

PUBLIC HEARING

before

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

on

SENATE BILL 2046

(DESIGNATED THE "FAIR HOUSING ACT")

L. Stann
2 Bill F

Held:
September 17, 1984
Room 114
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Wynona M. Lipman (Chairwoman)
Senator Gerald R. Stockman
Senator Richard J. Codey
Senator Gerald Cardinale
Senator H. James Saxton

ALSO PRESENT:

Senator S. Thomas Gagliano

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

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TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Senator S. Thomas Gagliano District 12, New Jersey State Senate | 1 |
| Harry Pozycki Chairman, Ad Hoc Committee on Fair Housing | 4 |
| Saul G. Hornik Mayor, Marlboro Township, New Jersey | 46 & 82 |
| Joseph Popolo Mayor, Holmdel, New Jersey | 49 |
| Joseph Coniglio Council President, Borough of Paramus, New Jersey | 51 |
| John Atlas Vice President, New Jersey Tenants' Organization | 53 |
| Lisa DiGiulio Concerned Citizen, Mahwah, New Jersey, and Co-Chairman, State Mayors' Task Force, and Chairman of Mayor's Advisory Committee, Mahway, New Jersey | 61 |
| Mary Keri Concerned Citizen, Mahway, New Jersey | 66 |
| Mary Lou Petitt Housing Director, New Jersey State League of Women Voters | 73 |
| George Murtaugh Mayor, Clinton, New Jersey | 98 |
| William H. Cherry Representing Princeton Township, New Jersey | 104 |
| <u>APPENDIX</u> | |
| Letters, submitted by Lisa DiGiulio Mahwah, New Jersey | 1x |
| Photostatic Copy of Newspaper Clippings | 5x |
| TM: 1 - 31 | |
| JB: 32 - 60 | |
| TM: 61 - 88 | |
| JB: 89 - 103 | |
| TM: 104 - 106 | |

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SENATE, No. 2046
STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1984

By Senators LIPMAN, STOCKMAN and LYNCH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 e. Any member may be removed from office for misconduct in
30 office, willful neglect of duty, or other conduct evidencing unfitness
31 for the office, or for incompetence. A proceeding for removal may
32 be instituted by the Attorney General in the Superior Court. A
33 member or employee of the council shall automatically forfeit his
34 office or employment upon conviction of any crime. Any member or
35 employee of the council shall be subject to the duty to appear and
36 testify and to removal from his office or employment in accordance
37 with the provisions of P. L. 1970, c. 72 (C. 2A:51-17.2a et seq.).

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

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

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

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

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

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

12 c. Population and household projections; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) The age of the case:

12 (2) The amount of discovery and other pre-trial procedures that
 13 have taken place:

14 (3) The likely date of trial:

15 (4) The likely date by which administrative mediation and review
 16 can be completed: and

17 (5) Whether the transfer is likely to facilitate and expedite the
 18 provision of a realistic opportunity for low and moderate income
 19 housing.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 e. Shelters for the homeless.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

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

SENATOR WYNONA M. LIPMAN (Chairman): Good morning. Senator Gagliano, do you want to sit up here, please? I have to get all the Senators into place, dissenting and consenting.

Ladies and gentlemen, I would like to introduce the Senators who are here. I understand Senator Saxton is on his way. On my right is Senator Tom Gagliano of Monmouth County. Next to me is Joe Capalbo, our Committee Aide. I am Wynona Lipman, Chairman of the State Government Committee. On my left is Senator Gerald Stockman, and to his left is Cathy Crotty, who is on the Senate staff.

We are here today to continue the process of receiving public input on the Mount Laurel legislation. We know that there have been many discussions on this bill. We know that the ad hoc committee has been discussing possible amendments to it. We have not decided what kind of bill this will be, so that is why we are taking testimony today.

The Legislature has received a lot of criticism for not doing something very quickly on this matter, but since this is such a complicated and complex issue, we want to fashion the best legislation possible. That is the reason why we have called this public hearing. I hope you are ready to give us your points of view.

Senator Saxton, a member of the State Government Committee is now present.

SENATOR SAXTON: Senator Saxton was here at 10:00, right on time.

SENATOR LIPMAN: Yes, I know; I heard.

I understand that the Senators want to speak. Senator Gagliano, we will start with you.

SENATOR THOMAS S. GAGLIANO: Madam Chairman, members of the Committee, as you know, I am not a member of the State Government Committee, but I have been, for a long time, vitally concerned about the Mount Laurel II issue. I am here today to listen, because I believe -- I hope, at least -- that the Committee is getting to the point where it will start to accept some amendments to the bill. We can then decide whether or not we can support the bill.

I think it is true that the Legislature is being criticized for a lack of activity; frankly, that is the reason why I suggested the moratorium, or staging, earlier, so that the Legislature would be able to give this entire issue due deliberation, and at the same time hold back some of the flow of litigation that has been started all over the State.

However, the Legislature, in its wisdom, chose not to go with the moratorium, and not to go with staging. So, I think we are still in an emergency type situation with respect to Mount Laurel II.

I feel very strongly that it is up to this Committee to recommend legislation which will bring rationale back to this issue.

I want to point out to you the Warren Township decision, which requires Warren Township to provide zoning for 900-plus low and moderate-income housing units. The only way they can be funded now is through the so-called "density donors." That is the only way that I know of, because I don't think Warren Township has a lot of money; certainly, the State hasn't offered them any money to provide for this housing on a one-on-one basis.

So, the density bonus would mean that Warren Township has to multiply their number times five. If you multiply the number times five, you come up with four or five thousand new housing units for Warren Township, and a situation where that is probably three times larger than the town is right now, in terms of numbers of housing units. I don't know the number of housing units in Warren Township. Maybe the attorneys here, representing Warren Township, will know the number of units in the township. But, this is happening all over the State because of this bonus density issue.

When one has to multiply times five, this type of growth is going to have a severe impact on the size of New Jersey, the infrastructure of New Jersey, neighborhoods, and, as we have heard -- and I believe this also -- on the urban areas, because these people have to come from some place. I think that many of them will come from urban areas and, therefore, disturb neighborhoods on that basis.

So, I think the Legislature has to act, and act quickly. It definitely has to face up to the formula that has been enunciated by

the courts. I think the formula must be reworked, and I am here to work with you in any way that I can on this issue. I think I have attended just about all of the meetings on this issue, and I will continue to attend them if I can be of help. Thank you.

SENATOR LIPMAN: Thank you, Senator. We certainly appreciate your attendance and your comments each time.

Senator Saxton?

SENATOR SAXTON: Madam Chairlady, I had written a statement for this morning. Apparently I lost it and Senator Gagliano found it, so I will withhold my comments for a few minutes. As the day goes on, I guess we will all have a chance to give our input. Thank you.

SENATOR LIPMAN: Senator Stockman?

SENATOR STOCKMAN: No, not at this time.

SENATOR LIPMAN: No? All right, we will now begin the hearing. Mr. Harry Pozycki, Chairman of the Ad Hoc Committee, will be our first witness.

SENATOR GAGLIANO: Madam Chairman, there are several people who are outside. I don't know if they have been invited in, but I understand they are people who are interested in this issue. They are outside, and I think they should be inside.

MEMBER OF AUDIENCE: Garry Stein is now addressing them.

SENATOR GAGLIANO: If I may, I know this is not my Committee, but they are here for this Committee hearing. They should be invited in because the meeting has started.

SENATOR LIPMAN: Maybe I should have come in at 11 o'clock instead of 10 o'clock? (laughter)

SENATOR GAGLIANO: It is just that I think Mr. Pozycki's testimony is important.

MEMBER OF AUDIENCE: I think they intended to come in as soon as Mr. Stein finished talking with them.

SENATOR LIPMAN: All right, we will wait a few minutes.

(at which time there is a pause in hearing)

We are glad to have you. (Senator Lipman welcoming aforementioned people) We are glad you are here to talk about the Mount Laurel situation and the legislation, if you care to.

I had just introduced the Senators who are here to listen to your comments today. They are Senator Stockman, of the State Government Committee; Senator Saxton, of the State Government Committee; and, Senator Gagliano, who has a very lively interest in this issue. They all made their opening statements, and we were about to hear the first person who is going to testify this morning. He is Mr. Harry Pozycki, Chairman of the Ad Hoc Committee which has been proposing amendments to Senate Bill 2046.

HARRY POZYCKI: Senator, what I hope to do today is to give you a review of the Committee's most recent meetings and their proposals, some of which are in hard copy form for amendment, others which are really more in the form of recommendations, based on a consensus reached by the Committee. These will be put into hard copy by the subcommittees which are now working on them.

SENATOR LIPMAN: Are you all familiar with S-2046? This is the legislation Mr. Pozycki will be addressing. If not, perhaps you better make all points as clear as possible when discussing the issues as well as the amendments, Mr. Pozycki.

MR. POZYCKI: I will attempt to give an outline of the bill as I go through the amendment proposals.

SENATOR LIPMAN: Very good.

MR. POZYCKI: May I begin?

SENATOR LIPMAN: Yes, please.

MR. POZYCKI: Madam Chairwoman, members of the Senate Committee: As has been indicated, I represent what has been called the Committee on Fair Housing. So that we understand what this Committee is, I would like to point out that they are a group of representatives of at least four essential constituencies: the poor who are in need of housing; the municipalities who, while willing to accept housing, are concerned about disruptive growth; the planners of our State who wish to see housing built in a way which is coordinated with overall municipal and statewide development; and, the builders who want to see remedies that are realistic in terms of the economics of today.

The Committee has been painfully pushing its way through the intricacies of the Mount Laurel dilemma in search of a legislative

solution which is fair to all parties concerned, fair to the poor who lack the dignity of a home, and fair to the municipalities who fear disruptive growth.

We don't pretend that we have a perfect solution. The Governor's office has been working -- as far as I am aware, from the time of the Cahill Administration's blueprint for housing -- for nearly 20 years now on the problem. The Supreme Court of this State has worked for more than 10 years, from the onset of the Fair Housing suits to the present time, without a solution that we can all embrace at this time. And, I do not pretend that we are submitting the perfect solution to you here today. But, I do want to strongly recommend the consensus approach which allows the grafting of good ideas onto a balanced legislative proposal.

I am sure, in testimony that will follow this morning, there will be new ideas brought before this Committee which can be grafted onto this legislation. Our approach is to keep an open mind and to try to accommodate all parties concerned in an effort to avoid the constant bickering and adversarial relations that prevent a workable solution to the Mount Laurel problem.

Thus far, it appears that some of the other proposals, such as ACR-24, do not hold any immediate resolution to the problem. I understand that that constitutional amendment cannot even take place until 1985, at the earliest. That is certainly not an imminent solution.

Just by way of introduction, I would like to compliment Senator Lipman for the genius of her approach in avoiding the adversarial process and looking for consensus. She has had the courage to work toward a solution that would be fair to all parties concerned.

The Fair Housing Act, S-2046, which Senator Lipman held up just a few moments ago, is based upon two fundamental elements. One concerns itself with planning as an alternative to ad hoc injection of large-scale developments into the towns of our State.

The second concerns itself with a guarantee that implementation of fair housing development will, in fact, occur, and not simply be discussed.

I would like to direct myself, first, to the matter of planning. As many of you are aware, in Section 9 of the bill, the legislation provides for a municipal option, and I underscore the word option. Each town in this State, if it wishes, can adopt a housing element in accordance with this bill; certain benefits attached to the housing element, such as the ability to have mediation instead of court intervention; the ability to have solutions other than the builders' remedy; and the ability, ultimately, to gain subsidization from the State for the construction of low and moderate-income housing.

The Committee felt that the housing element, as was originally developed, was perhaps too rigid and we wanted to include flexibility so that local municipal considerations could be reviewed by the Housing Council.

First of all, a Housing Council will be established, according to the bill, in State government for the review of housing elements which municipalities might opt to prepare. That Housing Council will define the regions of the State. This is a difficult problem right now, one which is absorbing the courts and the lawyers on both sides of the issue. It doesn't seem to have an easy solution. I believe the Housing Council can define the regions and at least move us closer to the solutions by such a defining.

The Housing Council will then estimate for each of the regions what their fair share should be. In the present draft of S-2046, there was simply an indication that the Housing Council should determine a fair share for the regions. This appeared to lock the Housing Council into a hard and fast number which would remain inflexible, and which would be imposed upon the local municipalities.

In an effort to recognize that as times change population projections change, we tried to incorporate more flexibility into the development of a regional fair share number. We incorporated such words as "estimate" the fair share number, and we incorporated references to published data pertaining to population projections. So, as population projections change and different types of housing studies, government reports, and census facts change, we will have the ability to modify the regional fair share estimates. These estimates

are not mandated on a municipality, but are merely provided as a support data base for municipal computation of local fair share obligations.

I want to stress that the bill, from the onset -- and even as it is presently drafted -- permits the municipalities to calculate their own fair share, rather than have that fair share number calculated by the State and imposed upon them. There is a review by the Housing Council in the State of those fair share numbers, but that is a matter for discussion within the context of the implementation process.

To the issue of planning, we have now incorporated language, by reference, in the bill which will permit consideration of local infrastructure capacity; the availability of undeveloped land within a given municipality; and the fiscal capacity of a municipality to meet its responsibilities with regard to fair share.

We have also recommended the incorporation of language. We do not have hard copy on this at this time, but it will include in the findings a recognition that some of the parts need not equal the whole. What I mean by that is, once the Housing Council has been able to come up with an estimate of the fair share of a given region, the Housing Council will not be reviewing local computations of fair share as though each one of those local parts of a region must add up to the overall regional fair share. This was done in consideration of the fact that individual towns may have justifiable constraints on being able to accommodate their fair share obligations. Therefore, if there is an adjustment made for a local municipality, in recognition of fiscal or infrastructure constraints, there need not be a fair share allocation which, when combined with the other municipalities in the region, will equal the fair share estimate of the Housing Council.

Next, with regard to the planning element -- the housing element in S-2046 -- we have given recognition to the fact that there are many ways to respond to the fair share obligation, aside from the builders' remedy, which was referenced by Senator Gagliano just a few moments ago. As you are all aware, the focus of Mount Laurel's solution at the present time seems to be on the bonus zoning, or

density bonus as it has been referred to. In this type of a solution, for every one unit of low or moderate-income housing, there must be four units of conventional housing. This creates a burden on the municipalities, in that it forces them to incorporate five times the amount of housing they would otherwise have to incorporate if they were to fulfill their own obligations toward the low and moderate end of the housing.

We have given recognition in our Committee discussions to the fact that there are ever-increasing new solutions to the implementation of a Mount Laurel solution in a given municipality. I would like to list some of those for you. Again, we do not have hard copy on this. Our Committee has been meeting from week-to-week, and I had telephone calls as late as midnight last night from various Committee members, making sure that I incorporated some of their suggestions today.

