOUSING AND COMMUNITY DEVELOPMENT LEGISLATION. ANOTHER BENEFIT ASSUMED IS THE ABILITY TO ATTAIN HIGHER QUALITY SCHOOLING FOR DISADVANTAGED CENTRAL CITY CHILDREN. SOME COMMENTATORS BELIEVE THAT LOCALITIES WILL BENEFIT FROM THE SOCIAL HETEROGENEITY THAT MIGHT RESULT FROM AN INCLUSIONARY LAND USE POLICY, AND THAT SUCH A POLICY OF SOCIAL HETEROGENEITY IS IN ANY EVENT A BASIC VALUE IN OUR SOCIETY. ANOTHER METROPOLITAN BENEFIT ASSUMED IS FACILITATING THE IMPROVEMENT OF PHYSICAL CONDITIONS IN THE CENTRAL CITY BY OPENING UP LOWER INCOME HOUSING OPPORTUNITIES IN OUTLYING AREAS, A POLICY NOW EXPLICIT IN FEDERAL HOUSING AND COMMUNITY DEVELOPMENT LEGISLATION."

AS TO THE ROLE OF A REGIONAL HOUSING ALLOCATION PLAN, THE SAME STUDY STATES:

"THE REGIONAL HOUSING ALLOCATION PLAN IS AN IMPORTANT CONCEPT IN RELATION TO AN INCLUSIONARY LAND USE PROGRAM. IF UNDERTAKEN ON AN APPROPRIATE SCALE, IT CAN IDENTIFY SUBAREAS (COUNTY, TOWN, ETC.) APPROPRIATE FOR ESTABLISHING HOUSING PLANNING AND LAND USE GOALS. IT CAN ALSO ENABLE A COMMUNITY TO UNDERSTAND WHAT GROWTH IT SHOULD EXPECT WITH RESPECT TO LOW- AND MODERATE-INCOME HOUSEHOLDS AS WELL AS WHAT GOALS IT SHOULD PURSUE LOCALLY.

"A HOUSING ALLOCATION PLAN OUTLINES DISPERSAL POLICIES FOR FUTURE DEVELOPMENT OF LOWER INCOME HOUSING. THEY HAVE THREE PRINCIPAL DIMENSIONS: (1) NUMERICAL, WHICH DESIGNATES THE NUMBER OF UNITS TO BE ALLOCATED BY THE PLAN; (2) TEMPORAL, WHICH SETS FORTH THE TIME SPAN OVER WHICH THE PLAN IS TO OPERATE; and (3) SPATIAL, THE ALLOCATION OF HOUSING UNITS TO GEOGRAPHICAL SUB-AREAS OR POLITICAL JURISDICTIONS

IN A REGION. PLANS THAT MERELY IDENTIFY HOUSING NEEDS, ANALYZE MARKETS OR HOUSING AND EMPLOYMENT LINKAGES, ESTABLISH SITE CRITERIA, OR QUANTIFY THE LAND THAT SHOULD BE ZONED RESIDENTIALLY, ARE NOT HOUSING ALLOCATION PLANS."

WE FEEL THE DVRPC REGIONAL HOUSING ALLOCATION PLAN, WHEN COMPLEMENTED BY THE REQUISITE COUNTY SUB-COUNTY ALLOCATION PLANS, WILL GO A LONG WAY TOWARD ACHIEVING BOTH THE BENEFITS NOTED ABOVE AND THE OBJECTIVES OF SENATE BILL NO. 3100,

"TO INCREASE TO THE MAXIMUM EXTENT POSSIBLE AND FEASIBLE, THE OPPORTUNITIES FOR ALL ITS RESIDENTS TO SECURE, CONSISTENT WITH THEIR CHOICE AND MEANS, ADEQUATE HOUSING IN A SAFE AND HEALTHY ENVIRONMENT, WITHIN CONVENIENT ACCESS TO PLACES OF EMPLOYMENT, RECREATION AND NECESSARY COMMUNITY FACILITIES."

THANK YOU.

SENATOR GREENBERG: Thank you, Mr. Knapp.

I don't know that everyone on the three Committees is familiar with the Delaware Valley Regional Planning Commission. Tell us what authority it has with regard to the ultimate implementation of the allocation?

MR. KNAPP: We have no authority, sir. We are an advisory body established under interstate compact between the States of Pennsylvania and New Jersey to make plans and recommendations to our constituent governments regarding development problems and solutions thereof, within the region.

The implementation power remains with the levels of government which have always had it, the states, counties and local governments.

SENATOR GREENBERG: So you are an advisory body?

MR. KNAPP: Correct.

SENATOR GREENBERG: How many counties in New Jersey are within the Commission?

MR. KNAPP: Four.

SENATOR GREENBERG: And in Pennsylvania?

MR. KNAPP: Four plus the City of Philadelphia - five.

SENATOR GREENBERG: You have testified that two counties have attempted to implement the proposal?

MR. KNAPP: Two counties, as of January, had completed their work and had adopted a sub-county housing allocation plan, in accordance with the program established three years ago.

SENATOR GREENBERG: What is your opinion with regard to the municipal acceptance of that sub-county allocation?

MR. KNAPP: It has been mixed. In both cases, there were extensive public hearings within the counties and some testimony for and some testimony against. I was not at those public hearings at the county level, so I don't know what the specific response was. But I do know that the county people heard from both sides of the fence.

SENATOR GREENBERG: What is the expectation at this point? Do you think it will be implemented?

MR. KNAPP: In those two counties, the County Planning Commission and, in one case, the County Board of Commissioners listened to the testimony and weighed the evidence and proceeded to adopt the plan, their county-prepared plan.

In several other instances, plans have been prepared by staffs of the county, but they have not proceeded to hold public hearings or adoption. As my testimony states, they said they would do so only after our Board action of March 27th, in essence, requiring them to do so.

SENATOR GREENBERG: What is the procedure contemplated in the two counties that have adopted for implementation?

MR. KNAPP: There is no specific procedure established that I know of.

SENATOR GREENBERG: What do you expect will happen?

MR. KNAPP: I don't know.

SENATOR GREENBERG: Well, if nothing further happens other than the adoption at the county level, there can be

no implementation, I assume.

MR. KNAPP: There are several major impediments to implementation of the plan. What we are talking about is building units, correct?

SENATOR GREENBERG: Yes.

MR. KNAPP: The plan is only one step toward that. The sensitive units, which are the low- and moderate-income housing units, require financial assistance of some sort. They cannot be built within the private market. For many years past, the main source of subsidy money was dried up. The federal government had for two or three years ---

SENATOR GREENBERG: You are now dealing with the actual construction?

MR. KNAPP: Yes.

SENATOR GREENBERG: I am just a step before that. I assume zoning modifications have to be made in the municipalities covered by the sub-plans in order for there to be any construction. I am really talking to you about the adoption of those new zoning ordinances.

MR. KNAPP: In many instances there will have to be modifications to the zoning ordinances. There is nothing implicit in the plan which requires that.

SENATOR GREENBERG: And you have no opinion at this time as to whether or not you would meet with any degree of success in having those zoning ordinances adopted?

MR. KNAPP: That is correct.

SENATOR GREENBERG: How long did it take the Commission to complete its work in terms of the recommendations to the counties?

MR. KNAPP: The staff work took one year. The hearing and deliberation took an additional six months.

SENATOR GREENBERG: Any questions? (No questions.)

Thank you very much, Mr. Knapp. I appreciate your appearance.

Fred Stickel, representing the New Jersey League of Municipalities.

While Mr. Stickel is distributing his statement, I would like the record to note that I have a letter here from Philip J. Cocuzza, Executive Vice President of the New Jersey Builders Association, dated May 23, 1975, in which he indicates that because of the significance and importance of the bill and the lack of adequate time to prepare written comments and analysis, he would request that he be notified of a subsequent date of hearing, at which time the Association would seek to be represented.

I have a short statement from the New Jersey County Planners Association, dated May 28, 1975, in which they indicate they are very much interested in the legislation, but because of short notice they were unable to prepare an official position. As soon as the Association's position is formulated, they indicate they will either forward the findings or testify at a regional meeting.
(See 28 X.)

Mr. Stickel.

F R E D G. S T I C K E L, I I I: Mr. Chairman and members of the Committee:

My name is Fred G. Stickel, III. I am attorney for several planning and zoning boards in North Jersey and have over thirty years of experience in planning and zoning matters in New Jersey. I am also co-chairman of the Legislative Committee of the New Jersey State League of Municipalities and am a member of the League's Land Use Law Study Committee. My comments today are made on behalf of the League.

There has been a great deal of dialog in New Jersey, both before and after the Mount Laurel decision, concerning public policy with regard to the availability of low and moderate income housing. There seems to be little or no dispute that New Jersey's existing supply of housing units

is not adequate to meet the needs of our people, and there is also little or no dispute that building and construction costs have pushed the price of newly constructed homes well beyond the reach of many families.

However, there is much less agreement as to the solutions to the problem and what the role of the respective levels of government should be in achieving those solutions. There are those who have charged that municipal land use patterns and zoning practices have contributed to the problem, and that large lot restrictions preclude the construction and marketing of homes within the range of many buyers. The Mount Laurel decision, as most of us know, held that a developing municipality must affirmatively provide, through its zoning regulations, opportunity for low and moderate income housing. Many observers have hailed the Mount Laurel decision as a cure-all which will correct all of the evils which blight the ideal expectation of adequate and wholesome housing for everyone who needs it. That view is open to question.

The Mount Laurel decision does however give impetus to the effort to achieve greater availability of dwelling units through some kind of mandatory housing quota system. The housing quota approach, of course, is the heart of S-3100 which we are considering today.

The League has not undertaken a detailed study of Senate 3100 and, therefore, I am not prepared to make an analysis of the bill's provisions. I would, however, like to make some general observations which bear on the whole subject of creating a better climate for fulfilling our State's housing needs.