To give you just a few: One is the locally initiated development of fair share housing. This is the case when the municipality takes upon itself the building of low and moderate-income housing so that it need not accommodate four conventional units for every low and moderate-income unit it builds.

A modification of this approach permits a municipality not to build but to subsidize a developer who would build low and moderate-income housing. By providing the subsidization, the municipality can avoid giving the developer the extra four units that a density bonus would require.

We have also incorporated another avenue of relief, and that is the voluntary contributions of commercial developers who might receive an increase in intensity of development, permitted by a municipality if they make a contribution to a local housing trust fund. A given office developer might be able to build an extra 1,000 square feet in an office building proposed before a Municipal Land Use Board. In return for the additional 1,000 square feet, the commercial developer might make a voluntary contribution to the municipality for its housing trust fund, permitting the municipality to build or subsidize the low and moderate-income units; thereby, again, avoiding the extra four conventional units.

I see some of you smiling at the idea a developer might voluntarily contribute to a municipal housing trust fund. Please be aware that the voluntary contribution is to the developer's benefit, the benefit being his ability to build additional square footage. As an attorney who represents both municipalities and developers, I can tell you that land for commercial development is often priced on the square footage of permissible development; therefore, the developer gains a real tangible economic benefit in return for his or her contribution to a local housing trust fund.

We have also incorporated another avenue of solution, and that is the conversion of oversized existing residential units, and even in some cases the conversion of industrial factories to low and moderate residential development. Conversion is an avenue that has not nearly been fully explored. This country provides far more square feet of housing per individual than many of the most successful economic countries in the world today, such as Germany and Japan. Many of the houses that were built in times of large families are now substantially oversized, and municipalities can provide for conversions in appropriate areas of their municipality that would allow larger housing to be broken up for low and moderate-income housing. This solution also avoids the necessity of having to take the four additional conventional units that come with the builders' remedy that the courts are now mandating in most Mount Laurel cases.

Finally, we have left open the option of municipalities to develop their own solutions, even outside these recommended solutions. So, as towns become more creative in responding to their affirmative obligation, these creative solutions can be incorporated. Flexibility has been the byword in the Committee's deliberations.

Moving on to the second essential element of the bill, we come to the area of ensuring implementation. While, from the municipal perspective, I am sure that a planned rational approach that takes into consideration the fact that individual towns have individual constraints on the development of housing is certainly a welcome approach. Those advocates of fair housing, those who would see the poor have the dignity of a home, must also have the comfort that there

will, in fact, be housing developed and not simply more and more planning for housing. In this instance we, therefore, have addressed the matter of ensuring implementation of the housing.

The Housing Council, once a municipality has optionally determined that it will construct a housing element, will review that element to see if there has been a good faith calculation of fair share by the given town. The Council will offer review on a case-by-case basis. We want to actually incorporate this, by language, into S-2046. The purpose of this reference to a case-by-case basis is to put the Housing Council on notice that individual towns are quite different from each other, and that the Housing Council must give consideration to the individual town's specific fiscal capacities, infrastructure capacities, and the like.

In the implementation process, the first step is the filing of a resolution by the Town Council, offering to comply with the housing element provision in S-2046. Once that is done, the town becomes, at least for the time being, insulated against future litigation. There is a mediation procedure established. If notice is published by the municipality that it is going to adopt a housing element, developers and advocates of fair housing who would normally have gone to the courts to challenge the town, will now be called in before the Housing Council for a mediation session, and the Housing Council will be able to bring the parties together on a case-by-case basis, taking into consideration those local constraints on development, and, hopefully, handing down a solution which will bring about the development of the housing rather than the continuation of argument, appeal, and the adversarial process which does not seem to give solace to either the municipalities or to the fair housing advocates.

One of the major areas for proposed amendment that our Committee has been working on, Senators, has been in the area of review once mediation has been completed. It is the purpose of the Housing Council to ultimately grant or deny a strong presumption of validity to the municipalities who opt to accord with the housing element requirements. Previously, the legislation allowed what could have been

a rather long and tortuous process. As was pointed out to us by a number of municipalities, there may be the possibility that a town which takes the time to construct a housing element, comes before the Housing Council, and attempts to mediate its problem, would then be forced to go through a lengthy review process, offering testimony, paying for experts, permitting long, extended cross-examination and, only after a long process, getting a presumption of validity, which then might be challenged in the courts and brought back into the area of litigation. We wanted to avoid a dragging out of the process. We wanted to avoid a doubling up of hearings on the part of the Council and the courts.

In substitution, what we have designed is a streamlined procedure for the hearing process, where the municipality and any other concerned party can submit their reports, together with the housing element, to the Housing Council. A hearing will then be held which will last, in most cases, no more than one day. We propose to set in legislation a maximum of two days for the hearing process. We do not intend to permit full and extensive cross-examination because we feel this would be a duplication of the court process and it would only extend the time for implementation.

Instead, we would permit the Housing Council to entertain limited questions from concerned parties, as well as their own questioning of the municipality concerning the proposed housing element. In the event that the Housing Council after this, in most cases, one-day review procedure felt that the municipality had made a good-faith effort to reach its own fair share obligation, through a housing element that truly was geared to implement the fair share, the Housing Council would then be empowered to grant that the presumption of validity be strengthened.

The entire Mount Laurel process really is a legal advance on local home rule. Previously, zoning legislation carried with it a strong presumption of validity, whereby a town was almost guaranteed insulation against developer attack. With the recalcitrance of many municipalities -- and I stress, not all municipalities -- the courts felt it necessary to put aside the presumption of validity and, thus, the onslaught of litigation that now comprises the Mount Laurel issue.

If the Housing Council, proposed in this legislation, reviews a local town's effort at designing a workable housing element and it feels that the town has made a good-faith effort, that it has made an appropriate calculation of fair share, and that it has an appropriate methodology for implementation, we want the Housing Council to be able to offer the municipality a very strong presumption of validity. This will not be an absolute guarantee against future litigation but it certainly will be a warning to any developer who would challenge the municipality that the heretofore strong presumption of validity the town had enjoyed with regard to their zoning ordinances has now been restored and that it would be a most difficult process to overturn such a presumption.

Certainly, this would be an advantage to a town, and we hope that it will encourage municipalities to plan for the incorporation of low and moderate-income housing by virtue of a housing element, rather than to simply be caught as sitting ducks for developers who would challenge, and for court intervention that would create ad hoc housing developments without the kind of planning that a bill, such as Senator Lipman's, could prescribe.

One final element of the implementation process relates to phasing. Phasing is most important because it also takes into consideration local constraints on development. In this instance, we have recommended phasing be applicable not only to municipalities who heretofore have not been sued by developers or fair housing advocates, but to municipalities that have already settled, or who have had Mount Laurel judgments imposed against them by the courts. We have removed, by recommendation to this Committee, the former phasing schedule, which was rather rigid and which required certain percentages in each given year. We are now recommending a phasing schedule that will be based upon a review of local infrastructure, fiscal capacity, and similar considerations.

If in the event a municipality can show that there should be a phasing schedule different from that which is proposed in the legislation now, we want the Housing Council to be authorized to give consideration to the local needs of a given town. As a protection for

the fair housing advocates, we would also like to recommend the option of a decertification process. If a municipality has argued that the phasing of development should be slower than was already ordered either by the courts or by the Housing Council, we want a developer, or a fair housing advocate, to have the opportunity for appeal to the Housing Council to decertify the municipality -- that is, to strip it of its presumption of validity if the phasing is not working as proposed by the given town. So, there is both the opportunity for fair consideration on a town-by-town basis, and also the protection against a town merely planning and not truly implementing the development of low and moderate-income housing.

These two areas, planning as an alternative to large-scale housing developments imposed by the courts, with five times the amount of housing than the low and moderate fair share might indicate, and an implementation process that is flexible enough to take into consideration local needs and local characteristics, while still giving the ability to fair housing advocates to ensure the development of the housing, we think constitutes an advance in the improvement of S-2046.

There are a number of other relatively minor and technical modifications which I would just like to put on the record. We will then submit a copy of the bill with hard copy amendment proposals to achieve these ends.

The first is a recommendation that the subsidy provisions contained in S-2046 be removed from the bill, except for reference to the housing trust fund. We have been advised that subsidy provisions are more appropriately taken up in the Assembly, where such such appropriations are usually considered.

Second, we have reincluded, by recommendation, the HMDC -- the Hackensack Meadowlands Development Corporation -- and the Pinelands Commission, under the review of the Housing Council, if a municipality, within its borders, should opt for a housing element. It was recommended to us that these Commissions have responsibility to meet their fair share obligations, and, therefore, we cannot ask them to be their own judges. We need them to come before the Housing Council, in fairness to low and moderate-income advocates.

Third, we have recommended an increase in the appropriation in this bill, from \$250 thousand to \$1 million. If we are to take up consideration of the individual needs of every municipality on a more flexible basis, rather than abide by rigid guidelines, there has to be sufficient funding for the Housing Council to operate. Certainly, if we had rigid guidelines which simply mandated that a municipality meet certain hard numbers and which provided for less mediation and less flexibility, the appropriation could be lowered. But, if we are to engage in extensive mediation to achieve a solution, and if we are to take into consideration the details of individual municipal needs, there has to be a larger appropriation for the Housing Council.

Finally, we are recommending in the bill that the Department of Community Affairs be incorporated, or we should at least incorporate an administrative agency to oversee eligibility requirements for low and moderate-income housing, and future resale approval for low and moderate-income housing. It is enough of a burden on the municipalities to build the low and moderate-income housing and to spend the money that we are recommending for the planning of housing elements. We felt that the expense attached to qualifying potential purchasers or tenants of new low and moderate-income housing -- the eligibility matter -- should be handled by the Department of Community Affairs.

Finally, when these units are either re-rented or re-sold, in order to guarantee that the units remain low and moderate-income housing and that they do not reduce the fair share compliance of a municipality, opening it to future litigation, we felt that the Department of Community Affairs should administer the re-sale to ensure that the units remain low and moderate-income units.

Madam Chairwoman, members of the Committee, this constitutes the recommendations of the Fair Housing Committee for modification to the bill. As I indicated to you, those I have most recently outlined are in hard copy; the rest are a matter of consensus which subcommittees of the Fair Housing group are now working on, and we hope to be able to submit them to you within the next 30 days.

The gist of our recommendation, in sum, is to provide the kind of flexibility that will invite a municipality to drop efforts at fighting the litigation and to plan for a rational absorption of low and moderate-income units that can become a real thriving part of their communities; and, to provide an implementation process that will get the housing built for those in need of a home within the State of New Jersey, rather than subjecting that constituency to continuing litigation, appeals, threats, and the constitutional moratoriums against housing that have been a matter of recent record.

I thank you for your patience in hearing me out. On behalf of the Committee, I want to thank the Committee members who are not present here today for their hard work. We have been involved in lengthy sessions virtually every week, with take-home work, the likes of which you can't imagine.

Finally, I would again like to compliment Senator Lipman on her courage in standing firm for a reasonable solution to this issue, as opposed to the adversarial process, which seems to be continuing.

Thank you, Senators.

SENATOR LIPMAN: Thank you, Mr. Pozycki. I am glad the ad hoc committee adopted a name, the Fair Housing Committee. I am glad you did that.

Senator Saxton?

SENATOR SAXTON: Mr. Pozycki, do you envision that the draft you are going to submit to us will include amendments reflecting the basic structure of this bill, or will it be significantly different?

MR. POZYCKI: It essentially reflects the structure of this bill, in that there is an optional provision for a standardized housing element, there is an implementation process which includes mediation, and, finally, there is a presumption of validity awarded to a municipality that complies.

SENATOR SAXTON: The reason I asked that is, in this bill, in Section 6, it sets forth a criteria which the Fair Housing Council would use to ascertain the housing needs for the fair share formula. The criteria in paragraph (d) of that section includes guidelines for municipal adjustments, based on vacant land, infrastructure

considerations, and other municipal matters. There is no mention in that criteria of the need for low and moderate-income housing, not until we get over to section 9, where the municipality itself is developing a plan, do we get to the concept of a need for housing. I wonder if you think the Council ought to have some consideration as to the municipality's need set forth in their criteria as well?

MR. POZYCKI: Well, in section 6 (b) of the legislation, there is a requirement that the Housing Council, under our proposed amendment, establish the estimated present and prospective need for low and moderate-income housing. The criteria that are to be established by the Housing Council are a part of section 6.

It was our feeling that what we had to do was to have that need estimated, rather than fix the Housing Council into a hard and fast number for the region.

Once the Housing Council has a regional perspective of the estimated need for low and moderate-income housing, and once, under section (b) -- which you referred to -- it has established guidelines for a local municipality to look at these numbers and determine how they might accommodate their fair share, then a municipality will have enough instruction, we would hope, to be able to make its own calculation of fair share, and the Housing Council will have enough reference to make an appropriate review of the municipal calculation.

SENATOR SAXTON: Thank you.

SENATOR LIPMAN: Mr. Pozycski, I would like to ask a question here. From a regional point of view, and an estimate of the region's number, how in your plan will you prevent municipalities from disagreeing, saying, "I don't deserve to have 600. I am smaller than another municipality, which only has to provide 200?"

MR. POZYCKI: That is really the thrust of our recommended amendments. We have provided, as Senator Saxton has pointed out, the opportunity for an adjustment by the Fair Housing Council of what might otherwise be a hard fair share for the local municipality, based upon the municipality's proof that infrastructure constraints, fiscal capacity constraints, lack of available developable land, lack of access to transportation facilities for the new low and moderate-income

residents, and other factors such as these, will bring about a need for adjustment in the fair share calculations for the individual town.

We don't believe that this would be a watering down of the process. We don't intend it to be such. But, we do want to encourage municipalities to come in and make a good-faith effort to accommodate their fair share. We felt that the best way to do this was to permit a municipality to be able to argue for adjustment if, in fact, there are very realistic constraints on immediate accommodation of fair share numbers.

SENATOR LIPMAN: Gerry, do you want to say something? Excuse me, let me just introduce Senator Gerry Cardinale, as opposed to Senator Gerry Stockman.

SENATOR SAXTON: They are usually opposed.

SENATOR LIPMAN: Yes, they are constantly opposed. Senator Cardinale has just arrived. He is a member of the State Government Committee, and I have not introduced him up to this point. Right now we will hear from Gerry Stockman, who is Vice Chairman of the State Government Committee.

SENATOR STOCKMAN: Thank you very much, Madam Chairlady. Before I ask Harry Pozycycki a couple of questions about his testimony, I would like to take the opportunity, publicly, to compliment him, especially, and the ad hoc committee, generally, for its work in this area.

Harry Pozycycki is a rare individual. Most of you haven't had the opportunity, as I have had, to get to know him. I have worked closely with him as he helped me fashion the State Planning Commission bill, which hopefully is about to become law. While it doesn't directly deal with Mount Laurel and its dilemmas, it will have an impact on the growth and development, hopefully, of the State of New Jersey in a sensible way, as we go into the 21st Century.

But, you know, from time to time private citizens kind of spring up who are willing to put in tremendous amounts of time, thought, and effort in the public interest. We elected officials have an ulterior motive. Every time we involve ourselves and sit before public gatherings, such as this, we get some publicity. We get our names in the papers, and maybe these things help us to get reelected.

Harry Pozycki isn't running for office. To my knowledge, he isn't getting paid for the tremendous amount of time and effort he has put into this issue. I think he speaks with great reason. I think he speaks with great balance. I think when the history of this phase of New Jersey's movement in both the area of planning and particularly in the area, the sensitive area, of meeting our housing needs, Harry Pozycki's name ought to be one of the major figures in resolving that problem. So, Harry, I wanted to take this opportunity to say that to you. Now I will try to put you on the spot a little bit and ask you a couple of tough questions -- not really; I guess they won't be too tough for you.

I did want to ask you, Harry -- and I tend to agree with the direction of the amendments the Committee is taking -- about the Warren Township decision, which I know has disturbed a lot of people. I know you are basically familiar with it, and I also know that some of my colleagues think it really is an irrational step. I wonder, can you briefly tell us what you think that Warren Township decision is, and whether you think this bill can deal with it in a time frame and in a manner that will not wreak havoc in that particular municipality? That seems to be becoming one of the crying corners, or cause celebre, as Senator Lipman says, in this struggle. I think maybe there is some misunderstanding about it. Can you just discuss that with us?

MR. POZYCKI: I would be happy to, Senator, but before I begin, may I thank you for your compliment. It is the kind of encouragement that you have offered me all along which has really drawn me into this process and made me put in the kind of hours you referred to. It is that kind of stroking that makes volunteers, like myself, work and come back to meetings again and again. You are far too kind.

The Warren Township decision, for those of you who may be unfamiliar with it, adopted what has been referred to as the Lehrman formula. Many people have cringed in fear of the at least perceived rigidity of the Lehrman formula. I know that municipalities, at least some of those I am familiar with, have pulled out the opinion, excerpted the formula from it, ran a quick calculation, and then have gone into a state of almost permanent shock.

I think the legislation that is under consideration today, S-2046, provides for flexibility and adjustments to be made to the Lehrman formula. I don't want to degrade the formula. I think the courts, without the kind of resources that the Legislature has, were forced to make some sort of calculation. They were also forced to act within the constraints of ongoing litigation. They reached out to the planning community, and their best effort at constructing a formula, to calculate fair share.

But, the proposals we are making to amend S-2046 speak to the need for flexibility. We want to be able to provide adjustments if there are bona fide infrastructure constraints, and not simply a town saying, "Well we don't have the sewer capacity right now to build fair share; let it go elsewhere." Where there is an inability to get the infrastructure built -- even if one were to start tomorrow -- in a sufficient time frame to accommodate new housing, that is a serious constraint that has to be considered.

Where there is a limit on the amount of developable land available for the construction of low and moderate-income housing, that is a factor that must be considered. And, if a municipality's fiscal capacity is so tight that it cannot bond for sufficient funds to construct its own housing, that is a factor which must be considered.

This legislation will begin to respond to the need for adjustments, flexibilities, and perhaps improvements upon the Lehrman formula. I don't think it will provide an immediate solution because there probably still has to be substantial debate and amendment to the legislation, and before a legislative consensus comes about it may be several months before a bill can, even with the greatest hope, be adopted.

But, I do think that if there is legislation, around which consensus is forming, which provides a flexible formula, the courts themselves, by reference to the formula, may adjust the Warren Township decision. The courts have shown an open mind in considering new ideas regarding the Mount Laurel arena, and they have actually specifically called for, in the Mount Laurel opinion, a legislative response that would take them out of the game.

So, I think that once we are able to provide an adjustable formula, the courts will give deference to it. I think that will go a long way toward relieving many of the municipalities concerns about the Warren Township decision.

SENATOR STOCKMAN: Thank you, Harry. You referred to the fiscal restraints on local municipalities, and you also suggested that subsidization, perhaps by local municipalities, may be a partial or a total answer to the builders' remedy, which is a troublesome concept and one that I don't think anyone thinks is the ultimate best solution. What about some role by the State in this area? And, in particular, what about the question of -- because of the peculiar pressures and the immediate pressures some municipalities face at this time -- the apparent possible available revenue at the State level? At least at this point there is an open debate, or discussion, as to whether this revenue should be used in the form of a homestead rebate, a reduction in the sales tax, or in a direction of that sort. Do you think there is more than coincidence in the fact that we have this immediate pressure on some municipalities because of the court decision -- whether some have it through their own fault or not; nevertheless it is there -- which threatens five times more development than would otherwise occur, and possibly some resources at the State level which could be directed towards this problem and towards these municipalities? Has the Committee talked at all about that? Have you given that any thought? Do you think it makes any sense?

MR. POZYCKI: Well, the Committee has deferred the matter of subsidization, at least State subsidization, of the construction of low and moderate-income housing to the Assembly, upon advice to us that that is the proper forum for such an appropriation. However, subsidization, I might point out from my own personal perspective, can come from three different sources. The first is, the given municipality can float its own bond ordinance and provide some funding to either directly build low and moderate-income units, or to offer developers a subsidy, as opposed to a density bonus of four additional conventional units, for the construction of the low and moderate-income units.

A second source would be voluntary relationship with commercial developers, whereby a commercial developer would receive a bonus in square footage for development, and in return they would pay into a municipal trust fund, which would then be used to either build the units or to subsidize a developer, without the need for giving them an additional four conventional units.

But, my own studies of this have come to the conclusion that there would be a need for substantial subsidization funding if we are to accommodate, in the six-year time frame that is in most master plans and zoning ordinances that are operative, a sufficient number of low and moderate-income units to satisfy the needs of our State. I have heard numbers as large as \$200 thousand in subsidy funds needed over the next six years. I certainly think that the two sources I--

SENATOR STOCKMAN: Two hundred thousand?

MR. POZYCKI: I mean \$200 million, excuse me. I think we can handle \$200 thousand. I stand corrected. Two hundred million dollars is a number the likes of which I don't think can be met by local funding or even by local funding in addition to commercial developer contributions.

So, your point is well taken, that the State will have to play a major role in providing the subsidies which, it has been said, can buy down the conventional units that come with the density bonus. I think that if there are any funds immediately available in the State, those funds should be allocated forthwith to the municipalities that are now trying to figure out how to face the prospect of five times the amount of their fair share numbers.

For each unit a municipality can either subsidize or build of its own accord with State funds, the municipality enjoys a reduction of four conventional units. I think that is a benefit which any municipality that faces a Mount Laurel settlement, a Mount Laurel order, or even the threat of litigation, would certainly be well served to support.

SENATOR STOCKMAN: Thank you. I have no further questions.

SENATOR LIPMAN: Senator Cardinale.

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SENATOR CARDINALE: Mr. Pozycki, let not Gerry Stockman be the only one to give you a few nice words at the outset. I want to say that, despite some basic disagreement, I can sense in what you have been presenting, a moderation in the prior positions some of those who have been involved in the initial drafting and initial input, with respect to this whole question, have taken.

Despite all of that, I think it still contains a number of features which I find will probably be objectionable to a great portion of the population of this State. Quoting back to you some language you just used, you mentioned the recalcitrance of some municipalities. I think, inherent in all of what has led us to the point we are at today is an attitude on the part of those who pursued these policies that the municipalities, as some sort of detached entity, are reluctant to do what is right. Yet, those municipalities are made up of people who are represented by elected officials, officials who were elected by an electorate that has greater knowledge of the policies they were going to follow than those who elect us, or, indeed, than those who elected most of the people -- if any of them are elected -- who are part of your ad hoc committee. I still find a great deal lacking, probably because of a lack of consideration regarding the interests of the people at the lowest level of our government, in what you have proposed.

Rather than take each individual portion of that proposal, I would like to center on one subject. You have indicated that there is a lack of resources on the municipal level to enact the policies which your group considers to be fair. As I look at this issue, I see that the Public Advocate, the courts, and many other aspects of government have used the resources which are available to them to promote this policy. Whereas, the municipalities -- many of them individually, and collectively -- have done very, very little, but those who have done something have had to call upon the very limited resources available to them. Many of them are volunteer governments that do not have full-time elected officials serving in those governments; therefore, they have had to volunteer a great deal of time. Most of the opposition to this policy could be characterized as opposition from the grass roots, not from government.

I recognize that some of the movement toward this policy is also a grass roots movement. To that extent, I applaud it. However, since you already recognize that there is a limit on the resources of the municipalities, would your group consider, or have you considered, allowing the municipalities some funding from the State, which would allow them to match the resources that have been used to promote the policies that are now, through an attempt in this bill, to be institutionalized in our State? As a second matter, this will give those very municipalities and grass roots people an opportunity to express themselves -- in the democratic form of government which we enjoy -- by putting on the ballot SCR-24, which is an alternate policy that we are going to discuss here today. If you do not support either of these alternatives, I would just like you to explain to me why you can still consider yourselves -- and the Public Advocate has had a great deal to do with your group -- as advocates of the public, or as advocates of a democratic form of government. Because what is at the heart of what I see back in my own district I could not agree with more, and that is that this seems to be a policy which cannot stand on its own, which does not have public support, and which can only be put in place by some group acting in a dictatorial fashion and imposing it on the rest of society. (applause)

MR. POZYCKI: First of all, let me suggest that the word recalcitrance was not a word which I had a hand in creating. It was used by the courts. I am merely referring to the decision of the courts over the past 10 years, and their estimate of municipal inaction in terms of the construction of low and moderate-income housing.

Second, I would like to point out, Senator, that I have served as an elected official, and I have great sympathy for the municipal position, having been one of those volunteers serving in a small municipality that did not have a great deal of funds. Therefore, I have a very close understanding of the problems you have outlined. I am certainly not insensitive to them.

I would like to point out further that there are representatives on our Committee from municipal government who have been helping to fashion the kind of moderation you referred to earlier

-- the kind of compromise which is necessary to pull the Mount Laurel issue out of the arena of the courts and place it in the hands of the people, be they the people represented by the State Legislature or by local government.

As was indicated in my previous remarks, the Mount Laurel opinion stripped the local municipalities of their presumption of validity, the presumption that they understood their towns well enough to devise a rational course of development for their municipalities. This legislation seeks to restore the presumption of validity to each municipality that wishes to comply.

I think if blame needs to be placed, it should not be placed on those who seek to develop a workable response to Mount Laurel; it should be placed on those legislators who are not willing to grapple with an immediate legislative solution. Every day that we waste in not trying to work with the kind of legislation that is before this Committee today, results in further court orders and court settlements that impose five times the amount of housing a municipality may be prepared to absorb in relation to its fair share obligations.

I don't think that the municipalities have acted as conscious demons, recalcitrant against their affirmative obligations. Planning is a new and emerging science. Some even refer to it as an art. As little as ten years ago, I think it was almost one of the ten commandments of municipal governments that high density housing meant a tax burden, rather than something that could support a municipal tax base. Recent studies that have been developed by the State, and by the various universities of this State, have pointed out that apartment development is not necessarily a tax burden, and it can often even generate a tax surplus. We are all just coming to recognize that we can accommodate different forms of housing, from large-scale, single-family houses on large lots-- I mean, previously, if you rode through the State of New Jersey you could hardly go a few miles without seeing a given town's name, saying such-and-such municipality invites industry. You never saw one that said it invited housing.

However, today we are coming to realize that we have sufficient capacities in our schools and the tax ratable that comes

with a moderate density of housing is often something that is beneficial to a municipality, and not quite the burden that it was initially perceived to be.

I think municipal officials would like to be able to accommodate the needs of the poor, so that they could have a home and the dignity that comes with a home. But, what the municipalities need in order to make this accommodation is direction, and that is what the Legislature has to provide.

I think that the specifics of the housing element here, indicating how a municipality can go about calculating its own fair share; how it can go about making adjustments to that fair share, based upon its own infrastructure; physical capacity; transportation availability, and the like, is just the kind of direction that municipalities are looking for. The opportunity to plan to absorb this housing, rather than have it imposed by court intervention, is the kind of reprieve that municipalities are begging for.

I know there is the matter of SCR-24, but it is my understanding that SCR-24 could not even become effective until 1985. It won't be on the ballot this year, and if it is not to be on the ballot until the earliest next year, a solution on the basis of SCR-24 is really a dim hope far, far on the horizon. We really need to address the immediate problems of municipalities that are now subject to developer law suits, that don't want to have to absorb the four additional conventional units, and that are looking for the kind of subsidization which Senator Stockman referred to a moment ago.

I think if we give them a direction as to how they can absorb the low and moderate-income housing, in a rational process that incorporates such housing as part of their community, and if we give them alternatives to the builders' remedy that allows them to convert existing units, to subsidize units, and so on, the municipalities will rush to comply, as opposed to staying within the adversarial realm that just means continued litigation expense -- and as a lawyer I can tell you that those expenses are running quite high for the municipalities -- and then having the eventuality of a builders' remedy, with five times the number of units their fair share would otherwise dictate.

SENATOR CARDINALE: You have failed to answer one of the questions I asked. Let me rephrase it because perhaps you didn't understand it.

MR. POZYCKI: I may not have.

SENATOR CARDINALE: The grass roots people who have been involved on the pro-Mount Laurel side of the issue have had the obvious advantage of enormous sums of governmental money being spent on that side of the question. The grass roots people on the other side of that issue -- municipal residents who are negatively impacted -- had to provide their own defense funds. Whenever there is an imbalance of money in the court system, it invariably follows that those who are best funded are best able to carry that litigation to the most successful conclusion. Now I ask you if you would support, within this measure, an appropriation so municipalities would have State money available to them of a sufficient quantity to balance the funding mechanisms? Even this Council is planned to be a paid entity. Invariably, this Council is going to have some disagreements with the individual municipalities that are involved. How are those agreements going to be arrived at? They are going to be arrived at with a paid staff, on the one side, and, in many instances, volunteers from the municipality on the other side.