My major point would be that there have been a number of suggested approaches to this issue of which the mandatory quota technique is but one. A very significant approach worthy of serious consideration has been

put forth by the County and Municipal Government Study Commission -- the so-called development timing plan. That particular method may not be the solution but it certainly deserves attention. The much discussed transfer development rights approach, which raises many questions in its own right, nevertheless might offer a medium for achieving our housing goals. These and other approaches should be carefully weighed along with the quota system so that legislation can be enacted which best accomplishes our purposes. The League would certainly be most interested in working with this Committee in exploring these respective approaches.

My second point is that if it develops that a quota system is the only way in which the Mount Laurel decision can be complied with, we must have a more clearly defined conception of region than is provided in S-3100. We all know that the factors which bear on this issue -- transportation connections, job availability, etc. -- transcend county boundaries. While the county is a useful starting point for defining a region, it is not sufficient as the ultimate or definitive yardstick.

There are further major policy issues which should be addressed. It is common knowledge that housing is not built by governments but by the building industry, and we still must recognize the fact that housing within the reach of low and middle income families will not be provided unless the building industry can construct and market such housing at a fair and reasonable profit. This raises the question of subsidies which should be fully explored before any quota bill becomes law.

And on the subject of subsidies, since the provision of adequate housing has been recognized as a state problem, and since the allocation of housing units to various municipalities around the State will result in substantial increases in the costs of providing local services, what

provisions have been made for reimbursement to the municipalities in question so that their local taxpayers will be saved harmless and will not have to shoulder a burden which rightfully belongs to the state.

With regard to one final matter, the League, of course, would ultimately have to take a position in opposition to any quota system which is mandatory in nature, although it must be recognized that even a voluntary quota system must be coordinated on some kind of a regional level.

These few thoughts are far from comprehensive and are not addressed specifically to the bill before us. They should serve, however, to raise some points for continuing discussion so that we can achieve an acceptable reconciliation to this issue.

The League will continue its study of Senate 3100. We would hope that the hearing record on the bill is held open so that ample review and opportunity for alternative methods may be explored.

Gentlemen, that concludes my prepared statement, and I will be pleased to answer any questions you may have. Thank you.

SENATOR GREENBERG: Thank you, Mr. Stickel, for coming down and giving us the benefit of some of your preliminary thinking.

Yes, the record will be kept open and we contemplate additional hearings, as you know.

I would, on behalf of the Committees, appreciate some additional input as you conclude your study of some of the questions you have raised, specifically the question of costs and subsidies. It appears to me that even by mandating certain quotas on a voluntary or an involuntary basis, somebody has to come in and build them; that is, the housing units. When that happens, I assume, that that construction will have to take into consideration costs which a municipality will ultimately have to bear. So I am not so sure that

this is different from what we have now in so far as money and dollars are concerned. To put it another way, I don't know whether it will take care of itself or whether we have to concern ourselves with providing the wherewithal to raise additional moneys for the municipalities that are going to be affected.

MR. STICKEL: We have made provision for that in this timing bill that the County and Municipal Study Commission is now studying and hopes to have in some bill form before too long.

SENATOR GREENBERG: What kind of provision?

MR. STICKEL: Compensating the municipality for the loss of revenue, etc.,that might result from the building of, say, subsidized housing and all of that sort of thing - "in lieu of" payments, things of that nature.

SENATOR GREENBERG: I guess we first have to determine what the law says, if anything ---

MR. STICKEL: Right.

SENATOR GREENBERG: (Continuing) --- secondly, what the additional costs are; and, thirdly, whether the State can raise the money.

MR. STICKEL: Right. It is a real problem because, if a lot of this housing is taken in some of these communities with the problems that they have now and with a considerable amount of State aid being taken away and all that, it is going to present real problems for them.

SENATOR GREENBERG: I don't really contemplate that this will result in a loss of ratables; on the contrary, I would think ratables would increase as a result of it.

MR. STICKEL: It may increase in some areas, but certainly in the low-income areas, it is not going to increase the ratables. If they are subsidized by the federal government or the State government, somebody is going to have to pay for the taxes, unless they are

government owned; and, if they are government owned, there is going to have to be some kind of setup for "in lieu of" payment.

ASSEMBLYPERSON BURGIO: I would like to know a little bit more about this development timing plan you just mentioned.

MR. STICKEL: The drafting of the bill is in its early stages. I saw it this morning at our meeting in New Brunswick and it provides for a study to be made in each of these communities and a timing arrangement - priorities - for land which is closest to being served by the municipal services. I don't know whether you remember reading about the Ramapo decision up in New York State, in which there was a timing device or timing method of controlled growth over a period of years. You set up, say, a five-year period, and you grow out in the community maybe a mile or so and you build up in that area. The next five years, there is another area. You control both the school and municipal services so that it is no substantial burden upon the community at any given time. If you start developing out, say, a mile from the center of town, you have to provide your services - your schools and bussing and all those sorts of things. It runs into a lot more money than it would if you do it on a priority system.

They had a case like that out in Petaluma, California, and the judge threw that case out. But, as I understand it, it has been since reversed. But there are lots of methods and I believe we can benefit by studying what has happened in other states. I know California has been doing this for quite a while now. I think the experience that they have had, particularly in the Los Angeles and San Francisco areas would be helpful.

I certainly appreciate the help that Senator Greenberg

has given us on our 3054, and I am sure that in a year's time, with his help and leadership, we can get rid of 20 years of trying to get this bill in some kind of shape. I believe the League of Municipalities for whom I speak and the County and Municipal Government Study Commission, working with your group and others, such as Mr. Willis, can come up with the answers. I am not altogether sure that 3100 has all the answers.

SENATOR GREENBERG: Thank you. Are there any questions?

ASSEMBLYMAN VAN WAGNER: I just wanted to make one point. I think the first timing plan was developed in the late 1800's for the City of Boston, if I am not mistaken.

MR. STICKEL: I think you are right.

ASSEMBLYMAN VAN WAGNER: I was thinking about it when you were talking about the plan, itself. The concept of timing and timed development goes back to the late 1800's when labor was a problem and housing was a problem in the inner-city areas. And they developed in conformity with the development of transportation.

MR. STICKEL: Right.

ASSEMBLYMAN VAN WAGNER: So I think we have sufficient precedence.

MR. STICKEL: I think so.

SENATOR GREENBERG: Thank you, Mr. Stickel. We appreciate your testimony.

David Cross.

D A V I D C. C R O S S: Senator Greenberg and members of the Committee, my name is David C. Cross. I am an attorney and I am from the law firm of Diordano and Halleran, which is located both in Toms River and in Middletown, New Jersey.

I am here principally on behalf of the New Jersey Shore Builders Association, a local of the State Builders Association, from whom you have read the letter from

Phil Cocuzza. That organization is a subsidiary of the National Association of Home Builders. With respect to Phil's letter, I talked to him since he sent that and he said that he would approve of my being here on behalf of the State Builders also.

With respect to Senate Bill 3100, this, of course, is a proposal for state land-use planning, providing a system of regulations applicable through the Executive Department down through the counties and to the municipalities. It provides for mandatory controls out of the Department of Community Affairs, out of the Commissioner's Office, applicable to both the county governments and to the municipalities.

To my reading, the bill is essentially broken down into three major parts, the first of which requires that a study be made, conducted by the Department of Community Affairs, whereby 15-year projections are to be made, broken down on a 5-year basis, applicable to each of the counties. Thereafter, there is a requirement imposed on the counties for coming across - and I don't want to go into the technical terms used in the bill - with their plans or a housing survey of their particular county. After this has taken place, the municipalities have an affirmative obligation placed upon them to come up with their particular plans. There is discretion vested in the Department of Community Affairs at both the county level and at the municipal level to evaluate the programs proposed by the counties and the municipalities and, if necessary, to enforce upon both the counties and the municipalities what the Department of Community Affairs considers to be an appropriate standard, if it is considered to be manifestly - and I don't mean to quote from the bill - inadequate to meet the needs of the over-all survey conducted by the Department of Community Affairs.

SENATOR GREENBERG: Mr. Cross, may I interrupt you? In an effort to save some time, rather than go through the bill with which I think we are all familiar at this point, could you direct your comments to your reaction to it?

MR. CROSS: Yes, sir. I didn't mean to ramble on. I just wanted to make the point that this bill, if passed, goes into effect immediately and what it does is to vest a large degree of discretion in an Executive Department of the State government. It does this on an immediate basis and it provides no mechanism where the State Legislature has any direct say over whether the standards proposed by the Department of Community Affairs, the standards proposed by the counties or the municipalities are adequate and to the satisfaction of the Legislative Branch of government.

I guess if you wanted to boil down my comments to one particular area, it would be an over delegation of the legislative authority, the authority which is vested within the Legislature and thereby answerable to the general public.

SENATOR GREENBERG: What do you do with Section 4 of the bill which establishes the standards to be used by the Commissioner?

MR. CROSS: To make a positive recommendation, the builders are not against the concept of a uniform system of statewide land-use regulation. What we are opposed to is the handing over to the Department of Community Affairs this authority on a permanent basis. In other words, the Department of Community Affairs does not have to come back to you after completing this study and passing on the regulations which are in the sections immediately thereafter, Section 4 being the section that requires the 15-year projections and the 5-year housing guidelines.

Our recommendation would be that, at this study point in the bill, the Department of Community Affairs come back to the Legislature, seeking authority to continue. The same recommendation would apply to the plans which are placed into effect by the counties and the plans which are placed into effect by the municipalities. In that way, a reasoned approach can be had in developing this very complex, this very pervasive area.

SENATOR GREENBERG: You mean that the Legislature would then sit and review the activities of the Department and the counties and the municipalities in each instance to determine whether they meet the standards that they determine exist?

MR. CROSS: I am recommending something which would accommodate that principle, yes. I don't know exactly how we are going to work it out and I would think that possibly some standing arm of the Legislature would be better equipped to review these particular standards, maybe your Committee. But I think there is a clear need for a return to the Legislature at various points within this bill for real authority to continue.