Certainly, even within the structure of this bill -- even if we accept all of its parameters -- there is another imbalance being created, and we arrived at this through a process which is perhaps not yet complete. Actually, the Supreme Court of the United States has not said that Mount Laurel has been rightly applied in this case. I realize that our State courts have closed their eyes to some of the basic constitutional issues of property rights which are involved here. It is unlikely that the municipalities of the State of New Jersey can carry that litigation to its complete conclusion in that forum. Yet, the people seem to be denied the means to effectively counter what is being done with government money. If there is any legislative inaction, and you talked about legislative inaction, it came about in a couple of places. Certainly, it came before Mount Laurel. There was legislative inaction; the court referred to it.

However, I would differ with the court's interpretation. I would say that the people of this State, through their elected officials, expressed disagreement with the direction some people wanted to take us in. Therefore, we did not enact this legislatively for a very good reason.

Many of us who would have voted for Mount Laurel as a Legislative enactment wouldn't have been reelected; therefore, it was not done. It could only have been imposed by an outside group. Enormous amounts of governmental funds were used to arrive at that conclusion. Why not balance the inequities? If what you are talking about is fair-- You used the word fair housing. If you want to be fair, why aren't you fair on all sides of the question? Why not let the other side of the argument have its fair say, and its fair opportunity? Perhaps it is timing. You say your objection to SCR-24 is that it can't be done soon enough. Well, perhaps if we said to the Supreme Court of this State that we are going to put this on the ballot and let the people decide, maybe the Supreme Court of this State would react to public opinion; they have before. Maybe they would say, "Okay, until it is decided we will stay our orders with respect to Mount Laurel." No one has done that at this point in time, and for a very good reason: SCR-24 is not scheduled to go on the ballot, and SCR-24 is not going to go on the ballot because your side of the question seems to feel it has won -- it has won the battle -- and that it is just a question of how it is going to be implemented.

I say to you, there are some of us on the other side of the question who are really not willing to concede that the battle is totally over. You many have won, and you may continue to win, but I want to point out that it is not fair. Although we are in 1984, it is hardly appropriate to use words like fair when we are talking about a policy like this, which is imposed from outside on the people of this State. (applause)

SENATOR STOCKMAN: Madam Chairwoman, as a point of personal privilege, I have no doubt that Harry Pozycki can effectively carry on an exchange of this sort, but if you as Chairperson are going to allow Senator Cardinale to make a statement -- and I respect your right to --

I would like to give a response to that statement at some point, after Harry Pozycki does.

SENATOR LIPMAN: Be my guest, both of you.

SENATOR CARDINALE: Now remember, Gerry, I started out agreeing with you.

SENATOR STOCKMAN: Well, just so there is no confusion in the audience, Senator Cardinale, I think we both know we have a very basic disagreement in this area. While it appears that your statement is a popular one with the group this morning -- and I respect the fact that there will be people with that feeling -- I at least don't want to let the opportunity go by without suggesting that I do think we are dealing with a matter of fairness. I do not think the New Jersey Supreme Court has closed its eyes to justice by seeing and recognizing a fundamental right, and a fundamental fairness, in the need for housing for the poor and the near-poor.

I would welcome a carrying of that question to the Supreme Court of the United States. I can't help but suggest that with what is at stake, and with the finances that are at stake, I can't really believe that some group cannot come up enough money to take that decision to the Supreme Court of the United States.

I happen to think that those who watch the Supreme Court carefully, would recognize -- at least in my judgment -- that they would quickly acknowledge the right of the Supreme Court of New Jersey, pursuant to its Constitution, to fashion this remedy, and this recognition of a fundamental right.

I happen to think that it is in the public interest, and that history, way down the road, will make it clear that our society is a vibrant, alive, progressive, and wonderful place to live in, because from time to time decisions of this sort have been made here in this State.

So, I don't wring my hands in distress at the Mount Laurel decision. I don't enthusiastically embrace the builders' remedy, but I think that can be dealt with, as Harry Pozycki has pointed out.

The suggestion that there ought to be some funding for the other side of this reminds me of an exchange I had with another

opponent of the Mount Laurel decision, Professor Rosen I think it was, who was equally upset -- and I guess Senator Cardinale was -- with the Robinson vs. Cahill decision, where our Supreme Court insisted we come to grips with the patently inadequate funding of public education in urban areas, and as a result of that decision we now have an income tax. I suppose one could argue that when that scenario unfolded we should have appropriated money for the opponents of the income tax so they could continue to fight.

I don't really think that is what this decision is all about. I think it is in place, and I think we should get on with the question of dealing with it. I absolutely agree that the longer we continue to debate in terms of the outrageousness, or the need for a constitutional burying of the Mount Laurel II decision, the very municipalities that may, at first blush, be inclined to embrace that kind of argument are going to pay the most dearly for not getting on with the business of living up to the Constitution.

I am sorry for balancing that off, and I don't expect a great deal of applause for that. (applause) Thank you.

SENATOR LIPMAN: We have a very appreciative audience today, Senators. Mr. Pozycki?

MR. POZYCKI: There is really a substantive response to Senator Cardinale's question, which is really on target with the concern you raised. I am not here to disagree with you or your premise that fair housing advocates have been well funded in their attack on municipal housing ordinances, and that municipalities, on the other hand, are often strapped for litigation expenses to defend their positions. I suggest to you that we really don't have the luxury of funding further adversity in such economic times as today. The constraints on the State's available funds are such that I think we have to prioritize the use of the funds and put them where they are best applied, and that is with the subsidization of housing, so that we don't have to deal with the builders' remedy.

Even if a municipality was able to argue a reduction in the builders' remedy to half of what the fair housing advocates had estimated, they would still be stuck with five times that one-half if they had to take the development in the form of a builders' remedy.

If they took the funds that you referred to and they applied them to subsidization, they could reduce the development of new housing in their municipality by five. I think that is the best allocation of those funds.

But, more to the point -- and this is a subtle point that I hope I can make clear; it is a lawyer's point -- the shifting of the presumption of validity speaks precisely to the inequity that you put on the table. Right now, as you indicated, the developers and the fair housing advocates have the lion's share of funds to attack a given municipality. The municipalities have less.

In S-2046, if a municipality obtains the presumption of validity offered by the Housing Council, the burden of proof that a municipality is deficient shifts heavily to the developer, or fair housing advocate. What that means in terms of litigation expenses is that, unlike the situation today when a developer need only come in and point out that a municipality doesn't have a fair share, and the municipality then is forced to pay for the planners, to pay for the attorneys, to pay for the other expert witnesses, and to undergo days, and days, and days of testimony, all of which adds up in municipal litigation expenses, we could shift the burden of proof to the developer. Then if there was adversity remaining even after this legislation was adopted, the lion's share of expense, in relation to any kind of Mount Laurel litigation, would have to be borne by the developer. The amount of money that a municipality would need to defend itself would be substantially reduced, because instead of having to pay lawyers and pay planners to defend its position, it would have the shield of the very strong presumption of validity. It could hold this shield up against developers and force the developers to consider the obstacles of extensive litigation, heavy expenses, and the planners' proof that would be able -- hopefully on the developer's side -- to scale this presumption of validity.

So, there would be a major shift in the expense of litigation away from the municipality and to the developer if a town complied with the optional housing element and received its presumption of validity.

I think that is in the bill right now. That speaks very much to the kind of inequity that you are concerned about.

SENATOR CARDINALE: I would say to you, yes, once having arrived at that point, I would hope, as you hope -- and neither of us know -- that the courts would honor that shift and that the fiscal aspects of that shift would also fall into place. However, the cost of arriving at that point is going to be borne, on the one hand, by government and, on the other hand, by local people defending where they should be on that spectrum. That is the first problem.

There is more than money involved, at least more than the money for the lawyers. There is also the question of what sacrifice, in terms of the quality of life in a given community, is going to have to be made to arrive at that point? I will say that in some communities there will be no sacrifice in the quality of life; in others, it may be very substantial, or what they perceive as being a very substantial shift in the quality of life.

I don't think it is any accident that the communities which have been attacked by the advocates of fair housing are communities which developed out of a wilderness -- which all of this was a few hundred years ago -- in a manner that all of us would consider "that's a good place to live." There are people here from Saddle River today. I doubt that anyone would think that Saddle River is not a good place to live -- there may be a few, but that is a good place to live.

I would suggest to you that the planning policies which developed, in some portions of our State, what we would all consider to be good places to live, and in other places -- sometimes very closely adjacent to them -- as maybe still good but not quite as good, were not all wrong. But, the advocates of fair housing have said those policies are wrong, and I am afraid that the people who are going to sit on these committees are going to make decisions based on a heavy input of the kind of philosophy that has led us to this point in the first place.

It is no great remedy to say to the people of Mahwah and the people of Saddle River and the people of Ramsey -- or to the people of Mount Laurel -- "you are now going to be protected because we are going to come to a point, with no protection -- after they have knocked you down a level -- where perhaps now you are not going to be much better

than the communities you consider to be undesirable places." You consider them undesirable places, because we pointed out at our last hearing that there are vacant apartments -- vacant apartments -- in the City of Newark which were built with government funds. Why don't we fix them up? I dare say, if we surveyed areas in this State, we would find lots of places zoned no differently than the zoning you are trying to get in many other places where apartments have not been built. Why? Why are we blind to that fact? You want to build them somewhere else because it was the policies that were followed in those other areas which have led to their becoming less desirable places to live in -- and many of them are not undesirable, but certainly they are less desirable places to live in.

The bottom line on why I disagree with you is, I am afraid you are going to introduce the same policies that have made some places undesirable, or less desirable, imposing those policies on the other more desirable areas of the State, and we are going to come, just as we did in Robinson vs. Cahill, to an attempt to decrease quality of an area where quality exists, so as to narrow the spectrum. I don't think that is American; I think that is something else. (applause)

SENATOR LIPMAN: Mr. Pozycki, I know you can answer Senator Cardinale. I didn't want to get drawn into this discussion, but since he brought up the subject of Newark, I have to make a statement.

Senator Cardinale, you pointed out that this problem is probably going to be solved with governmental moneys. I have to point out to you that one of the main reasons for having to resort to governmental moneys at a State level and a local level is because the Federal subsidies, which subsidized municipalities in the past, don't exist any longer. For this reason, there has to be new procedures. The State and local governments have to pick up where the Federal government has stopped working.

I can think of many debates which we could have here as I hear the various points being made. For example, a media person asked me, "How do you like the fact that the courts have turned activist? Do you appreciate it as a legislator? What do you think of it?" I happen to think that SCR-24 sort of represents an evasion of the Legislature

to face its own problems. Despite the fact that I believe this, we still considered SCR-24 until it was brought out that it was too late for this year's consideration in order for it to be put on the ballot.

I would like to ask you a question about S-2046 which is always asked of me. Has the Fair Housing Committee thought of adjustments in your considerations for the towns and municipalities which already have rulings? What have you done about possible appeals to the Housing Council?

MR. POZYCKI: What we have done is, we have provided-- Let me see if I can reference you to the specific section. It is Section 14. We have provided two avenues of relief for municipalities which are already subject to Mount Laurel rulings. One avenue of relief, of course, is to provide for adjustments in the phasing schedule that might take local constraints into consideration. The second is to point the way to the courts for referral of cases that are ongoing. If there is a case which is before the courts, and the court feels that mediation before the Housing Council might effect a more expeditious remedy and one that would be acceptable to the both parties, the courts can refer the case to the Housing Council.

For those cases which have already been decided, there is an opportunity to make adjustments in the phasing schedules as per multiple constraints.

SENATOR LIPMAN: All right. That is important, and it is something I thought we needed to clarify. It is something that is very often asked: "What will we do about what has already happened?"

Senator Gagliano?

SENATOR GAGLIANO: Thank you very much, Madam Chairman. Mr. Pozycki, I don't want to get into a long discourse with respect to SCR-24, but I feel it would be very appropriate for this Legislature to permit the people of this State to vote on that issue. (applause) I do not agree with the Chairwoman when she said we realize we can't do it this year; therefore, we won't do it. Actually, we could pass it out of Committee now. We could pass it and get it ready for 1985. Although it would be late, it would give the people an opportunity to look forward to voting on this issue. So, Madam Chairman, I don't agree with you.

Besides, Senator Dorsey has had this legislation in for months, if not years. Election year 1984 wasn't that crucial; it could have been 1983. But, the Legislature chose to do nothing about it.

With respect to the so-called legislative inaction and the time it is going to take, that is the reason -- and, I don't think I was farsighted; I think I was just being sensible and logical -- I suggested in February or March of this year that we impose a legislative moratorium on these judgments so that the Legislature and people like yourself, who are volunteers, could work carefully, and shall we say, maybe slowly, in coming about with a legislative decision. The moratorium was poo-pooed by most people. I attempted on the floor of the Senate to do something about it, but I got no support from, in fact, your Committee, as I recall, and various other committees. That is why we are in this position.

All that having been said, I would like your Committee to look further at the issues of, "What do we do now to help those municipalities that have either (1) effected settlements under duress, or (2) those municipalities that already have judgments against them?" I don't think they have gone far enough, Madam Chairman. Madam Chairman, what I am saying is, the Committee has not gone far enough, and I think the Committee should have the intestinal fortitude to go further, even to the point of challenging what has happened in the courts, because there is no way at this point for the municipalities to do the various things that you have suggested can be done under this bill.

For example, getting money from developers, subsidizing on their own -- municipalities just can't put all of that together. So, what you are giving them is an empty promise. But, they already have either judgments or forced settlements against them.

If you want to be fair, you will address that issue, you will give the municipalities a substantial amount of time and something that will allow them to cut down on the numbers. Now I'm going to get to the numbers.

Warren Township, with a requirement of 900-some units: Right now, the only way I know of that Warren Township can comply, regardless

of all the rhetoric we've seen and knowing that their budget is in place, is to provide for approximately 4,500 new homes in their zoning ordinance. I can be challenged on that, but I'm close, if not exact, at 4,500 -- I'm close. For them to comply with 4,500-- They are a town that probably has maybe 1,500 homes in it altogether, and there is no way that we can sit here, face each other, and look at each other right in the eye and say, "That is a logical decision for Warren Township." There is no way we can do that.

Therefore, if your Committee wants to do a job for the State of New Jersey and show the people that we are logical, sensible, and sensitive to the problems of this State, then this Committee must do something about that decision which has already come down. If we don't do that, Warren Township will eventually, unless the courts change it, rezone for 4,500 units. They just can't accommodate that. Why are we hiding from that fact? It is true; there is no question about it. As the judgments come down, it is going to be more and more. This is decided on the basis of some person named Lehrman and a group of planners who got together in a back room. The court accepted it. Really, that is wrong. Your Committee would not have come up with that decision; I feel confident of that.

What you have to do in your Committee is, in my opinion -- I think your Committee is respected, and certainly the Chairwoman feels that the Committee knows what it is talking about -- I think you have to come up with something that brings those numbers way, way, way down so they can be accommodated. I say to you that if the Supreme Court had told every municipality in the growth area, "Provide for 100, 150, or 200 units of low and moderate-income housing," it would have been done. But, when you get decisions where it is going to range anywhere from 700 to 3,000, 4,000, or 5,000 -- that is low and moderate-income housing -- and you multiply that times five to get your total number, you are just not going to be able to accommodate it in the State. You are going to have all the litigation we have talked about.

What do you think you can do to bring the numbers down, first of all, for a Town like Warren that has already been sued, and secondly, for all the other towns that are being sued? What can we do

to make them reasonable? I have tried a moratorium, I have tried staging, and I've argued that it should only be a percentage of the existing population of that town. Let's say a town has 2,000 units -- people living in 2,000 dwelling units of any kind, be it apartments, houses, or whatever. Why can't we say that for a specified period of time, no more than a certain percentage -- five percent or ten percent of that total number -- would be authorized for any purpose under Mount Laurel II? Then the towns can assimilate this growth, and then it is going to make some sense. In my opinion, it is not going to make sense when we are talking thousands of units.

Besides that, it will have a negative impact on other parts of the State. It will certainly have a negative impact on our highways, and they are already the most used highways in the country.

I don't think your Committee has gone deeply enough into the issue, and I wish you would. As I said, the Committee is honored and respected, and I think the Chairwoman is going to listen to you. Unfortunately, I think the Public Advocate had too much to say with the original drafting of the bill. That is my guess; nobody has told me this. I have just guessed it. That is a problem we have to overcome.

Bring in reasonable numbers, and I think people will accept them. Without reasonable numbers, we are going to continue on to Mount Laurel III, IV, V, VI, VII, and on to X. That is the way I feel.
(applause)

SENATOR LIPMAN: Yes, that is what we wish to avoid.

MR. POZYCKI: Senator, I hear you, and I also hear the people in the audience who express concern for the very large numbers that are being generated in ongoing court litigation.

We are open to suggestions. We have been working on the very problem you have outlined -- trying to figure out how we can make adjustments for individual municipalities so that the accommodation of low and moderate-income housing does not become a matter of disruptive growth, but becomes really a matter of community evolution.

I would point out to you that I think part of the way-- I frankly admit to you that I don't know the solution to make the rest of the distance, and I will certainly be listening to testimony today, but

as far as the phasing option, which we have offered -- much along the line of your own suggestion that there should be some sort of staging or phasing in former legislative proposals -- we have indicated that where a judgment or settlement has already been obtained against a given municipality, that the municipality might appeal to the courts or the Housing Council for adjustments to the phasing schedule, or for the adoption of a phasing schedule if none existed. I would point out to you that we differentiate between municipalities that have been trying hard to accommodate and those that have been simply stonewalling it. For those who have been trying to accommodate, we have actually inserted a criteria for past performance. So, if a municipality can show that it is making an effort to accommodate, it can avail itself of a more favorable phasing schedule.

Secondly, the subsidization that is recommended in this legislation, which admittedly will have to be taken up in the Assembly, will speak to existing court decisions. In municipalities where the numbers are similar to those in Warren -- and, there are as many as 5,000 units being mandated -- not all of those units necessarily are represented by the builders' remedy. In some instances, the units are the result of attacks by housing developers, and therefore, they carry with them four conventional units for every low and moderate-income unit. In other instances, those are just numbers reflecting the remainder of the municipal fair share.

If subsidization is made available to a municipality, the remainder of the fair share can be accommodated at the earlier stages, thereby not only reducing the overall number, but allowing the phasing of a builders' remedy that would be far more gradual than has been ordered by the courts.

SENATOR GAGLIANO: Excuse me, Madam Chairman, Mr. Pozycycki is a graduate of the same university I attended and where your niece is now a freshman. He is a very bright guy. He said he heard me, but I don't think he did, because what I am saying is, Harry, you-- Maybe I should have said it directly. In my opinion, fair share, as enunciated at this point by the courts, is unfair. We have to recalculate those numbers and come in with lower numbers. We have to do that. If we

don't, I feel we would be irresponsible toward a substantial part of the State. I am saying it is just plain unfair for Warren Township to be faced with the prospect of increasing its size by five. I don't think there is anything fair about that.

MR. POZYCKI: With all due respect, Senator, and much thanks for the credit of our mutual university, I think that argument is not really an argument that I can respond to, or even that this Committee can respond to. It really is an argument that the courts will ultimately have to respond to.

SENATOR GAGLIANO: No, no, the courts said--

MR. POZYCKI: (interrupting) If I might just finish--

SENATOR GAGLIANO: (continuing) --we didn't act, so they came up with a formula. Now we can act and come up with our own formula. The courts said there were a certain number of units that were needed to be filled, to be rehabilitated, or whatever in this entire State. What I am saying is, we should question that, and we should come up with our own numbers, our own formula, and bring it down to a logical, sensible basis. That is all.

SENATOR LIPMAN: Excuse me, Senator. I think in his earlier remarks, Mr. Pozycki indicated just what you are saying -- that the Housing Council and the local municipality will come up with its own numbers. They will face the courts together. That is what he has been saying all morning.

MR. POZYCKI: Madam Chairman?

SENATOR GAGLIANO: (interrupting) No, he just responded that it is up to the courts. That is what I thought he said with respect to fair-share numbers.

MR. POZYCKI: We have a basic misunderstanding here, and it is in differentiating between cases that have already been decided by the courts and cases that are prospective.

My recommendation in S-2046 is for an adjustment to the formulas which I feel are too rigid right now, and which might be accomplished through sensitive legislation. But, that is for prospective litigation.

You raised the question, "What can be done for the Warren Townships of this State that have already had a decision rendered against them by a court of jurisdiction over the municipality?" With regard to those decisions, that is what I mean when I say that we can't speak to that kind of an argument in this forum.

There is the constitutional doctrine of separation of powers, and the courts may be willing to listen to some sort of an appeal or some motion for review of their decision based, upon new legislation. But, I certainly can't determine whether the courts will reopen a case that has already been decided. That is why we have addressed this legislation primarily to perspective litigation, and we have tried to give some comfort to those towns that have already had decisions rendered against them through subsidy and through adjustments of phasing. To change the number that has been ordered by the court in a case where there has already been a decision is something that can only be done by the litigants involved -- if they appeal or if they make a motion to the court for an adjustment of that decision. I think that avenue is open to them, but we can't proscribe it legislatively because of the separation of powers.

SENATOR GAGLIANO: Madam Chairman? Okay, I hear you. I want to ask one more question, and then I'm going to keep quiet.

Would your Ad Hoc Committee file an amicus brief in the Warren Township appeal should they appeal?

MR. POZYCKI: My Ad Hoc Committee has been given far more credit than it deserves here today.

SENATOR LIPMAN: Not enough, not enough.

MR. POZYCKI: The powers it has assumed in this legislative hearing are awesome, I'm sure. When I report back to the members of the Committee, they are certainly going to be impressed. We may carry away with us a sense of self-importance that is far too big for the Committee.

What we are struggling to do here today -- and, I emphasize "struggling"--

SENATOR GAGLIANO: (interrupting) You didn't answer my question, Harry.

MR. POZYCKI: Well, I'm going to answer it right now. What we are struggling to do here today is to develop a legislative solution that can take the courts out of the business of Mount Laurel and return the power of home rule to the municipalities.

I personally don't have the energies to do more than I'm doing right now. I am not pleading for your mercy; I'm simply pointing out that as a volunteer -- and we have several volunteers on the Committee; I might point out that many of them are municipal representatives -- we're trying to fashion a response that will remove the matter of Mount Laurel from the realm of adversity and that will get on with the solution in a way which is most sensitive to municipal needs.

If you feel there is a way to go in terms of further litigation, it certainly is your option, but the members of my Committee and myself are overwhelmed in simply trying to fashion a legislative response.

I might point out that from the time of Governor Cahill's blueprint on housing, the Executive Branch has spent over 20 years trying to deal with the housing issue. From the time of the first fair-share housing cases in the courts, the Judiciary has spent over 10 years trying to deal with the housing issue. My Committee has been working on this for a little over two months, and I really think we have to keep our focus on the solution that we're working on right now in order to be effective. I'm not trying to argue against your solution as another avenue, but it certainly is not an avenue that my Committee has the capacity to respond to.

SENATOR LIPMAN: Are you finished, Senator?

SENATOR GAGLIANO: I promised I wouldn't say another word.

SENATOR LIPMAN: All right. I have been sitting here trying to figure out what is the best way for the mayors who have asked to speak to ask questions of the Ad Hoc Committee Chairman. You have already been up here for two hours. I will approach it like this: Are there mayors present who would like to ask questions of Mr.--

SENATOR GAGLIANO: (interrupting) I think there is another Committee member.

SENATOR LIPMAN: Oh, all right. Senator Saxton, just a minute. Let me just finish this, and then you can take over. I thought you said your piece, but that is all right. (laughter)

Would you answer questions about your testimony that you made this morning in case there is some point which is not too clear? For example, one that I have heard and which you haven't addressed is -- there are times you have -- in determining numbers, is the town going to get any credit for the building they have recently done, for example? That is a question you haven't answered.

MR. POZYCKI: I can answer that one. The answer is yes.

SENATOR LIPMAN: All right. Senator Saxton?

SENATOR SAXTON: I didn't go to the same law school. In fact, I'm not even a lawyer. (laughter)

MR. POZYCKI: We were talking about undergraduate school anyway.

SENATOR SAXTON: In a sense, a lot of this discussion has been philosophical this morning, and I would just like to get away from the specifics that we've talked about so much this morning, because there are questions that there are some basic disagreements on. I think we all recognize that.

What we really are talking about here -- I think Senator Stockman and I can agree on this wholeheartedly -- is that at some point, it becomes the responsibility of society to try to help, in some way, those who are perhaps disadvantaged. It has been discussed here for the last months and years, I guess, in terms of Mount Laurel, by trying to do something within the realm of what has been called Mount Laurel, and, based on that decision, to try to help people who can't perhaps afford to buy what might be considered average housing in some towns where it is at least questionable as to whether or not those folks would really want to be there, whether we can really help them do that, or whether or not that is a social goal which is realistic.

In terms of the services that are provided there -- whether the transportation, the education, or the social environment -- it is in keeping with what people will be able to prosper in.

At the same time, government has recognized the necessity to try to do things in an economic vein for people who are less able to do those things for themselves. We have looked at some urban enterprise bills, which Senators Stockman, Lipman, and Rand, and also people who represent urban areas where there are large numbers of people who are disadvantaged economically and socially-- That is a concern that we all have. On the one hand, we're trying to help people to get into a situation where they can afford some reasonably good housing, and on the other hand, we're trying to do things in urban areas to help the entire economic structure of those areas become better.

It seems to me that, at least in part, we are going in separate directions. On the one hand, we're saying, "Let's create some jobs where people live. Let's create better services; let's provide better medical care; let's provide things in areas such as Trenton where we have cooperated to try and build governmental buildings where people can work." In Camden, we're trying to develop the ports where people can work. In Atlantic City, we've got things going on where people can work. Yet, the whole substance of this debate has been on how to move those same people someplace else where we're not trying to do those things -- where those same opportunities for blue-collar workers don't exist, and where we're making no opportunity available nor any effort to try to make them exist.

What I am trying to get to is, it just seems to me that with all this effort -- with all the different schemes to subsidize low and moderate-income housing in areas where the opportunities for jobs and happiness don't really exist -- as part of this program, we should funnel some of those energies and some of those moneys into the areas where we are trying to make economic opportunity, social adjustment, and happiness exist. So, we are working in two separate directions, and I just think that as part of your program, as part of your ad hoc group's thrust in solving Mount Laurel, if we can put those two things together, and if we can put together the use of subsidized money -- either from government or from the builders' remedy -- and get those moneys into places where people want to live and have opportunities to live, where the Federal and State governments are trying to make

economic things happen for low-income people -- I think that would be a much more desirable end than to try to work with dual purposes, as we are now.

I guess I am interested in what your response to that might be.

MR. POZYCKI: I am very sympathetic to the concerns you have just expressed, Senator. In the proposed amendments to S-2046, we have outlined the prospect for adjustments for a municipality's fair-share based on things like transportation availability and those kinds of considerations that you expressed. Although it is not a part of S-2046, I personally would support a bill that would arise in the Assembly, giving priority for the allocation of funding to those areas that are most in need of that kind of funding right now.

I do believe that we have to avoid the continued growth of pockets of poverty in the State because I think that kind of problem will be to the detriment of the quality of life of all the municipalities in our State.

I think the answer really is as you suggest; it is two-part. We have to take care of the needs of the poor, for housing within proximity to jobs and services, as best we can. We have to absorb the need for low and moderate-income housing in proportionate shares throughout the municipalities of the State simultaneously. The need is so great that I don't think it can be done in one area or the other, but I do agree that to simply indicate that it should be allocated in municipalities in the furthest reaches of the State is not the way to solve the problem. It has to be done in both locations. We have to do whatever we possibly can to reduce these pockets of poverty. I think they might become almost like sores on the State of New Jersey, and while we would be able to ignore them if we are in the more fortunate municipalities, in time, the reputation of this State and the results in terms of future development of the populations that might move to this State, it could cause that kind of deterioration in the quality of life that some of us have expressed concern about here today.

Your point is well-taken. The funding should be made available to both areas, and perhaps even priority allocation to those

areas where housing is most critically in need. I don't think it is a matter of one or the other. It has to be both of them coming together.

We're trying to do that. We're providing for adjustments in fair-share numbers in given municipalities that can show they have constraints that argue against full fair-share accommodation. We are supporting the notion of subsidization so that if a given city's fair share, or a given city's housing needs, can be accommodated through subsidization, the gross regional need will be reduced. That will further reduce the fair share of the municipalities within the region.

Your point is well-taken.

SENATOR SAXTON: I would just like to make two other points. Perhaps one is the point you and I have just talked about.

First, I would just like us to view, if we will, some of the decisions that have come down involving the builders' remedy. You know, I've talked with people from municipalities who are affected. I've talked with builders, I've talked with planners, and I have really tried to be diligent about getting as many perspectives on this as I can, including trying to understand Senator Stockman. I do occasionally. (laughter)

One of the conclusions that most of the people whom I've talked with seem to come to when it involves the fair-share allocation, the builders' remedy, and the density bonus program, is that those units which are provided for low and moderate-income folks -- in the towns that we have been talking about here this morning -- are probably not going to go to help those folks that they are intended to help. We have already pointed out that people need to be near their jobs, and they need to be near their services. Those court decisions that have come down have been concentrated in areas where people who are in need of those types of facilities -- the urban middle class and the urban poor -- are going to have a very difficult time justifying their own families moving into those facilities. So, who will move into them? It may be my kid when he graduates from high school, or your kid when he graduates from college. To a large degree, I think that is going to be so. I think a lot of people agree with that point of view.