I don't think that it is appropriate to vest within the Department of Community affairs, an executive department, this broad-based, broad-stroked attempt at State land use regulation. The principle is one, I believe, which is with us and which we have to agree is appropriate, whose time has come. It is our fear in the building industry that --- Within your bill, you say that the courts have become a forum for the development of the principles of land use regulation. We feel that it is just as bad if the forum is a bureaucratic forum where there is no general answer-ability to the public. And I don't think, given the giant scope of this bill, that it is inappropriate to ask that the Legislature take an active and on-going part in developing the standards because the standards affect everybody, be they a corporate citizen or an individual.

I will rest my comments there.

SENATOR GREENBERG: I appreciate your coming and giving us the benefit of your thoughts. It is almost impossible for the Legislature to sit and function in an executive capacity, which is what you are talking about. You delegate certain responsibilities to certain departments of government and you give them standards and guidelines so that the courts in review can determine whether or not they have carried out the policies of the Legislature.

What you are proposing is an on-going supervision by the Legislature, which is very, very difficult to accomplish.

I might just add the Legislature always has the ability, as it does constantly, to amend, change or modify when circumstances are brought to its attention either through its own Oversight Committees or because of public pressure in the newspapers, etc. that there are deficiencies in operation of government in an area where the Legislature has already acted. But I understand your view. I think it is something we will have to consider. I appreciate your coming.

Any questions?

ASSEMBLYPERSON BURGIO: I agree with what you said. I don't see how we could bring it back to the Legislature for review. We are not expert planners.

MR. CROSS: I don't mean to say that. The requirements within the bill, in and of themselves, require the creation of the standards which I don't think are given in great enough detail to the executive department. That is the fear, that the standards aren't there.

SENATOR GREENBERG: That may be. We may have to review the standards to see whether we have given them specific enough instructions.

Thank you very much for coming.

Joan Crowley or Mary Lou Pettit, League of Women Voters.

M A R Y L O U P E T I T T: I am Mary Lou Petitt, the Housing Chairperson for the League of Women Voters of New Jersey.

I gather that today, at least, we are the only citizens' group speaking as far as this particular piece of legislation is concerned.

I would like to make two or three brief comments in view of the fact I have been here since the session opened this morning on points that we have made in our statement, which is also quite brief, that have not been covered

You said earlier this morning, Senator Greenberg, that one of the purposes of this particular piece of legislation was to open a dialogue or to commence a dialogue. The League certainly appreciates that. I would think this bill is already further along than Governor Cahill's voluntary balanced housing bill, which never had any kind of public hearing and, of course, never left Assemblyman Russo's Committee. So we do appreciate the value of the dialogue and we have already found that value obvious today, as I am sure your Committee has. You have such issues facing you now as either administrative or legislative roles. Which is the best way to go? That certainly was researched this morning and discussed. Also such things as withholding of State aid and the granting of incentives are other areas which you have been forced to look at because of the hearing today.

Enforcement procedures and just how strong they can be, whether they have to be mandatory or whether voluntary will work, is another whole area.

I know, speaking for the League, we have much to look into, having listened to much of the testimony here today.

I would also like to point out, as I am sure you are very well aware, everyone today has spoken as though the Mount Laurel decision is the law of the land and the

law of the State of New Jersey. As a resident of Bergen County and having been in contact with many mayors and civic officials, that perhaps is not as well accepted by everyone as it was by the people who spoke here today as the law of New Jersey. So I think there are many problems of which you are obviously aware regarding this piece of legislation and the Mount Laurel decision, itself. But I do think that you have already served a valuable purpose.

The League of Women Voters of New Jersey is pleased to have this opportunity to comment on the "Comprehensive and Balanced Housing Plan Act." The League strongly agrees with the thrust of the bill which accepts legislative responsibility and charts proposals to deal with the critical housing needs in New Jersey. We believe this task rightfully belongs to the state Legislature, although, because of legislative inaction, the courts have become the principal forum for deciding land use policies.

The League of Women Voters at national, state and local levels has been involved in working for equality of opportunity in housing since 1970. In 1971 the League of Women Voters of New Jersey adopted a statement of position on housing and zoning in New Jersey, several points of which closely parallel sections of S.3100. Specifically, the League stated that in order to meet the housing needs of all the people in New Jersey:

1. The state government should establish housing goals to meet the housing crisis in New Jersey and provide strong guidelines and leadership for the local communities.

   Section 4 of S.3100 sets up a procedure for ascertaining state housing needs and goals, while Section 5 goes into standards and guidelines for municipal and county determination of those needs and goals.

2. The League's position also states that "municipalities should zone residential land in such a way as to provide a diversity of housing within the community."

   Section 3 of the Act defines balanced or increased housing opportunities to mean the provision of an adequate mix of housing types for both sale and rental, for persons of all incomes, ages and family sizes..."

3. The League stressed in its position that "a higher level of government such as county or region must have power to supersede local zoning codes which do not meet state goals in housing."

   Sections 21-24 set up the procedures which allow the county planning board and the state to have the necessary power to implement housing goals.

The League is also concerned with environmental factors, particularly as they relate to population growth and distribution.

Section 20 of the Act develops minimal standards for the municipal housing development program which relate to environmental and density impacts of housing development.

In addition to these specific points, which closely correspond to the League's position, the League commends the intent of S.3100 to address New Jersey's zoning problems with a definite, clearly outlined plan. Although we are well aware of the political realities in New Jersey today, we believe it is high time to begin discussing the controversial issues the bill addresses. Issues which involve equality and justice and need should not be set aside until the political climate is right -- that time may never come.

The League does have some reservations about S.3100 over and above its political acceptability. We are concerned that no mention is made of state assistance for provision of municipal infrastructure and facilities in S.3100. Obviously, the population growth which implementation of this Act would create will place demands on roads, sewers, schools, parks, etc. The League believes financial incentives to aid municipalities in providing these support facilities are needed and would be a politically realistic approach. Several state legislators stated publically after the defeat of Governor Cahill's housing proposals that they would look favorably on legislation which offers incentives to their communities if they increased their housing stock. Also, the whole area of penalties or withdrawl of state aid should be studied to see if it would be wise to incorporate this aspect into legislation.

Secondly, S.3100 seems to the League to give a great deal of power to the state, although it does establish advisory boards set up to work with the Commissioner of the Department of Community Affairs and the county planning boards and requires numerous public hearings. While the League recognizes that a central authority is necessary to set goals and assure their implementation, we have some concerns about giving this authority to the state and to one person there -- the Commissioner of the

Department of Community Affairs -- rather than to the county or regional level. We would urge even more involvement by local and county officials and the general public than is now written into the legislation. As hearings are held on this bill in various areas of the state, more insight might be developed as to how this can be accomplished.

Last, until the need for fiscal zoning is eliminated through tax reform, New Jersey cannot expect to effectively resolve its land use problems. In addition, changes in our present tax structure might bring in the revenue needed to provide financial incentives to municipalities for housing and the support facilities required.

The League of Women Voters of New Jersey supports many of the principles covered in this legislation and hopes the New Jersey Legislature will, at long last, assume its proper role in addressing zoning practices as they relate to the housing crisis in New Jersey. We will be closely following the public hearings on S.3100, and look forward to further opportunity to comment.

SENATOR GREENBERG: I thank you very much. I assume that if we pass the broad-base income tax and 3100, the League would be satisfied.

MS. PETITT: I think the League would be more than satisfied. It would also probably pass out in one joint body.

SENATOR GREENBERG: I would look forward to further comment from the League with regard to exactly how we can get more involvement by local and county officials and, at the same time, accomplish our objectives.

MS. PETITT: I appreciate what you are saying that sometimes that interferes with the objective, except that perhaps in the long run it might assure it more than by not involving them at the beginning.

SENATOR GREENBERG: We will be notifying the public through the press of the subsequent hearing dates, and any additional comments you might have will be welcomed.

MS. PETITT: We will be willing to make them.

SENATOR GREENBERG: Thank you very much.

William Roach.

W I L L I A M R O A C H: I am sorry that I just arrived and I hope that I will not be repetitious. I am not speaking officially for the Somerset County Planning Board, of which I have been the Director for going on 20 years.

I will start by saying I am sympathetic to the goals of providing housing for all sectors of our population. I seriously question whether any legislation will result in the construction of the type of housing that is the expressed goal of this bill.

The bill places a great burden on counties for conducting studies, implementing plans and forcing them on our respective municipalities. But I deem it deplorable that there is no recognition of county planning in the language of the act. You mention State, municipal and interstate and regional planning. The New Jersey Planning Act mandates that county planning boards adopt a county master plan of land use. We have done this in Somerset County. I have a copy of the plan here for your perusal.

I think it equally distressing that the Superior Court decision rendered by Superior Court Judge Leahy of Somerset County has not gotten any recognition. In that case, it was my privilege to testify for a day and a half and I entered our county plan into the record where we had recommended certain areas for higher density development in the township being sued. I entered the State Horizon Plan, which had never received any administrative or legislative sanction. I entered the Regional Plan Association plan and the plans of the Tri-State Regional Planning Commission. I think that these plans should be given recognition, particularly county land-use plans in those counties where they have been adopted.

Judge Leahy did this in the Bedminster decision. He directed the twonship to provide for multi-family housing in a density range specified in our plan in the Bedminster-

Pluckemin Village areas. We are now working with that municipality to implement the Judge's determination, hopefully, to provide housing for all economic groups.

I think we have to acknowledge that private enterprise cannot build housing in this present economy. The costs of land, materials, labor and money make it prohibitive, regardless of local planning or zoning.

I have seen municipal officials request developers to build to the minimum dwelling size permitted. Builders have refused to do it because apparently the profit motive was not as great.

Finally, I would express my concern that forcing this type development in suburbia is going to have a further drastic effect on our center cities. I think that the universities should be asked to study who is moving to these multi-family developments in suburbia, Twin Rivers, the PUD's in Hillsborough Township and other parts of this State. I am fearful that we will find that we are accelerating the flight of the middle-class from our cities, including our Plainfields and New Brunswicks in our own local area. I would like to see some affirmative thrust towards giving some help to the cities, stablizing and attracting back some of that important segment of the population.

One of the things that I have personally advocated is that we should urge modular housing to overcome some of the high costs of stick-by-stick construction. I think that industry has suffered under a stigma over the years and I have now tried to designate this as single-unit, modular development where low-income or moderate-income people can buy so-called mobile homes which are only mobile if you hire a big truck to pull them and get special permission. You no longer hook these things behind your car and drag them around the countryside. We suffer from lack of good site planning and good design for this type development in New Jersey.

Briefly, those are my summary remarks. I apologize for not having had time to prepare a statement. I do know that the New Jersey County Planners Association years ago made a recommendation which was submitted to the Legislature to develop a program which would provide a bonus incentive to municipalities who planned affirmatively for housing, feeling that it was the method of municipal finance in New Jersey which had led to this negative attitude towards residential development. I will also secure copies of that proposal and submit them to you for your consideration. But I do urge that some consideration be given to county planning, not just looking on the county as the workhorse for the State to implement this program.

Each of the twenty-one counties now have county planning boards. They all have professional staff. But the work burden that is going to be placed on county planning boards by this act will undoubtedly require larger budgets and greater staffs. We think that some recognition should be given to the broader planning responsibilities of counties and I am fearful of the administrative red tape that might develop from this. Very often when you get into applying to State and federal agencies for grant moneys, the effort is not worth the return, particularly if the amount requested is minimal.

I do wish you success in trying to come up with something that will help to solve this problem, but unless some changes are made in this to give direct benefits and rewards to those municipalities that plan for this type housing, you are giving the counties a very hard row to hoe.

SENATOR GREENBERG: I am confused. On the one hand, you talk in terms of the county planning board not receiving adequate attention in the bill and,on the other hand,you talk in terms of the burden that will be imposed upon them and the need for additional funds to make sure we are not going to kill them with red tape.

MR. ROACH: You want me to clarify that.

SENATOR GREENBERG: Yes.

MR. ROACH: With our own resources, we have developed and adopted a county land-use plan. Nowhere in this act do you mention county planning or a county plan.

SENATOR GREENBERG: Let's distinguish between the two. The ultimate county allocation and the municipal allocations are going to be handled at the county level under this bill.

MR. ROACH: That is true. But, if I can refer to the act where you have a series of references: "Levels and distributions of long-range growth. . ."

SENATOR GREENBERG: Where are you?

MR. ROACH: On page 5, starting with line 28. (Continuing quote) ". . . insofar as may be consistent with State, interstate or regional land-use and growth plans and policies, . . ." There is nothing about a county land-use plan.

SENATOR GREENBERG: Page 5, what line?

MR. ROACH: Page 5, line 28. There is no mention of a county land-use plan.

ASSEMBLYMAN VAN WAGNER: I think the words "county" and "regional" are probably used interchangeably.

MR. ROACH: They shouldn't be. There are twenty-one counties in New Jersey. There is no official regional government in effect in New Jersey.

SENATOR GREENBERG: You are talking about recognition of county plans where they exist?

MR. ROACH: Yes.

SENATOR GREENBERG: Okay. Go ahead.

MR. ROACH: Do you get that point?

SENATOR GREENBERG: Yes. I am really concerned, not with what you have in your hand, although I know what it took to put it together, but with the function of the county planning board under this bill and what deficiencies

there are in that function in your opinion.

MR. ROACH: Number one, the county is instructed to conduct an inventory of the quantity and quality of the current housing stock within the county, including data on the types, distribution, location, cost, vacancy rates, conversion rates, rehabilitation needs and replacement rates of existing dwelling units. That is a tremendous responsibility to go throughout a county and update census data, in effect.

SENATOR GREENBERG: Yes. What is your point?

MR. ROACH: Well, I am raising the point as to how this is to be accomplished. I would note something else: The State recently issued a housing needs report based on some computer formula which is outlandish.

SENATOR GREENBERG: Yes. But can we stay with this for just a second because I really want to understand what you are saying. It is very important to us.

I thought your position was originally that the county planning boards are not given adequate recognition and responsibility.

MR. ROACH: County land-use planning is not given any recognition.

SENATOR GREENBERG: You are talking about the existing plans where they do exist. And if the word "region" were defined to mean county plans, that would accomplish that?

MR. ROACH: Yes. But what I am concerned about, in Judge Hall's Mount Laurel decision, he said he doesn't look to the county as a reasonable level of government to handle this.

SENATOR GREENBERG: That is his opinion, but we are dealing with the bill. Now the bill was drawn before the opinion was rendered and was introduced before the opinion was rendered. What I would like to do is determine from you, not whether it is too much to handle - we will get to that in a second - but whether or not adequate recognition

of the input from the county planning board is provided for.

MR. ROACH: There is adequate recognition of the county's input into the housing needs study, yes. But there is no mention of the county land-use planning.

SENATOR GREENBERG: County land-use plan?

MR. ROACH: County master plan of land use.

ASSEMBLYMAN VAN WAGNER: You mean of existing plans.

MR. ROACH: No, a plan for land use. We have a master plan for the development of Somerset County.

ASSEMBLYMAN VAN WAGNER: What you are saying is that there is no recognition of existing county land-use plans?

MR. ROACH: That is right.

SENATOR GREENBERG: Aside from that, assume that there were recognition given to it for the moment, are you complaining about the limited function of the county planning bodies in this bill?

MR. ROACH: Not in this bill, no. You are placing a tremendous workload and burden and responsibility on us.

SENATOR GREENBERG: We have to do it someplace.

MR. ROACH: All right.

SENATOR GREENBERG: I would assume you would rather it be at the county level than at the State level.

MR. ROACH: We want to work together. In any testimony I have given in court, I have urged some level of sophisticated State planning, county planning related within that framework, and then detailed municipal planning and zoning, in keeping with those general guidelines.

I deplore any suggestion that New Jersey should suburbanize from the Hudson to the Delaware, from High Point to Cape May, which seems to be the direction of some of the court decisions.

SENATOR GREENBERG: Getting back to the bill for a moment, what is wrong with the way we treat county planning boards in the bill, if anything?

MR. ROACH: You understand the one: You don't recognize ---

SENATOR GREENBERG: Aside from that.

MR. ROACH: Okay. Aside from that, I think we would want some assurances that we do not get bogged down in administrative red tape. If we are given money to help do this job by the State, we don't want to have to submit monthly work reports and get bogged down as counties have gotten bogged down in 701 planning grants. I would hope that procedure could be streamlined.

SENATOR GREENBERG: Right. Other than that, aside from the bureaucracy that inevitably is involved in this kind of thing, the function, itself, is well placed at the county level; do you agree?

MR. ROACH: Yes. We welcome that recognition.

SENATOR GREENBERG: And do you have any problem with coordinating the various municipalities in the county, getting the acceptance of the concept of the municipalities working together with the county planning board?

MR. ROACH: We have had a very good working relationship with our municipalities. But when we tell them, "You have to do thus and so," it is going to be difficult.

SENATOR GREENBERG: Not if the law says it.

MR. ROACH: If the law says it, they would, I think, work with us rather than with the State.

SENATOR GREENBERG: That would be preferable?

MR. ROACH: That would be preferable. I would hope that there would be something about municipal financing where we could do this on a sub-regional basis and not come up with a formula for every town in the State.

SENATOR GREENBERG: For example?

MR. ROACH: For example, we have municipalities that have gung-ho industrial commissions and they are getting a lot of industrial development. We have counties that have the infrastructure to support that development: the freeways, the utility systems.

There are places where this development should go and these places don't exist in each of our twenty-one municipalities.

ASSEMBLYMAN VAN WAGNER: In other words, you are saying, give us the option for creating, for example, a regional subdivision of perhaps eight or nine municipalities within an area when we are looking at land use, rather than having us do it for each municipality.

MR. ROACH: Right, if we can get agreement on that level to meet some reasonable fair-share of housing in that area rather than going to 567 towns on a statewide basis and doing this.

ASSEMBLYMAN VAN WAGNER: Do you think you would have problems getting agreement on that level? It would seem to me that would pose more of a problem.

MR. ROACH: We would have to work at it and see if it works, but I think that option should be there ---

ASSEMBLYMAN VAN WAGNER: I agree.

MR. ROACH: (Continuing) --- short of creating official regional housing agencies, as called for in the bill.

ASSEMBLYMAN VAN WAGNER: On page 5, line 51, (i), does that give you some aid and comfort, let's say?

MR. ROACH: Yes. We in our own county have advocated flexibility in design.

ASSEMBLYMAN VAN WAGNER: --- particularly the part where it says, "Make available to the counties such planning assistance as shall be proper and available for the implementation of this act. . ." I think that might overcome some of the burden.

MR. ROACH: We would like a close working relationship with the State. We would like to be consulted. This housing needs study that they published without consultation, I think, will prove an embarrassment. They showed where one of our smallest towns had 107 dilapidated and deteriorated houses and the total housing count in the community was

207. There are about three dilapidated houses in the town.

ASSEMBLYMAN VAN WAGNER: I think the whole thrust of this bill is to bring a closer relationship between the State and the counties.

MR. ROACH: That would be helpful. I think there has to be this type of communication.

SENATOR GREENBERG: Mr. Roach, just one last question from me: As the Planning Consultant to Cranbury Township, would you discuss with us for a moment, please, the substance and the effect of Judge Furman's ruling?

MR. ROACH: Let me say I was called in to testify on that case. I am not their Planning Consultant. I did testify before Judge Furman. He, I think, took recognition of the uniqueness of Cranbury Village. Cranbury Township is completely comprised of Class I and Class II farmland. I introduced the Blueprint Commission Report, stating that this was prime farmland. I think we have to do something about saving that. And we did introduce the Middlesex Land-Use Plan. So his was a letter opinion which simply said to provide for some type of housing mix in accordance with the Mount Laurel decision. It wasn't definitive, but that municipality is now going to be looking at building some zoning around Cranbury Village related to the likely availability of utilities and provide for a reasonable share of housing. But, side by side, I would like to see that Blueprint Commission Report implemented and some of this prime farmland saved. If you can't eat, there is no point in having a house.