Secondly, I just want to emphasize once again that I don't see in the bill or the amendments that you talked about, a real attempt to do something to help those poor folks, those low-income folks, who you think might be in the bill. I don't see it there. At least, in part, if you are all going to push this bill through -- and, you've got the authority and the power to get it through the Legislature; I don't think there is any doubt about that-- Whether the Governor is going to sign it or not is something else, but I think one of the concepts that is absent from it and that you really ought to consider is, how can you couple the growth in the housing we need for low and moderate-income people with jobs? I don't see this bill doing it.

I know there are efforts being made by this administration, the national administration, and the national Congress to try to provide jobs for people, so that a meaningful change in society will take place. Providing a low-income house for someone doesn't change his life. People have to have the means to sustain themselves; they have to have the means to feel good about themselves. That only comes through the opportunities that make people feel that way.

Low-cost housing and moderate-cost housing in the communities we've been talking about this morning is so far removed from the economic opportunities that I think are necessary. I think you ought to go back to the drawing board and consider more carefully that aspect of planning for a social change in New Jersey. (applause)

SENATOR LIPMAN: Excuse me. I have to point out that there already is legislation in the Assembly, which is supposed to be a companion to this legislation. That legislation provides funds for housing in urban areas. Last Thursday, the Senate Revenue and Finance Committee appropriated \$1.5 million, plus \$75 million, for shelters for the homeless.

Senator Saxton, I think this problem is being addressed at different points. In planning for workers to live near where the jobs are, perhaps if Morris County did not develop in the Newark area, this situation might not be the same. We are now transporting laborers from Newark to Morris County to the jobs.

Perhaps what you said is true -- that this low and moderate-income housing will not reach the poorest of poor in Newark, but you have to remember, there are a lot of people, and we are planning for them.

I have to say how much I appreciate what the Committee is doing, and how many long hours you have spent on this. I appreciate you. I have to tell you something. Several times, you have expressed that the funding in this bill has to be dropped and put in the Assembly. I'm not sure I can get it through the Senate without funding, so I have to say to the Committee, perhaps this is a matter that we have to consider. Even if we gave a suggestion to the Assembly as to what the tone should be, you know, I'm a big spender. We have \$600 million in the surplus; I'm going to take your \$200 million figure rather than your \$1 million figure, if I may.

MR. POZYCKI: Well, we understand the need to keep funding as a part of S-2046. The specifics of the appropriation may be a matter for the Assembly Committee, but we are keeping the provisions that there be a State Housing Trust Fund for the State allocation of subsidy in S-2046, and then referencing the funding over to a subsequent bill. In that way, there could not be S-2046 without having funding from the Assembly. We have anticipated that type of problem and kept the funding requirement in S-2046 dependant upon and conditioned upon an approval for substantial funding in the Assembly. I think we have addressed that as best we can at this point.

SENATOR LIPMAN: All right. If you are not too tired, are there any mayors who would like to-- All right, we have Mayor Hornik. This is for questions to Mr. Pozycki; this is not for your testimony.

MAYOR SAUL G. HORNIK: (Begins to testify from audience, but reporter unable to hear him)

SENATOR LIPMAN: Mr. Hornik, the reporter cannot hear you. Will you sit next to Mr. Pozycki?

MAYOR HORNIK: I am the Mayor of Marlboro Township. I would like to thank the Chairwoman for allowing me the opportunity to ask a few questions.

Number one, you made a statement that there would be adequate income generated from low to moderate-income housing, and potentially with a combination. Have you taken into consideration the fact that under the present financial structure of a municipality, revenues that come in do not necessarily go into the expenditure part of the budget? There is a five percent cap involved. The problem is, very frankly -- and, I would like you to address this -- we have to increase. If this decision goes forward, and apparently it is going to forward, as Warren Township ruling indicates, no matter how much revenue is taken in, we are only allowed a five percent increase. If we have to provide an increase to the police and road departments, where is the mechanism to provide that? Revenue is laying there, but it isn't going to do us any good. So, I would ask you to address that issue.

The statement I made to the Committee previously is that there should be some working relationship developed with the Department of Finance and a municipality involved in this area so that they can show that in some instances, when they have to take twice as many houses that exist in the town because of this ruling, which we are against, they should be allowed to dip into a reserve where it won't affect the tax rate of the community. That is prevalent in a lot of communities. We would like to use that money for increasing the police.

That has not been addressed. I think it is unrealistic to go along and talk about revenue when it can't be touched.

MR. POZYCKI: As I indicated earlier, I have served as an elected official in my own municipality, and I am familiar with the cap law and its effect upon appropriations. I am sympathetic to the concern you have raised, and it is certainly a valid one. I don't know that it is appropriate for inclusion in this piece of legislation, but I do think that there should be legislation to respond to it.

This legislation attempts to reduce the fair-share numbers that are part and parcel of the builders' remedy right now. To the extent that a municipality takes the benefit of this legislation, it might reduce the amount of housing that it would have to accommodate by 80% in terms of new police officers and other services which are costly

to the municipality. To that degree, it speaks to a concern which already exists and is not being imposed by the legislation, but rather reduced by the legislation.

I do believe that the Legislature would be responsive to a bill that might propose an expansion in municipal budgets beyond the cap to accommodate those units which are nonconventional, i.e., the low and moderate-income units' demands on increased municipal services. I think your point is very well-taken. As a municipal official, I would support it.

MAYOR HORNIK: The only problem I have with that statement is, with the bonus program, the burden on police services will increase as a result of the five-to-one ratio. I just don't think you can have a cap configuration apply to the low and moderate-income of that section. I disagree with you that this type of bill would reduce the obligation by 80% as far as the formula goes. If it is supposed to be done with a profit motive, I don't see how it can.

MR. POZYCKI: The purpose of this bill in reducing the density bonus is to allow the municipality to utilize the subsidy funds to encourage a developer to build low and moderate-income units without having to give the developer the other four conventional units as a bonus. The encouragement that the municipality would be offering would be the subsidy. If a developer, for instance, could say, "I can bring in a unit at \$40,000, but I can't get down to the \$28,000 level that might be required for a moderate-income unit," the subsidy could be provided to the developer to make up the difference, then the developer would not have to be awarded the four additional conventional units. There would not be the need for that kind of inducement to a developer to develop low and moderate-income units.

MAYOR HORNIK: I don't want to make this into a debate. I understood you the first time you stated that. The fact of the matter is that in order to build those types of units, subsidies and moneys have to come from somewhere. I don't know if a municipality has the capability to create the infrastructure that would represent that type of subsidy. I'll address that when I talk to the Committee with specific regard to sewers. Thank you.

SENATOR LIPMAN: Okay. Mr. Popolo from Holmdel?

MAYOR JOSEPH POPOLO: Thank you, Madam Chairman. I am the Mayor of Holmdel.

I have a question. We supported the effort to amend this bill, S-2046. In fact, we had a participant on the committee; he was our Township Administrator. We are anxious to make sure that this bill, when it is put on the floor, has the best aspects and a fair-balanced effort in it.

In concert with that, I have to agree with Senator Cardinale who raised the point about fairness. One aspect that we think could be a bit unfair is the make-up of the Committee. I would have to address this to Harry. With regard to the nine members, as it may be amended, we have two municipal officials, one county government official, three representatives of low and moderate-income needs -- which may have developers included in that -- and three other members who would be members of some public interest group. We feel that right off the bat, we're loading the committee with people, six to three, in terms of those who are interested in having more low and moderate-income housing. We would like to see it-- For example, if the Public Advocate is going to be a member of this committee, let's make him one of the low and moderate-income group representatives, along with the developers. I think it is a little unfair and unbalanced.

MR. POZYCKI: There is a slight correction I would like to make as far as the composition of the committee. You are correct that the composition of the committee consists of nine members, and I might point out that the legislation mandates that they be bipartisan, and that there be a split of at least five/four between Democrats and Republicans on the committee.

With regard to the membership of the committee, what we have are two representatives of local government -- municipal government -- and one from county government, which we felt would be a representative responsible to municipal government, since, at least in my experience, most county governments respond more to their municipal constituency than to the State.

As far as the three representatives who you indicated are for the low and moderate-income people, it is really two representatives of

low and moderate-income people and one representative of the builders' industry, because we wanted to have someone who would understand the realities of the economics of low and moderate-income construction.

The remaining three members are members of the general public, and we indicated that one of those should be a representative of State government.

These appointments are made by the Governor, and the choice of the chairman of the committee is the Governor's choice, at his sole discretion. We hope that by creating bipartisanship of five/four, a split between Democrats and Republicans, allowing the chair to be chosen by the Governor and the vice-chair chosen by the committee, allowing municipal representatives, county representatives, and State representatives, as well as representatives of low and moderate in the building industry, we would have a balance. I don't see it really as being weighted in anyone's direction. If there is further input as to how we can modify to achieve even greater balance, we certainly would be open to that kind of suggestion.

MAYOR POPOLO: I think it has been clear in the past that the Public Advocate's office has really been an advocate of low and moderate-income housing. I think he should, by law, be one of the members of the two low and moderate-income housing representatives.

MR. POZYCKI: I'll consider that, but there has been some discussion of that and some reservation about the Public Advocate serving on the committee, because the Public Advocate is supposed to be a free and unfettered ombudsman of the poor. It would be difficult for the Public Advocate to both sit on the committee and bring cases or arguments before the committee.

MAYOR POPOLO: Well, if that is the case, then I would agree with it. Thank you, Madam Chairman.

SENATOR LIPMAN: Okay. The Mayor of Clinton, Mr. Murtaugh? Is he here? The Mayor of Clinton? (Mayor Murtaugh replies that he does not wish to ask any questions at this time)

The Mayor of Princeton Township? Do you have a question?

UNIDENTIFIED PERSON FROM AUDIENCE: I represent him, Madam Chairman, but I have no questions at this time.

SENATOR LIPMAN: All right. Is there another mayor here? I only mentioned the mayors who are here to testify. Is there another mayor who has a question? (affirmative reply)

COUNCIL PRESIDENT JOSEPH CONIGLIO: I am Council President Joseph Coniglio from the Borough of Paramus.

My question, sir, is: How do we get relief from fair-share mandates at this time without a moratorium? I would like to address the problem we face in Paramus.

Paramus is one percent shy of being a totally developed community. We are told that we must provide close to 2,000 units as our fair share. In order to accomplish this, we must build 10,000 units, which would bring with it a minimum population of 20,000 people. Presently, we have a population of 27,000. This means we would have to increase our population by more than two-thirds. To me, this is an unfair burden to be placed on any community with only one percent of its land left to be developed.

I also believe-- I cannot see why any mayor or council -- if he decides to object to his fair share -- must agree, report mandates, and not be able to exercise our right to due process.

MR. POZYCKI: Mr. Coniglio, I'm sympathetic to your concern, but as an attorney who has both given advice to municipality and developer advocates in the Mount Laurel arena, I have had to face the question of a moratorium, and whether or not a moratorium would be constitutionally sustainable.

I also serve as the legislative coordinator for the New Jersey Bar Association's land-use section -- the zoning attorneys of the State. Before that forum, the question of a moratorium was raised. It was the unanimous consensus of the members of the Bar Association's committee -- and, I point out there are as many who represent municipalities as who represent developers -- that a moratorium would not be constitutionally sustainable. Basically, for the same reasons that I argued about with Senator Gagliano previously, the constitutional doctrine of separation of powers precludes the Legislature from telling the courts what to do. In this instance, a moratorium would have the effect of the Legislature telling the courts, "No, you can no longer implement the Mount Laurel opinion."

I think the best way to get the courts out of the picture is for the Legislature to pick up the ball and begin to carry it themselves with a bill like S-2046. I believe then the courts would start to remove themselves from the Mount Laurel arena. We can't mandate it without breaching the constitutional doctrine of separation of powers. I think if the Legislature was so frivolous to go ahead and adopt a moratorium, then it probably would not take more than 60 days before the Supreme Court struck it down, and we would be left without a solution again and subject to continued court intervention. I think we have to pick up the ball with a bill like S-2046, and then the courts will step out of the picture and let the Legislature regain its rightful power over the zoning issues.

COUNCILMAN CONIGLIO: Where do we get immediate relief before we even have the opportunity to pass your legislation at this time, or with the legislation pending? How do we get relief as part of your legislation, but without a moratorium?

MR. POZYCKI: I am working on this legislation because I believe it is the most expeditious avenue for relief. I don't know of any way in which there can be immediate relief other than perhaps a municipality showing to the courts that it is processing a rezoning that would accommodate, and then asking the courts for some deference to allow it to complete its own planning. I think the sooner legislation, such as Senator Lipman's bill, is on the record, the sooner the courts will be a little bit more tolerant to municipalities that are trying to accommodate through the adoption of the housing element. I don't know of any quick-fix solution. That is why I think it is so important that the bill before the Committee today be moved with all due haste.

COUNCILMAN CONIGLIO: Thank you.

SENATOR LIPMAN: All right. Wait just a second. Are there any other municipal councilman here? (negative reply)

Mr. Pozycski, I think we have come to the end of questioning. If nobody objects, we will get him off the hot seat right now.

MR. POZYCKI: Thank you, Madam Chairman.

SENATOR LIPMAN: I want to thank you so much for your presentation, for your contributions to Senate Bill 2046, and for your dedication to seeing that the Legislature makes the right response. Thank you so much.

MR. PDZYCKI: Thank you. (applause)

SENATOR LIPMAN: I think that rather than declare a moratorium on lunch, I am going to ask the Tenants' Council-- I understand that Mr. Atlas has to be back in Essex County at a certain time, so I would like to ask you to make your presentation. Then we will take a half hour for lunch.

JOHN ATLAS: Thank you, Senator and members of the Committee. My name is John Atlas. I am the Vice President of the New Jersey Tenants' Organization. We are an 80,000 member, dues paying, organization throughout the State of New Jersey, with 100 affiliates in municipalities across the State. I would also like to point out that we helped organize a coalition called The New Jersey Citizen Action, which is a coalition of seniors, women environmentalists, and others who are concerned about the issues of low, moderate, and middle-income people.

Today I am here to testify on behalf of the New Jersey Tenants' Organization. I particularly want to address myself to everyone who is worried about the details of this bill. I want to remind you that we are in the midst of a serious housing crisis. When I heard the testimony and the questions by Senator Cardinale and others concerning the Mount Laurel issue, I thought that maybe we were asking these questions in a vacuum. The fact is, we have a serious housing crisis.