SENATOR GREENBERG: That is not inconsistent with his opinion, is it?

MR. ROACH: No. His opinion took recognition of that fact, but it was a letter opinion just a page and a half long.

SENATOR GREENBERG: What are they doing about it?

MR. ROACH: They are currently meeting. They have asked me to advise them on meeting the requirements of the Judge's opinion. So they are starting to work on it to see what they can do to meet this. But, as I mentioned before, private enterprise cannot build low- or moderate-income housing. I would hope they would come up with a plan where they would mandate, as Franklin Township has done in our county, that 15 percent of all the housing units in a planned unit development must be for middle- and low-income families, and relate it to some sort of a formula such as that.

SENATOR GREENBERG: I appreciate very much your coming down here today. Are there any other questions? (No questions.)

MR. ROACH: Thank you.

SENATOR GREENBERG: Thank you very much.

There being no further witnesses wishing to testify, we will adjourn this hearing to a future date, at which time we will hear further testimony, the time and place to be the subject of determination by the Committees, and notification to the press will follow. Thank you.

(Hearing Adjourned)

GIORDANO & HALLERAN
COUNSELLORS AT LAW
POST OFFICE BOX 667
1005 HOOPER AVENUE
TOMS RIVER, NEW JERSEY 08753

TELEPHONE
(201) 341-9600

JOHN C. GIORDANO
OF COUNSEL

May 28, 1975

TO: Senator Martin L. Greenberg
Chairman
New Jersey Senate Committee on
County and Municipal Government

RE: Public Hearing, May 28, 1975,
Senate Bill 3100

Dear Senator Greenberg:

Enclosed you will find our Analysis and Comment on Senate Bill 3100. These comments are submitted for inclusion within the record of the public hearing and represent the sense of the New Jersey Builders Association, a statewide trade association of home builders and a subsidiary of the National Association of Home Builders.

Any questions which do arise and have not been adequately answered or disposed of at the public hearing may be communicated to the undersigned at the convenience of the committee, its members or staff.

Enclosed also is our firm's analysis of the Mount Laurel decision, a Supreme Court decision which has had a major impact on the area of municipal land use regulation.

Very truly yours,

GIORDANO & HALLERAN

David C. Cross
For the Firm

DCC:cm
Enclosures

ANALYSIS AND COMMENT

ON

SENATE BILL #3100

TO: Senate Committee on
County and Municipal Government

RE: Public Hearing on Senate Bill #3100
May 28, 1975

Gentlemen:

I offer to you these written comments on Senate Bill #3100, otherwise known as the "Comprehensive and Balanced Housing Plan Act," on behalf of both the New Jersey Builders Association, a statewide subsidiary of the National Association of Home Builders, and the New Jersey Shore Builders Association, a local of the New Jersey Builders Association, representing the home building industry in Monmouth and Ocean counties.

The explanatory statement attached to the bill, found at pages 17 and 18 thereof, states the general premise that in the absence of effective statewide land use planning, the State Court system, rather than the State Legislature, has found itself as the "principal public forum for policy and decision-making" in the subject matter area. The statement further declares that the bill is a reassertion of the "authority and responsibility" of the State Legislature for providing "a clear and coherent body of principles and standards that would assure that local zoning powers are used

in support of the State's efforts to meet its obligation to provide for the health, safety and welfare of all of the citizens of New Jersey." The statement further sets forth as an objective of this legislation an increase in "the opportunities for all residents of New Jersey to secure consistent with their means and needs decent housing in a safe and healthy environment and within convenient access to places of employment and community facilities."

The statement further advises us that these goals shall be obtained by means of the creation of "a planning framework which will allow municipalities to rationally plan and prepare the necessary sites for the location of adequate numbers and types of housing to meet the diverse needs of all segments of the population."

The explanatory statement as above set forth stating the general premise of legislative responsibility along with the goals and objectives mentioned outlines unassailable and universally acceptable principles favored by every citizen of the State, be they individual or corporate in nature.

The scope of this bill, however, is tremendous and if its omise were brought into reality, this bill would go a long way rd solving the problems of mankind, which problems have been s for many centuries.

bill itself contains seventeen pages of text broken down -three separate sections, all but two of which are new e "Municipal Planning Act"; the other two sections existing portions of the "Municipal Planning Act". finition section, a reading of which will ng of the scope and pervasiveness of the

operative provisions, the substantive provisions begin.

In the first of the substantive provisions, the Commissioner and Department of Community Affairs is tasked with the immediate responsibility of having available within six months after enactment a statewide fifteen-year projection of housing needs and housing goals. Further, this projection is to be segmented into three five-year "housing guidelines" for each county for said fifteen-year period and at that time all within this six-month period distributed to the counties thereby informing them of their individual "share" of the fifteen-year state housing goals based on the Commissioner's assessment of the county's existing and projected housing needs. Included within this projection for each county shall also be something called a "regional housing need factor" which shall "reflect the housing impact of regional development and trends insofar as such development and trends are deemed to have an immediate and appreciable effect on the county's housing needs." Included within these projections are to be such things numbers and types of dwelling units necessary to meet the Commi sioner's assessment of the county's existing housing needs and the impact of ongoing and anticipated developments on such h needs.

If this herculean task were not enough, the Commis Department of Community Affairs shall be obligated t one hundred twenty days of the effective date of standards and guidelines for the determinatio tions by county planning boards and county holders and rules and regulations relatin

in support of the State's efforts to meet its obligation to provide for the health, safety and welfare of all of the citizens of New Jersey." The statement further sets forth as an objective of this legislation an increase in "the opportunities for all residents of New Jersey to secure consistent with their means and needs decent housing in a safe and healthy environment and within convenient access to places of employment and community facilities."

The statement further advises us that these goals shall be obtained by means of the creation of "a planning framework which will allow municipalities to rationally plan and prepare the necessary sites for the location of adequate numbers and types of housing to meet the diverse needs of all segments of the population."

The explanatory statement as above set forth stating the general premise of legislative responsibility along with the goals and objectives mentioned outlines unassailable and universally acceptable principles favored by every citizen of the State, be they individual or corporate in nature.

The scope of this bill, however, is tremendous and if its promise were brought into reality, this bill would go a long way toward solving the problems of mankind, which problems have been with us for many centuries.

The bill itself contains seventeen pages of text broken down into thirty-three separate sections, all but two of which are new additions to the "Municipal Planning Act"; the other two sections are amendments to existing portions of the "Municipal Planning Act".

Following the definition section, a reading of which will give the reader a feeling of the scope and pervasiveness of the

operative provisions, the substantive provisions begin.

In the first of the substantive provisions, the Commissioner and Department of Community Affairs is tasked with the immediate responsibility of having available within six months after enactment a statewide fifteen-year projection of housing needs and housing goals. Further, this projection is to be segmented into three five-year "housing guidelines" for each county for said fifteen-year period and at that time all within this six-month period distributed to the counties thereby informing them of their individual "share" of the fifteen-year state housing goals based on the Commissioner's assessment of the county's existing and projected housing needs. Included within this projection for each county shall also be something called a "regional housing need factor" which shall "reflect the housing impact of regional development and trends insofar as such development and trends are deemed to have an immediate and appreciable effect on the county's housing needs." Included within these projections are to be such things as numbers and types of dwelling units necessary to meet the Commissioner's assessment of the county's existing housing needs and the impact of ongoing and anticipated developments on such housing needs.

If this herculean task were not enough, the Commissioner and Department of Community Affairs shall be obligated to prepare, within one hundred twenty days of the effective date of this proposed Act, standards and guidelines for the determination of municipal allocations by county planning boards and county Boards of Chosen Freeholders and rules and regulations relating to the form content

procedures or standards of evaluation for the survey reports to be submitted by the counties. Further, within a nine-month period of the effective date of the Act, the Commissioner and the Department is also to prepare standards and guidelines for the housing development programs to be adopted by municipalities.

There are also other tasks assigned to the Commissioner and the Department of Community Affairs by virtue of this section of the bill (Section 5), such as, the identification of areas of critical housing needs throughout the state, the identification of areas of high development potential, the preparation of standards for determining feasible and desirable density levels, and the recommendation of models of alternative patterns, levels and distributions of long-range growth.

It will do us well to pause here and to reflect upon the complexity and size of the task being assigned to the Department of Community Affairs. Given unlimited resources and top-notch expertise, it would still be doubtful that the assigned tasks would near completion within the time frames prescribed within the bill. Under the terms of the bill, however, if passed into law, the resulting Act would take effect immediately.

Because of the complex responsibilities and large scope in quantum of power which is anticipated to be surrendered to this executive department of the State Government, it is imperative that prior to allowing this Act to go into effect that these standards, these fifteen and five-year projections, and these identifications of high density, high growth and high development potential areas, be presented for approval to elected officials

answerable to the public. This must be done to approach this legislation on an intelligent and informed basis. This further must be done before the "bureaucratic cement" hardens around this proposed Act and leaves us with something which may not have initially been intended, notwithstanding the good faith of its creators.

Also created by this bill is a new standing council to be called the Advisory Council on Housing and Site Location. This is to be a fourteen-member council consisting of six specific State Department level personnel with the eight additional members being appointed by the Governor with the advice and consent of the Senate. This council is proposed to be empowered to hold public hearings and to give consideration to and submit recommendations on the rules and regulations proposed by the Commissioner of the Department of Community Affairs, the Commissioner's estimates of state housing needs, the Commissioner's inventory of vacant or developable land, and the Commissioner's land use and development policies within the state.

The next group of sections deal with the actions required to be taken by the counties in effecting the desired result of uniform statewide land use planning. By virtue of these sections, which are 10 through 18, there is then required that the planning board of each individual county conduct and complete a full survey of the housing needs of the county, taking into consideration an inventory of the quality and quantity fully broken down of the various housing needs of the county. Also required to be considered are current and projected transportation, demographic and economic data to include the distribution of population and employment

opportunities by areas and economic categories. Also included is a consideration of the level and distribution of current and projected needs and demands for housing, also fully broken down and projected forward on a five-year basis.

The final criterion is a determination of the net deficiency of available housing as opposed to the existing and projected needs of the county. Thereafter created by this bill would be a Municipal Advisory Board which would consist of the mayors of each municipality within the county. This board would be permitted to participate in the deliberations of the county planning board or in the deliberations of the Board of Chosen Freeholders on all relevant matters. They would not be permitted to vote, but they would be permitted to append recommendations and, further, they would not be foreclosed from public comment on all matters. After this survey is completed, the county planning board would then make its provisional housing allocations for the five-year required projection. Municipalities would be permitted to make available any information to the county planning board which they might deem relevant in proposing these allocations.

The county planning board would thereafter be required, after compliance with various notice requirements included therein, to hold public hearings, a minimum of two in two different locations in the county, at which time public input would be received. The county planning board thereafter, after reviewing all data received, would then make its report (required within one year of the effective date of the Act) to the Commissioner of the Department of Community Affairs. The Commissioner would thereafter evaluate this report

and provisional housing allocation based on four criteria, including the comprehensiveness and accuracy of the said report, its compatibility with state standards and requirements previously placed into effect, its adequacy and equity in light of the needs of the county, and its compatibility with the various overlapping state, regional and interstate land use and land development plans, policies and programs. Thereafter the Commissioner of the Department of Community Affairs has the ability to propose binding amendments, if necessary, to each county housing survey providing the Commissioner gives the parties prior to final certification thirty days within which to file any exceptions to the proposed amendments. The Commissioner by this particular section is also supposed to solicit opinions from other interested state agencies.

Once the Commissioner has finally certified a county housing survey, the Board of Chosen Freeholders of that county is required to adopt by resolution or ordinance said certified housing survey. If the Board of Chosen Freeholders does not do this within thirty days, the Commissioner shall then have the power to adopt and promulgate said certified housing allocations and their effect shall be binding on the county and the municipalities concerned. In the event that a housing survey, in the opinion of the Commissioner, is manifestly inadequate or if no housing survey is submitted by a county, the Commissioner also has the power to adopt and promulgate housing allocations for the county and municipalities concerned.

These then are the initial operative portions of this proposed law. It can be seen that it is the Commissioner's office of the Department of Community Affairs which has the real power to effect

land use planning within each county. It is strongly suggested and recommended that before this "blank check" is issued to the Department of Community Affairs, if in fact it is the intention of the State Legislature to issue it in this fashion, that the overall standards and the large-scale discretionary decisions which this bill implies are to be made, prior to going into effect, be approved and certified by an appropriate legislative arm of State Government. Decisions of such major importance should not be, and in certain cases may not be, assigned away to an executive agency not directly answerable to the public.

The next area of consideration is the area of the effect that this bill would have on each individual municipality. A municipality, according to the provisions of this bill, would be required within six months of the adoption of the certified county housing survey to prepare complementary changes in its land use system of land use regulation. Changes would be expected in a municipality's Master Plan, zoning ordinance, subdivision ordinance, official map, and building code. There is also required of a municipality the preparation of a housing development program and same must be tied in with the existing housing allocation program. This must be submitted to the county within one year of the adoption of the county housing survey. There is further required to be treated in this municipal housing development program such things as a municipality's long-term land use development plan considering such things as projected density levels and types and intensity of current or planned uses within such a municipality. Also included must be its five-year land development plan, the site locations for

development, redevelopment or rehabilitation of housing within the municipality, the environmental impact of such development or rehabilitation, and the compatibility of same with adjoining municipalities, the existing or projected distribution of types of housing or housing mix, the availability and sufficiency of local facilities and services to include a capital improvement program projected within the five years above-mentioned, the delineation of traffic and circulation patterns as they pertain to access to sources of employment, the financing plan for capital improvement, a plan for monitoring the quality and potential deterioration of various portions of neighborhoods and communities within a municipality, and a plan for the periodic reexamination and review of achievements, deficiencies, etc., of each phase of program activities.

A treatment such as this is unfortunately beyond the capability of and/or resources of a great many of the state's municipalities, many of which have relatively small populations and large amounts of undeveloped land, not to mention the municipalities in the highly urbanized areas which are facing, on a day-to-day basis, the specter of municipal bankruptcy.

Once a municipality has prepared this housing development program, it is required to submit same to the county planning board, which county planning board is required to evaluate same with an eye towards whether or not such a program might be overly restrictive and out of line with the hereinbefore mentioned housing allocations. The county planning board is required to determine

as to whether adequate site locations are provided necessary to meet the municipality's housing allocation and whether such a program contains an appropriate plan of land development, including such things as the scheduling, location and financing of capital improvements and public services and even where necessary, a program of land acquisition in order that the municipality may be able to cope with anticipated population growth. Further required to be ascertained in the review by the county planning board of a municipal housing development program are such things as whether the housing program contains adequate provisions and safeguards concerning environmental matters and the adverse side effects of development, also whether the designated site locations are readily accessible to major employment centers and whether the program avoids excessive concentrations of low income or subsidized dwelling units.

The county, after receipt of this municipal housing development program, must within sixty days inform the municipality of its findings and preliminary recommendations. The municipality thereafter has thirty days within which either to amend in accordance with the county's recommendations or to reject such recommendations and submit additional information. Thereafter the county planning board must submit its final recommendations and all copies of appropriate municipal material to the office of the Commissioner. The Commissioner is then to review and evaluate all materials. The Commissioner's office then can either give its unqualified approval, its qualified approval, or its rejection of said municipality's housing development program. If the

Commissioner's office rejects, then the municipality has thirty days to ratify the program placed into effect by the Commissioner's office, or in lieu thereof the Commissioner's office can place into effect their recommendations as to the municipality and the municipality will be bound thereby.

The bill then breaks down into miscellaneous remedial type sections, the first of which anticipates and provides for aggregate sets of land use regulations and uniform housing development programs encompassing more than one municipality within their provisions. The same criteria for approval and review are continued to accommodate a situation such as this. The next section concerns itself with a requirement imposed on municipalities assessing the housing impact of any type of entity which creates within the municipality one hundred or more full-time employment opportunities previously unavailable. This section looks toward the amendments of the various programs that exist to include a situation such as this. Such amendments are required to be submitted to the county planning board for its review and approval. A further section is added to provide that technical assistance may be afforded to municipalities for the purpose of assisting them in meeting their obligations under this proposed Act.

One of the last provisions in the proposed Act anticipates situations where the Commissioner may make a grant contingent on the availability of funds to municipalities or counties in aid of their making the required studies, surveys and reviews provided for in this Act. There is, however, a limitation of a fifty per cent maximum participation by the Department of Community Affairs.

This section also anticipates the payment for work already completed by such a municipality or county.

The final two operative provisions are amendments to N.J.S.A. 40:55-1.11 and N.J.S.A. 40:55-32 and in both of these sections, the first of which deals with Master Plans and the second of which deals with the purposes for which zoning is deemed appropriate, the following language is listed in the various areas of consideration:

> "Adequate site locations to satisfy the housing needs of the community."

The last two portions of the bill include (1) the fiscal note appropriating $3.5 million to the Department of Community Affairs and (2) the effective date, which is listed as an immediate effect upon enactment into law.

The comments given concerning this bill do not, in and of themselves, state categorical opposition to the concept of a uniform system of land use regulation and planning; rather, they should be considered as a request not to attempt legislation in this very sensitive and complex area of concern in such broad strokes so as to, in effect, create an assignment of large-scale discretionary responsibility to an executive agency of the State Government. A uniform system of land use regulation and planning must come about not by such means, but by a true partnership between the legislative and executive function thereby allowing the court system to extract itself from the legislative arena and to return to its assigned function of settling disputes within a properly integrated and defined system of laws.

In setting forth what is "appropriate," "adequate," and "necessary," as far as standards, regulations, and projections come into play within the provisions of this Act, the Legislature, and not the Executive Branch, must discharge a continuing function. The Legislature must be a constant and active source of guidance in these matters as opposed to being the expedient creator of legislation which simply changes the forum from the court house where it is conceded to be at present to the executive department where too much responsibility combined with inadequate resources has become the order of the day.

GIORDANO & HALLERAN

interoffice memorandum

FROM	DATE
TO	
SUBJECT	
COPIES TO	

As you are aware, the New Jersey Supreme Court, on March 24, 1975, decided the most significant zoning case in its history, Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. ____ (1975).

The following will serve as an in-depth analysis of the case which will have a major impact upon the future of local land use regulation not only in this State but throughout the United States. Because of the length of the Opinion (53 pages with 46 pages of concurring opinions) the analysis is likewise somewhat lengthy.

HISTORY OF THE CASE

The Plaintiffs, several civil rights organizations and various resident and non-resident individuals, brought suit against the Township of Mount Laurel charging that low and moderate income families were precluded from obtaining adequate housing in the municipality because of Mount Laurel's system of land use regulation. Judge Martino, in the trial court, agreed with the Plaintiffs and declared the Township Zoning Ordinance to be totally invalid, (See 119 N.J. Super. 164 (Law Div.1972)) and went on to order the municipality to conduct studies of low and moderate income housing needs and to present a plan of affirmative action designed to "enable and encourage the satisfaction of the indicated needs".

The Township appealed to the Appellate Division and there was a Cross Appeal taken by the Plaintiffs contending that the Judgment did not go far enough, i.e., it should have directed that the prescribed plan take into account a provision by Mount Laurel Township for a "fair share of the regional housing needs of low and moderate income families".

The Appeals were certified to the Supreme Court before argument in the Appellate Division, pursuant to R.2:12-1.

The Court, preliminarily, made clear that the effects of this Opinion would not be confined to Mount Laurel but would apply to "any number of other municipalities of sizeable land area outside the central cities and older built up suburbs of our

north and south Jersey metropolitan areas...which, like Mount Laurel, have substantially shed rural characteristics and have undergone great population increases since World War II or are now in the process of doing so, but still are not completely developed and remain in the path of inevitable future residential, commercial and industrial demand and growth." (Slip Opinion at page 5).