Listen to some of the symptoms: home ownership. Do you realize that most New Jersey residents who do not own a home today will never own one? The cost of buying a home has gone through the roof.

Statistics: Let me give you a few. A medium-priced house in 1970 was about \$23,000; today, as we all know, especially for anyone who has tried to buy a house, it is over \$90,000, and in many places in New Jersey, it is over \$100,000. In 1950, two-thirds of our citizens could afford to buy a home. What is it today? About 15% can afford to

buy a new home. As the price of owning a new or used home skyrockets, the fact is that more and more people will be shut out of the American dream of home ownership, and they can expect to live the rest of their lives as tenants, unless they are on the new G.I. bill -- you know what that is -- generous in-laws. (laughter)

The poor urban minorities and the elderly are familiar with the plight of being permanent renters. What is new -- and, I would like to speak to many of the people who are here today -- is the post-war baby boom generation of middle-income renters who live in Mahwah, Highland Park, and the other suburban communities and who grew up expecting that a home in the suburbs would be theirs for the asking. It is not. The American dream of home ownership is becoming a nightmare.

What then is it like to be a tenant? Well, it is often miserable -- quality, bad conditions, slums. Do you realize that the problem of neglect began in the 1960's, when between 1960 and 1970, dilapidated housing increased by over 200%? Today, the deplorable state of housing -- in Newark, for example -- is so widely recognized that it has become a national disgrace. By the way, let me address myself to the question of why there is a housing problem in Newark.

That problem wasn't caused by the municipal officials and representatives of Newark; it was caused by things outside their control, such as policies on the Federal level that use unemployment as a way of dealing with inflation. We are now at the peak of a recovery, and we have the same level of unemployment we had at the beginning of 1980. Also, things like jobs leaving the cities: That is not anything that the municipalities can control. So, the housing problem in Newark is more a job or income problem. If we want to deal with that, we have to deal with jobs and income.

The fact remains that tenants are paying exorbitant rents, and their living conditions are often brutal and oppressive.

Let me give you some facts about rents. We now have over 200,000 households that are spending more than 25% of their income to cover housing costs. The poor and the elderly are sometimes spending 50% to 80%. That is extraordinary!

A single adult living on general assistance receives \$119.00 per month. A room at the Y.M.C.A. in Paterson goes for \$45.00 per week. A two-room apartment in Essex County rents for at least \$240.00 per month, far beyond the means of an A.F.D.C. mother whose grant is \$273.00 per month. Do you want to know why we have a housing problem? Look at those numbers.

For the unemployed and the low-wage earner, it is nearly impossible today to find an affordable home, so many are moving into overcrowded conditions, and worse, go homeless -- the ultimate housing problem. According to the Governor's own task force, there is a minimum of 20,000 people in this State who are homeless, and it is growing. We have a serious housing problem.

Thousands of residents are closed out of the home-buying market, and as tenants, they live in fear of unaffordable rent hikes, condo conversions, displacement, arson, loss of essential services, and evictions. Why? It is because of the unequal power relationship that exists between tenants and landlords. Why do landlords have an unfair advantage over tenants? It is because of a serious housing shortage.

What are two of the basic reasons why we have that housing shortage? There are two. One is expensive financing -- high interest rates and the unavailability of capital. Two is exclusionary and restrictive zoning.

This bill begins to answer those questions. Can we begin to turn this problem around today? Of course we can. We can begin to make the right to decent and affordable housing a reality for all New Jersey people by passing a bill like this, without weakening amendments. It is an excellent mechanism to attack the problem.

I was waiting for applause.

We have two suggestions, by the way. One of the problems is that tenants oftentimes are unable to come to meetings like this because they have to work or take care of their families. But, they do need some relief. I have two suggestions, by the way, for this bill.

One, the Council on Affordable Housing, we think, should be expanded. It is a very important entity, and we think there are too

few people on it. We believe any public policy must reaffirm and energize a fundamental dynamic of our age and of our history -- democracy. By democracy, we mean, in this case, participation -- participation by those previously excluded, participation by the victims of those suffering from a housing crisis. So, accordingly, we would modify 4(a) to include five, instead of two members, who represent the interests of households in need of low and moderate-income housing. We would add that we would like to see these people as representatives of consumer organizations whose members are housing consumers in need.

Secondly, we would add to Section 9(i), number 9, wording which would say, "maintenance and enactment of local rent controls." Local rent controls are the only mechanism for making sure that already existing housing is affordable and for making sure that apartments in the future that are built remain affordable -- affordable to low and moderate-income people. After all -- and, I address myself to Senator Cardinale who has a bill that almost says the opposite -- if government is going to get involved in restricting the production of housing, then of course, it should and must control its price.

Finally, since we are talking about philosophy, I think we, too, would like to get in our philosophy. The issues before us are not merely local control or home rule. That is very important, and we believe in it. We support local rent control, but that has to be balanced against the need to provide safe, sanitary, and decent housing. We need to have a statewide housing policy that not only reaffirms the question of local control, but other traditional values such as fairness, freedom, quality, and justice in the need for low and moderate-income housing for all the people. Ultimately, I think it comes down to a question of philosophy. We can either choose a philosophy exemplified by R. J. Ewing -- the philosophy of isolated individualism, which defends self interest over community interest -- or a philosophy grounded in participation, accountability, responsibility, and freedom, which are values of democracy.

One of the people I would like to refer to is the Governor of New York. When he talked about this philosophy, he said, "Those who

made our history taught us, above all things, the idea of family, mutuality, and the sharing of benefits and burdens fairly for the good of all. There is an ideal essential to our success and no family that favored its strong children, or that in the name of even-handedness, failed to help its vulnerable ones would be worthy of that name. No state or nation that chooses to ignore its troubled regions and people, while watching others thrive, can call itself justified."

In short, we think this bill, with our amendments, is a step in the right direction that will carry out those principles, protect the need of localities to have local control, and also the need to have affordable housing throughout New Jersey.

Thank you.

SENATOR LIPMAN: Mr. Atlas, do you have a copy of your suggested amendments for us?

MR. ATLAS: We'll make them available.

SENATOR LIPMAN: All right, thanks very much. Senator Cardinale, I know you want to say something.

SENATOR CARDINALE: I really didn't intend to respond in any way, but Mr. Atlas mentioned a couple of things, and I think we need to put a couple of things on the record.

Let me start by saying we do have an area of agreement, and our area of agreement is that there is a housing shortage in the State of New Jersey. There has been a lack of the continued building of rental housing, particularly in the State of New Jersey. We disagree, as I have, with your organization in many other legislative forums as to the reasons why that exists.

You mentioned the specific bill going in a particular direction, and with respect to rent control being added to this bill. There are many who believe -- and, I don't believe in a vacuum; it is because they have studied the question -- that rent control has led directly to the lack of rental housing being built in the State of New Jersey.

I can give you an example of one which I am sure you are very familiar with in Ft. Lee. It is very dramatic. Since the inception of the Tenants' Association in Ft. Lee, the amount of rental housing that

has been constructed and the number of rentals units has gone from 9,000 rental units to about 2,000 rental units. I just offer you that as an example of a specific effect of rent control having been applied, and your organization having been very effective in getting that applied by the local government. It has practically destroyed the ability of the tenants to find rental housing there. I think it would be a bad mistake to add it to this bill.

But, I would offer you a challenge. You mentioned in your remarks that you favor democratic principles. I can think of no more democratic principle than to put this whole policy issue to a vote. Would your organization, therefore, support SCR-24, which would put this issue -- these principles -- to a vote of the people of this State?

MR. ATLAS: I would just like to ask you a question. Don't you agree that if you directly restrict the production of new apartments that you also have to control its price? Exclusionary restrictive zonings do, more than any other thing-- All the housing experts, if you compare the impact of rent control -- and there have been tons of studies to show that there is no impact on rent control causing no new construction-- There have been numerous studies, and nobody really believes that, except very few people. In fact, I was a member of the housing task force of the Governor; it was called the Technical Advisory Committee. It was made up of builders, landlords, and bankers. Everybody came to the conclusion that rent control doesn't stifle new construction.

We do know that restrictive zoning, which says you cannot build apartments, does that. There is no question about it. Wouldn't you agree that if you restrict new construction, then you have to control its price?

SENATOR CARDINALE: Madam Chairman, I apologize to you for having opened this discussion. All of the studies you referred to, which attempt to show that rent control does not, in fact, impede negatively on the production of housing, have a fault; they have a flaw. You know it, and I know it. We have discussed it previously at other legislative hearings. The rental housing referred to in those

studies are government subsidized housing. If you are willing to pay for government subsidized housing, you certainly can stimulate the production of housing. If you can make money available, you can certainly stimulate housing. The bill you referred to negatively was an attempt to do exactly that -- to make money available for rental housing, and to make money available by means of the private sector, not the governmental sector. Rent control is a very definite impedance to private money-- building rental housing absolutely, positively -- and it has been shown traumatically, but it is not the subject. That subject is not the subject of this hearing.

MR. ATLAS: Just for your help, I have the New Jersey Rental Building Permits -- the 1983 survey. You can go through it yourself. You can compare your rent control communities and your non-rent control communities, and you will find that there is no relationship between rent control and new construction. You can do it yourself. We don't have to debate it here. We will give you all the facts--

SENATOR CARDINALE: (interrupting) Mr. Atlas, I have served on various housing task forces; we have done it, and we have come to a different conclusion than your organization, because we start with a different premise. I don't think it is the subject of this bill. It is--

MR. ATLAS: (interrupting) I agree, but it is the only mechanism that you would agree with which can control the price increases of apartments. If we are going to have low and moderate-income housing now and in the future, you have to have some kind of mechanism to make sure the prices don't go through the roof. If you don't do that, then people are going to be rent gouged. Right?

SENATOR CARDINALE: Mr. Atlas, I believe the best way that one can do that is to allow a free market--

MR. ATLAS: (interrupting) What free market? There is no free market where you have restrictive zoning. You cannot call it a free market anymore. You are then saying, "No building of apartments." Once you say that, you've got to get involved in controlling the price. You can't have it both ways. You can't have it--

SENATOR CARDINALE: (interrupting) Mr. Atlas, that is not the situation we have in the State of New Jersey today. We have not zoned out apartments in the State of New Jersey. Unfortunately, in those areas where zoning exists for the construction of apartments, which are more affordable than private homes -- where that exists -- they are not being built to any great degree. The reasons are variable. You are probably right -- that the reason today is financing costs. That is a situation that has prevailed for the last several years. But, the problem goes back well before that, and it will continue unless some other basic policies are changed. We have other forums at which to discuss whether or not rent control is a viable way of controlling costs, and whether it, in fact, creates scarcity, which is a fact that makes costs go up. I believe one, and you believe the other, but we are not going to resolve it here.

The question I asked you, which you did not answer -- you asked me a question instead -- is, would your organization support putting this policy to a vote of the people of the State? The vehicle we have to do that is SCR-24.

MR. ATLAS: It is something we haven't talked about, but what we are concerned about mostly is the construction and maintenance of low and moderate-income housing. Anything that directly gets us there, we're for. This bill directly gets us there, and so, that is why it is a good idea.

SENATOR LIPMAN: That means he is against SCR-24.

SENATOR CARDINALE: Madam Chairman, I don't doubt your interpretation at all. I just thought I would like it on record that the New Jersey Tenants' Association is against democracy. (laughter)

MR. ATLAS: But, we are for apple pie.

SENATOR LIPMAN: Thank you very much. Please don't forget to make your suggestions of amendments available to the Committee.

I want to thank a young lady who is sitting right in front of me; she has been very active with this issue. She has been sitting with the legislators and the Committees much of her time in recent days, and I do think we have to get her on before lunch because I understand the buses are leaving. We have to hear what she has to say. Miss Lisa Digiulio from Mahwah?

LISA DiGIULIO: I am sorry I am keeping you from your lunch. I will try to get on with this as quickly as possible. We have several people here today who took time off from work, or who simply took the time to come down here and make you aware of their plight.

I would like to address you, and then we have one lady who would just like to make one very brief comment.

My name is Lisa DiGiulio. I am a concerned citizen from Mahwah, New Jersey, Co-Chairman of the State Mayor's Task Force, and Chairman of the Mayor's Advisory Committee in Mahwah.

Senators, Assemblymen, Mayors, ladies and gentlemen: The Mount Laurel decision has demeaned the principle of constitutionality and undermined the legitimacy of the legislative process. The negligence of our Legislative Branch to act has created a form of tyranny and a violation of the principle of the separation of powers. You should now seek to reestablish the Legislative, Executive, and Judicial Branches as coequal branches of State government in New Jersey.

It seems to me that every legislator would want to support some legislation in response to the blatant attempt by the Chief Justice and the Supreme Court to invade the powers of the Legislature in every municipality of our State.

New Jersey needs a planning mechanism directed exclusively toward our housing needs. We need significant legislation that might completely remove the Court's interference and guide and aid municipalities under Mount Laurel litigation.

For this help, I look to S-2046, the Fair Housing Act. I ask that this Committee seriously consider all amendments presented by the Ad Hoc Committee here today. And, I must commend Harry Pozycki. I know that he has worked very, very hard.

I have been attending meetings since February, 1984, and I cannot believe that nothing has been passed to aid municipalities. It has been 13 years. What are you people waiting for? If you do not act soon, don't bother because any bill will be too late to help most of us.

Most towns have been adjudged, or have made settlements out of fear. People are panicking and selling their homes. Don't you even feel guilty? If you do not act within at least 60 days, we won't need you. We will be accountable in 1990 when this housing has been constructed and has its financial impact. Who will have to make provisions to accommodate the demands that will be made by the residents for all their services? The courts have made no provisions for the costs they have imposed on the townships through their decision.

I look to S-2046 for the direction and infrastructure planning. I have some amendments to propose:

1. A municipality which has a judgment entered against it after the enactment of this act, or which has a judgment entered against it prior to the enactment of this act and from which an appeal has been filed, shall, upon municipal request, not be compelled to provide, within any six-year period, Mount Laurel housing individually, or coupled with density bonus zoning for an increase in their population of more than 25 percent, as of the date of the filing of the litigation which was the subject matter of the judgment, or one year prior to the date of the judgment of the court, whichever date is later. I feel that this would help in solving the numbers. Everybody has been trying to figure out how to get the numbers together.

(reading from a letter, signed by E. Carter Corrison, Esq.) "The purpose of this type of amendment would be to ensure the gradual development of the community and to avoid the harm that could take place by means of rapid growth without permitting the municipality to ready itself for some water, sewer, traffic, and roads." This letter is attached to my statement -- the whole letter. I really don't want to take the time to read the whole purpose of it, but I am sure you will.