BACKGROUND OF MOUNT LAUREL TOWNSHIP

Mount Laurel, a sprawling township of 22 square miles (14,000 acres), is located about seven miles from Camden and ten miles from the Benjamin Franklin Bridge crossing the Delaware River to Philadelphia. Since 1950, the population has grown from 2,817 to 11,221 in 1970. Sixty-five percent of the Township was still vacant land or devoted to agricultural use.

The Township is traversed by major highways, including the New Jersey Turnpike, I-295, Route 73, Route 70 and U.S. 130.

29.2% of all the land in Mount Laurel, or 4,121 acres, is zoned for industry of a limited nature (light manufacturing, research, distribution of goods, offices, etc.).

Only 100 acres of land is currently occupied by industrial use.

> "The rest of the land so zoned has remained undeveloped. If it were fully utilized, about 43,500 industrial jobs would be created, but it appeared clear that as happens in the case of so many municipalities, much more land has been so zoned than the reasonable potential for industrial movement or expansion warrants. At the same time, however, the land cannot be used for residential development under the general ordinance." (Slip Opinion at page 10).

The balance of the land area, almost 10,000 acres, is divided into several residential classifications. Multi-family and townhouse developments are not allowed under the general ordinance but are permissable under PUD.

The zoning characteristics of the five residential classifications are as follows:

A) R1 - Minimum lot area 9,375 square feet; minimim lot width 75 feet; minimum floor space 1,100 square feet - one story, 1,300 square feet if one and one half or two stories.

B) R2 - Minimum lot size 11,000 square feet; 75 foot minimum lot width; minimum floor area 900 square feet.

C) R3 - (4,600 acres) 20,000 square foot lots; lot width of 100 feet;aand 1,100 and 1,300 square feet floor area requirements.

D) R-1D (Cluster Zone) Utilized in R3 zone to reduce lot size to 10,000 square feet; (12,000 square feet on corner lots) but limitations of density to 2.25 dwelling units per gross acre. Minimum lot width of 80 feet and 1,100 and 1,300 square foot floor area limitations.

E) PUD No specific zone, but rather PUDs are agreed upon between the municipality and the developer. Although the PUD Ordinance was repealed, there were four PUD projects which were saved from extinction by the repeal of the statute.

These projects involved at least 10,000 sale and rental housing units to be erected over a period of years:

"While multi-family housing in the form of rental garden, medium rise and high rise apartments and attached townhouses is for the first time provided for, as well as single family detached dwellings for sale, it is not designed to accommodate and is beyond the financial reach of low and moderate income families, especially those with young children. The aim is quite the contrary; as with single family homes in the older conventional subdivisions, only persons of medium and upper income are sought as residents." (Slip Opinion at pages 16-17)

The PUD approvals also sharply restricted the number of multi-family dwellings having more than one bedroom so as to alleviate the burden of additional school children and additional revenues being needed to provide school services.

"In addition, low density, required amenities, such as central air conditioning and specified developer contributions helped to push rents and sales prices to high levels. These contributions include fire apparatus, ambulances, fire houses, and very large sums of money for educational facilities, a cultural center and a Township Library." (Slip Opinion at pages 17 and 18).

F) The Court also noted the existence of a Planned Retirement Community Zone of approximately 200 acres which it characterized as affirmative action for the benefit of certain segments of the population which was to be contrasted with the lack of affording any opportunity for decent housing for low and moderate income individuals. (Slip Opinion at page 19).

Based on this factual pattern, the Court concluded, as did the trial Court, that Mount Laurel has acted affirmatively to control development and to attract a select type of growth.

The Township's avowed justification was to keep down local property taxes by attracting industrial ratables and keeping the school population as low as possible.

THE LEGAL ISSUE

The Court stated the overall issue in the case:

> "The legal question...is whether a developing municipality like Mount Laurel may validly, by a system of land use regulation, make it physically and economically impossible to provide low and moderate income housing in the municipality for the various categories of persons who need and want it and, thereby,...exclude such people from living in its confines because of the limited extent of their income and resources";

and the Court concluded:

> "...every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor. These obligations must be met unless the particular municipality can sustain the heavy burden of demonstrating peculiar circumstances which dictate that it should not be required so to do." (Slip opinion at pages 25 - 26).

The basis of the Court's Decision was the New Jersey Constitution as opposed to federal constitutional questions, thereby almost certainly precluding review of this decision by the United States Supreme Court.

The Court then discussed the constitutional and statutory basis for local zoning regulations and concluded that restrictions on availability of housing to large segments of the population constituted a major question of fundamental importance justifying a decision on constitutional grounds, (Slip Opinion at page 28), a step Courts will traditionally avoid where possible.

The Court also discussed several cases it decided during the last twenty-five years concerning various types of land use regulations including minimum floor area requirements, large lot zoning, banning of multi-family, banning of mobile home parks and concluded that warnings of judicial impatience with restrictive land use regulantions had been made clear as early as Pierro v. Baxendale, 20 N.J. 17, 29 (1955):

"In the light of existing population and land conditions within our state these [municipal zoning] powers may fairly be exercised without in any wise endangering the needs or reasonable expectations of any segment of our people. If and when conditions change, alterations in zoning restrictions and pertinent legislative and judicial attitudes need not be long delayed." 20 N.J. at 29 (emphasis added)

The Court went on to discuss various cases which indicated that this regional approach to land use regulations is called for by modern societal makeup.

The Court emphasized that housing was a fundamental right which is encompassed within the term general welfare:

"It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation. Further, the universal and constant need for such housing is so important and of such broad public interest that the general welfare which developing municipalities like Mount Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality. It has to follow that, broadly speaking, the presumptive obligation arises for each such municipality affirmatively to plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate cost housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries. Negatively, it may not adopt regulations or policies which thwart or preclude that opportunity." (Slip Opinion at pages 33 - 34)

At page 35, the Court stated that "conditions have in fact changed and that judicial attitudes must therefore be altered to require a broader view of the general welfare and of the obligation of municipalities to afford all people the opportunity to be suitably housed." (Slip Opinion at page 35).

The Court discussed the procedural and substantive aspects of this presumption of affirmative duty on the part of municipalities:

"...when it is shown that a developing municipality in its land use regulations has not made realistically possible a variety and choice of housing, including adequate provision to afford the opportunity for low and moderate income housing or has expressly prescribed requirements and restrictions which preclude or substantially hinder it, a facial showing of violation of substantive due process or equal protection under the State Constitution has been made out and the burden, and it is a heavy one, shifts to the municipality to establish a valid basis for its action or non-action...the substantive aspect

of "presumptive" relates to the specifics,...of what municipal land use regulation provisions, or the absence thereof, will evidence invalidity and shift the burden of proof and, on the other hand, of what basis and considerations will carry the municipality's burden and sustain what it has done or failed to do."

APPLICABILITY OF LEGAL STANDARDS TO MOUNT LAUREL TOWNSHIP

1. Multi-family bedroom restrictions are outlawed:

   "Such restrictions are so clearly contrary to the general welfare as not to require further discussion." (Slip Opinion at page 39).

2. "Mount Laurel Zoning Ordinance is also so restrictive in its minimum lot area, lot frontage and building size requirements ...as to preclude single family housing for even moderate income families. Required lot area of at least 9,375 square feet in one remaining regular residential zone and 20,000 square feet (almost half an acre) in the other, with required frontage of 75 and 100 feet respectively, cannot be called small lots and amounts to low density zoning, very definitely increasing the cost of purchasing and improving land and so affecting the cost of housing. As to building size, the Township's general requirements of a minimum dwelling floor area of 1,100 square feet for all one story houses and 1,300 square feet for all of one and one-half stories or higher is without regard to required minimum lot size or frontage or the number of occupants...again it is evident these requirements increase the size and so the cost of housing." (Slip Opinion at pages 40 - 41.)

The Court then went on to discuss the area of zoning and land use regulations which have been used for many years by large, undeveloped townships such as Jackson, Berkeley, Lacey, Dover and Manchester, to establish land banks through the utilization of the zoning of large industrial tracts:

"Akin to large lot, single family zoning restrictions, restricting the population, is the zoning of very large amounts of land for industrial and related uses. Mount Laurel has set aside almost thirty percent of its area, over 4,100 acres, for that purpose; the only residential use allowed is for farm dwellings. In almost a decade only about one hundred acres have been developed industrially. Despite the Township's strategic location for motor transportation purposes, as intimated earlier, it seems plain that the likelihood of

anywhere near the whole of the zoned area being used for the intended purpose in the foreseeable future is remote indeed and that an unreasonable amount of land has thereby been removed from possible residential development, again seemingly for local fiscal reasons." (Slip Opinion at pages 41 - 42).

The Court thus concluded the Mount Laurel Zoning Ordinance was presumptively contrary to the general welfare, thereby shifting the burden of proof to justify said ordinance to the Township.

The Township advanced two principal reasons in support of its zoning pattern:

1. The current tax structure, i.e., heavy reliance on property taxes to finance schools.

The Court, while recognizing the problem, given full vent in Robinson v. Cahill, held that the zoning laws cannot be utilized to provide a municipality with relief from the tax system. (Slip Opinion at pages 42 - 44).

2. The second argument advanced by the municipality was ecological considerations, i.e., the unavailability of municipal sewer and water services and inadequate soil conditions such as would support high density development.

The Court rejected the utilization of this argument and sounded a warning to environmentalists which has been a long time coming:

"Generally only a relatively small portion of a developing municipality will be involved, for, to have a valid effect, the danger and impact must be substantial and very real (the construction of every building or the improvement of every plot have some environmental impact) - not simply a make weight to support exclusionary housing measures or preclude growth - and the regulation adopted must be only that reasonably necessary for public protection of a vital interest." (Slip Opinion at page 45.)

The Court then summarized its holding;

> "...Mount Laurel must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income. It must permit multi-family housing, without bedroom or similar restrictions, as well as small dwellings on very small lots, low cost housing of other types and in general, high density zoning, without artificial and unjustifiable minimum requirements as to lot size, building size and the like to meet the full panoply of these needs. Certainly when a municipality zones for industry and commerce for local tax benefit purposes, it must without question zone to permit adequate housing within the means of the employees involved in such uses. (If Planned Unit Developments are authorized, one would assume that each must include a reasonable amount of low and moderate housing in its residential "mix", unless opportunity for such housing has already been realistically provided for elsewhere in the municipality.) The amount of land removed from residential use by allocation to industrial and commercial purposes, must be reasonably related to the present and future potentials for such purposes. In other words, such municipalities must zone primarily for the living welfare of people and not for the benefit of the local tax rate." (Slip Opinion at pages 45 - 46)

The Court then discussed the concept of a municipality's "fair share" of regional housing needs.

The Court was unwilling to provide a hard and fast definition of region, although it indicated that restrictions within the boundaries of the State seemed practical and reasonable. The Court then indicated what the appropriate remedy was in the case. The Township was granted ninety days to adopt Zoning Amendments to correct deficiencies noted in the Opinion and the Plaintiffs were to be allowed thirty days thereafter to file any additional Complaints challenging the validity of these amendments. The Court specifically allowed the municipalities first crack at coping with their zoning and indicated a certain reluctance to step into the field:

> "It is not appropriate at this time, particularly in view of the advanced view of zoning law as applied to housing laid down by this Opinion, to deal with the matter of the further extent of judicial power in the field or to exercise any such power." (Slip Opinion at page 53).

But the Court left little doubt that it would, in fact, act if Mount Laurel and other townships similarly situated fail to do so.

Justice Pashman's forty-three page concurring Opinion differed from the Court from the majority only in that "I would have the Court go farther and faster in its implementation of the principles announced today." (Pashman, J., Concurring Opinion at page 3). He felt that the Court should lay down broad guidelines for judicial review of municipal zoning decisions which involve exclusionary abuses. (Slip Opinion at page 4)

Justice Pashman indicated a deep concern that the Court did not go far enough in setting forth the extent of the affirmative obligations imposed upon developing municipalities such as Mount Laurel Township, and he indicated a desire that the Court establish a policy of active judicial enforcement, not only of the negative obligations imposed upon municipalities by this Decision but also of the affirmative obligations. (Pashman, J., Concurring Opinion at page 25).

As to developing municipalities, Justice Pashman was realistic enough to expect and to realize that private enterprise could not cope with the problem of providing adequate housing for low and moderate income people without substantial public assistance:

> "Developing municipalities have a duty to make all reasonable efforts to encourage and facilitate private efforts to take advantage of these programs." (Pashman, J., Concurring Opinion at page 29).

Also, he realized that public housing programs may be utilized to provide this type of housing.

Pashman was quick to point however, that this affirmative obligation did not extend beyond providing a township's fair share of regional housing needs and that his desire was not to recreate slums in new locations and he also indicated that timing and pacing of development may be a generally acceptable method of land use regulation provided that they are reasonable and are not used as a means to deny the future. Justice Pashman also believed that the municipality should have the first opportunity to zone its land, but gave fair warning that judicial intervention in the cases of continued abuse would be swiftly forthcoming. (Pashman, J., Concurring Opinion at pages 33 - 34).

He then outlined a proposed form of procedure whereby a Trial Court could, in fact, shape an appropriate remedy in a case where a township has failed to meet the burdens imposed by Mount Laurel:

1. Identify the relevant region.

2. Determine the present and future housing needs of the region.

3. Allocate these needs among the various municipalities in the region, and

4. Shape a suitable remedial Order.

He also indicated approval of the concept of a Court appointed independent Planning Consultant being utilized as well as approval of the concept of joining all municipalities in the appropriately defined region as Defendants in the case. (Pashman, J., Concurring Opinion at pages 35 - 37).

He then turned his attention to communities which have already been developed in an exclusionary fashion and have thus contributed to the regional housing shortages outlined in both his Opinion and that of Justice Hall.

He felt that these municipalities share a similar burden to the developing municipalities such as Mount Laurel; a negative obligation not to use zoning and subdivision controls to obstruct the construction of low cost housing and an affirmative duty to plan and provide for such housing, "...insofar as these obligations can be carried out without grossly disturbing existing neighborhoods." (Pashman, J., Concurring Opinion at page 38).

He then turned his attention to those portions of the State of New Jersey which are neither fully developed nor in the path of major development:

> "In these municipalities it is not meaningful to speak of failure to meet regional housing needs, not because there are not persons who are inadequately housed, but because it is not yet meaningful to speak of "regional" needs nor is it clear that land use controls play a significant role in the housing shortage at the present time. Nevertheless, the time may well come when the frontiers of suburbia will reach these areas. Municipalities may not act to deter the future development of a diversified housing stock by establishing land use controls which are inherently exclusionary and which bear no substantial relationship to any legitimate zoning purpose." (Pashman, J., Concurring Opinion at pages 39 - 40, emphasis added).

He then listed zoning devices which he deemed to be presumptively objectionable as including minimum house size requirements bearing no substantial relation to health needs, bedroom requirements, zoning for excessively lots and large frontages.

To say that Mount Laurel is revolutionary is an understatement. It literally changes Zoning Law in New Jersey as it has existed for the past fifty years. It represents the most significant progressive view of zoning yet established by any Court in the United States.

The Decision imposes upon municipalities who are within the metropolitan areas of large central cities such as Newark, Elizabeth, Paterson, New York, Camden, Philadelphia and Trenton, an affirmative obligation to provide low and moderate income housing to people moving out of the cities and people who work in the industrial parks that these developing municipalities seek to attract because of the tax benefits attached to them under our current school tax financing system.

If a township is a "developing one", i.e., one which has experienced significant population growth in the past twenty years and which is still left substantially undeveloped, then that township must, through the makeup of its land use regulations, provide an opportunity for low and moderate income residents and prospective residents to obtain single family, townhouse or garden apartment high-rise or mid-rise apartments within that township. With regard to this particular problems of the definable region, what constitutes a municipality's fair share of that region's housing needs and what types of affirmative action a township must be required to take, it bears pointing out that a case which has been a companion to Mount Laurel, i.e., Oakwood at Madison, Inc. v. Madison Township, currently pending before the Supreme Court, has apparently been re-scheduled for re-argument some time in April. The latest decision in the Madison Township case, that of Judge Furman in April of 1974, invalidated Madison Township's efforts at providing a fair share of the regional housing needs of the area which Judge Furman deemed to include New York City. He invalidated the ordinance despite significant reductions in the amount of land zoned for one and two acres, provisions for cluster and PUD developments and the deletion of total floor space limitations in two residential zones and the deletion of bedroom ratio and maximum density restrictions from the multi-family provisions.

However, the evidence indicated that there was almost no potential for low income housing and no incentive designed to facilitate the building of low or moderate income housing (low income defined as up to $7,000 per year and moderate income as defined as up to $10,000 per year) and that only about 12% of the housing projected to be constructed under the zoning ordinance would be available to moderate income residents and virtually none within the reach of households with incomes of $9,000 or less. Thus the Court acted to invalidate the entire zoning ordinance.

It has been speculated that the Supreme Court will utilize Madison Township to specifically apply the guidelines set forth in Mount Laurel to a specific situation where statistics are readily available as to the composition of a region and the availability of housing therein and the projected needs for housing as well as population makeup and all other demographic statistics which would enable it to demonstrate what it meant in Mount Laurel by the affirmative obligations cast upon a township. Thus, Mount Laurel is but a first step in determining what sort of a burden the Supreme Court will impose upon large developing municipalities and Madison Township is likely to be a second, more significant step.

As an aside, it should be noted that Justice Hall, the author of the majority Opinion in Mount Laurel, has now retired from the Court and Justice Pashman, the author of the concurring Opinion, as well as the author of several lengthy Opinions in other land use regulation cases decided recently by the New Jersey Supreme Court, is thought to be the one who will author the Supreme Court's majority Opinion in Madison Township. If this is the case, the thrust of Justice Pashman's recent Opinions leads one to the inevitable conclusion that his methodology spelled out above in his concurring Opinion in Mount Laurel for determining what constitutes a township's fair share of a region's housing needs will come to fruition in the Madison Township decision. If so, then we will have a judicial model which will enable municipalities, developers and all other interested parties to determine exactly what a particular municipality's obligations are with regard to the provision of housing for low and moderate income families.

However, it is my opinion that Mount Laurel, standing alone, acts to invalidate numerous zoning ordinances found in Monmouth and Ocean Counties, where there are numerous municipalities located within the Newark - New York metropolitan area which are largely undeveloped, which, until now, have been almost exclusively developed for single family residential subdivisions and retirement communities. The Supreme Court makes it very clear that this type of development is going to stop and that development is going to take on a more multi-faceted nature and will not be confined to grid pattern, detached single family homes or even planned unit developments such as have become common in this area and which are thought by many to have the effect of negating any exclusionary allegations inasmuch as they do make provisions for multi-family housing. However, as Justice Hall makes clear, the utilization of placing other burdens on developers of PUDs makes it highly unlikely, if not impossible, for them to provide any type of low income or moderate income housing.

In summary then, Mount Laurel is in itself a revolution and it is essential that Townships be made aware of the impact of the decision and that they take steps to correct the zoning deficiencies found in their ordinances. This will probably not be possible until Madison Township is decided, but responsible developers, as members of their own community, should take steps to apprise local officials that many local zoning ordinances, as currently constituted, are now illegal and unconstitutional.

New Jersey County Planners Association May 28, 1975

Statement on Senator Martin Greenberg's Housing Bill, Senate 3100.

On behalf of the New Jersey County Planners Association, I have been asked to present this brief statement.

The County Planners Association is very much interested in the piece of legislation before you. However, because of the short notice regarding the hearing today, the Association was unable to prepare an official Association position on the substance of the proposed legislative measure. The County Planners Association will meet shortly to discuss and develop an Association position on this and other bills being considered by the Legislature which affect county planning. As soon as the Association position is formulated on this bill, we will either submit our findings to the committee by mail or testify at one of the regional meetings.

This statement was presented by:
Robert Halsey, President
New Jersey County Planners Association