2. This is something I have not heard addressed at any of the meetings, nor at any of these committee meetings: State residency requirements to prevent a large influx of out-of-state residents for the sole purpose of low and moderate-income housing. I feel if you don't have some kind of State residency requirement here, we are going

to get the influx from the surrounding states, which certainly includes New York City. They are having a terrible problem with their low-income housing, and I think their problem would certainly become our problem.

3. Some funding to balance the off-site improvement cost to municipalities. I don't feel we should have to subsidize the four high-priced units. It is enough we have to pay for all the sewer hookups, water, and all the other improvements, why should we subsidize private enterprise and pick up the expense for the four high-priced units? I think something should be done there. This is solely for the private developers. This is not fair housing when they not only subsidize low and moderate-income, but we also pay for everything else connected with the Mount Laurel housing. We cannot accept a bill that contains no funding; it would be useless.

The Council created by this bill should be made stronger and have more authority. The certification procedure should be made simpler and less expensive for the towns to qualify.

Municipalities should be able to control densities in a more reasonable manner than a four-to-one, or a five-to-one builders' bonus.

We must shrink the area encompassed by the Development Guide Plan or risk over-development of our State. I hope to see this bill work closely with Senator Stockman's bill. I think the two can really work hand-in-hand.

Housing credits should be given to the municipalities which have amended their ordinances to provide for low and moderate-income housing, and provide infrastructure and financial support to housing in that municipality. There should be a staging and phasing-in of all new housing and credits given to those municipalities who have been forced to settle. Somehow, all towns must come under the jurisdiction of the Council, whether they have settled or are under litigation.

Please consider these amendments -- they are essential -- and act as quickly as possible. I am asking you to make your bill an emergency bill, because if it is not enacted before the holidays, three-quarters of all the towns will have settled and we won't need the

bill. This is really a serious problem. I ask, and demand as a taxpayer of New Jersey, that you act immediately, for if this mandated court order is not halted and corrected, the people of our great democracy will cease to be their own rulers, having resigned their elected representatives into the hands of a tyranny.

I am disgusted, annoyed, and angry at your lack of attention to this serious matter, and at the lack of protection for your voters' rights. You will answer for this at the polls. We want and demand fair housing for everybody. Please move this bill, in an amended form, as an emergency bill.

I think it is a good bill. Senator Lipman, you know how I feel about you. Finally, a woman took the initiative -- and I have to bring that in -- to do something. (applause) But, I think the bill can even be made better with all the proposals I heard today from Harry Pozycki's Ad Hoc Committee, with which I am familiar. I have also worked with them.

I also have three other letters attached to the back of my statement, which I am not going to read now. However, there is one point I would like to make. Several towns and developers are segregating this housing and building them in clusters of 65, low-income. I think this is totally unconstitutional. I think what you have here with the Mount Laurel mandate, as it stands without any serious implementation, is busing of houses. We are simply going to move them from the urban areas to the suburbs. You could take the urban areas and really get credits there by putting some funds into those areas and giving people the homes they want.

I think every town needs some affordable housing, but not in the numbers being directed at them. We have heard so much about Warren, but the Town of Mahwah has been hit with 699 low-income dwellings, which means we have to put up 3400 units. This means that in six years they want us to have 30,000 people, and we only have 11,000 or 12,000 now. I don't see how this could possibly work. I don't see where you can force anything on people and expect the new people to be received favorably.

This has nothing to do with low or moderate income. It is just the amount of growth that is being forced on towns. They cannot absorb it in any way -- socially, financially, or in any other way. I don't think it really has anything to do with low, moderate, or anything like that. People worked hard to move into an area, and as Senator Cardinale said, some areas are less desirable and some are better. Why can't we make all areas desirable? Why should we simply move people out of broken-down and slum homes into other areas, where they are going to be classified as low-income, and make those areas less desirable? Let's build up the areas and give people an incentive so we don't have any more low-income in this whole country. That is the answer. (applause)

Now, I understand there is about a \$600 million surplus in this State. There has to be something there for homes, whether they be subsidized by the State, or whatever. If the court ordered all this housing, then the State should start building it, if it is that important and that needed. But, I feel we don't need the four-to-one. I think we are going to overpopulate. We are going to over-build, and we are going to have such a recession that these developers are going to lose. I want to know who is going to pick up the tab when they do go down?

We have people from Saddle River here. There is a house going up in Saddle River, to give you an example, and it is a \$4 million home. Can you really see a low-income development next door to that and expect it to be absorbed into the community? I mean, is this practical? Is this common sense? I really don't see it.

I am in favor of any woman, or any Senator, taking the initiative to get a bill going and working. But, you have had 13 years, and now I want it in 60 days; can you do it?

SENATOR LIPMAN: You give us a short time there, considering how long you have been with us, trying to get something done.

I can promise you that we are going to do this as expeditiously as we can. As I have always said, the Legislature is long in consideration. The point you make -- the lack of protection at the polls -- is one reason why I think they really haven't acted in the past.

I want to thank you though for your suggestions, and for the time you have put into this also, which is exceptional. I can tell you that we will take these amendments into careful consideration. We appreciate your trying to alert the rest of the citizens and the towns about what is happening, because we don't always get through with our notices. I appreciate it.

MS. DiGIULIO: Well, I have people here if they would like to stand up. Some of them have left. The buses had to leave. But, we have people here from Paramus, Saddle River, Wyckoff, Ramsey, and Mahwah. We also have one lady who would like to say something, very briefly, to you. She is one of our senior citizens who has been following this and who is on the verge of maybe losing her home if this comes in. She is very sweet. Mary Keri, from Mahway. Mary, do you want to sit right here by the microphone?

SENATOR LIPMAN: There is another mike right there in front of her.

MS. DiGIULIO: Oh, okay.

MARY KERI: My name is Mary Keri. They call me Keri, Carey, but don't call me late for supper if you are going to pass something. (laughter)

Well, anyway, I am a widow. I am 78 years old. I just paid off my house, a mortgage of 30 years. I really worked hard. I don't know how we are going to subsidize this. I had to put a lien against my home through the Bergen County Home Improvement, and I thank them very much. This makes me very nervous. They gave me \$1800, a lien against my house, so I can put the sewer in. Now I have another one to hook up, which is \$1,200.76. They put in that 76 cents to make it look small.

But, here we have a person who is going to build homes in Beaver Creek and I understand we the people in that town have to pay for the sewers, the roads, the lighting, the garbage collection, and all of that, plus snow removal. How can they do that to us?

I don't want anymore mortgage on my house, because I am getting old. I am on Social Security, which I live on -- \$8,409.49 -- and I manage. I think a lot of people can manage. But, the poorer class people have to live someplace too. I am not a rich person; I

have a lot of friends that are poorer than I am, but we are friends and they have a place to live. But, I don't understand why we have to subsidize the builders. They are going to make the money, and we are against this. (applause)

We just remodeled our high school. It was promised that it would be \$10 million -- that's a lot of baloney. It is up to \$16 million now. So, up goes your mortgage, right? I have to pay for it. But, in the long run, I am going to be here with our dear friend; and she is our best one. She is really working hard, especially with you. I hear so much about you.

SENATOR LIPMAN: Oh, really? I hope she says something good.

MRS. KERI: She does. She says there is a lady you are going to like very much, and I am glad. I hope the rest of you guys get in on this, because I am voting for who is going to vote to help us, the poor people -- and I am a voter. (applause)

SENATOR LIPMAN: Thank you so much. We appreciate your testimony. Do any of the Senators want to ask a question? Senator Cardinale?

SENATOR CARDINALE: I have a question, on a couple of the amendments, for Lisa.

SENATOR LIPMAN: Proceed, please.

SENATOR CARDINALE: I agree with almost all of your amendments. I think you knew the portions of your statement with which I would agree and disagree. Let me just indicate, for the record, that all of us at this table support some legislation to deal with this problem. The problem is, some of us support one approach, and others of us support a different approach.

We all sympathize with the problems of the people who would be forced, under what is going on now, to subsidize others who would be moving into their communities. There is no disagreement whatsoever with that.

I personally feel -- and I have expressed this to you before -- that this bill institutionalizes the problem and makes it imperative that everyone suffer, whoever they may be, from the problems of the Mount Laurel suit. I disagree that this would be a relief, as many people see it to be.

You have asked for an amendment which would give you relief, and that amendment is your first one. I would say to you that whether or not that amendment is in this bill, there is no guarantee -- as you have heard from some of the legal experts -- that the courts would honor, in any way, that amendment.

My question for you concerns something that I am surprised to see. You suggest that the Council, created by this bill, should be made stronger and have more authority. Now, you know, and we have discussed it here this morning, what the makeup of that Council would be. It would seem to me that that Council would be very unlikely to share the interests -- at least from what I have heard -- that are being expressed by most of the people in Mahwah, Ramsey, Saddle River, Norwood, or Mount Laurel. Why would you feel that the Council should be made stronger, given the fact that it is going to be so greatly tilted toward those who have proposed Mount Laurel, which created the problem in the first place?

MS. DiGIULIO: I think when I last spoke to Senator Lipman she indicated that would be one area of review. I do say that I support this bill with amendments. My reasoning for more authority would be that I don't see the purpose of towns having relief, going through a whole process -- a very expensive process -- of being certified for a presumption of validity, and then being dragged back into court. I would like to see, somewhere in this legislation, the Council having the final say. That is what I meant by authority. Maybe I used the wrong word.

But, I do have a question for you: Without this bill, do you have something else? Many people here would like to know what they can do, as the public, to get SCR-24 on the ballot. As a matter of fact, every note that was handed to me was-- I don't have the answer to that, but I know when I was here the last time, the Assistant Public Advocate indicated that we did not know how to vote for ourselves. In this instance, when you say the public does not understand Mount Laurel, the way it has been presented, I think everyone would totally vote against it, and would vote just the way he is saying.

I blame our legislators; I blame a lot of our elected officials, because they themselves don't know. I have been trying to make people aware. You have had 13 years; and still, when I say Mount Laurel to people, they say, "What is that? What program is that?" It is unbelievable. The press doesn't give us any coverage. They only print what they want. It is a hot potato for every politician; they won't touch it with a ten-foot pole. I came down here. I go to committee meetings. I hear wonderful amendments. I hear a lot of talk. Then I hear about a new bill. I have been through the Stockman bill, the Gagliano bill, SCR-24, the Lipman bill, and next month it is going to be too late for any bill to help three-quarters of the towns.

I do not understand this lengthy -- the words I want to use, I can say here -- talk and nonsense that I hear from elected people who are supposed to be representing the people who put them here. I pay taxes for you to work for me. You have me working for you. I have to come down here and beg. (applause)

I can say this -- this, of course, is not a threat; it is just what I have heard from all of the towns: "If we don't get any legislation, and all us have to settle under the gun, there will be a big change at the polls." This is the only power we have, and if that is what we have to do, then that is what we are going to do. This is not directed at anyone here, because I know you all have been working on something. I mean, 13 years to get some kind of a bill, and then you let the court work right over you, and now everybody is trying to figure out how to get it back out of the court. Why didn't Judge Wilentz order you to do something? Why is he ordering the municipalities to do it? I don't feel he had any right to do that. I didn't vote for him. How dare he order me to do something? (applause)

I would like some answers from each Senator here, as to why it has not been addressed in 13 years.

SENATOR CARDINALE: Lisa, for one, they have both been here longer than me. (laughter)

MS. DiGIULIO: Well, I have had my run-ins with Senator Stockman, but I think we have made peace, although we have had a few arguments; however, they were sincere arguments because we were on

different sides. I realize now what you mean when you say, "Well, maybe this bill isn't it;" but what have you got in place of this bill that will fly, that will go through the Senate and the Assembly? The SCR-24, of course, is the answer, but it is going to be bottled up in committee and there is no way it is going anywhere. So, what do we do? And, what do we do while you are talking about all of these wonderful amendments and this wonderful bill? When it comes to January 1st, all our wonderful towns will have the plows on them. We don't need the bill then. You know what you can do with it? Really. We don't need it then.

I sat here until 5:30 in the morning when the transportation bill went through under pressure. You were running around meeting with the Governor. Everybody was going crazy. I was sitting here. I left at 5:30 when it was passed. It got passed though. They all wanted that money. You had all that pressure from the unions. We have people who are going to lose their homes; doesn't that mean anything? Why don't you put this through as an emergency bill? We need it now, not later. That's what I have been fighting for. (applause)

Let me tell you something, I am not sitting here as a Republican or a Democrat. I think when I first came down here that was the difference. Senator Stockman said, "Oh, well," you know, "go to your--" When I met Carmen Orechio and everybody on the floor, it was: "Oh, well, she is a Republican." I am not here as either one right now; believe me, I am not. We have people like this, thousands of people like Mary -- and I didn't bring her here to cry; I just wanted to show you there are people like this who are not poor people; they have been honest, they have worked, they have homes, and they are going to lose them. Okay? We are dillydallying around with all these wonderful amendments that are going to mean nothing 90 days from now.

You have the power and you have the tool now. Maybe it needs a little brushing up, but I feel like locking all of you in a room because you are all brilliant people as far as I am concerned. I have seen you wheel and deal. I have seen you get these amendments. I have seen you get what you want. I have seen you run around that Senate floor. My God. They gave me a badge because they got tired of

throwing me out. I have seen it go. I want you to do it for us now. I have people, not many, but if you want more people here, you tell me how many you want and we will have them here. I want you to wheel and deal now for the people. We need a bill and you can do it.

Senator Stockman, has your bill been signed by the Governor yet?

SENATOR STOCKMAN: No, it is up for a vote on Thursday.

MS. DiGIULIO: Okay.

SENATOR STOCKMAN: I did say you'd better get the Governor in that room with us.

MS. DiGIULIO: That's all right. I'll sit there with you. You know, nobody moves, bread and water, and you figure it out. We have enough brains here in the Senate, and I have seen wonderful people on both sides. I am not even going to go down the party list. But, both sides, 40 people, can get together and give us a working bill. I am asking, demanding, crying, pleading -- or whatever you want me to do today.

MRS. KARI: Me too.

MS. DiGIULIO: Okay.

MRS. KARI: I'll go on bread and water too.

MS. DiGIULIO: Please, I think the cafeteria is closed, we are all going to be on bread and water. But, thank you for your extra time, because I know you have been dying for lunch. You have had a long day. I hope that, in some small way, since I have been down here and nudging everybody -- I have grown up quite a bit to the political field -- that you will please realize the seriousness of this, and also that 60 days from now we don't need it.

SENATOR CARDINALE: Lisa, you asked a question and I am not going to let you leave without answering it.

MS. DiGIULIO: Okay, go ahead.

SENATOR CARDINALE: You asked if there was something better. You pointed out the better thing yourself -- SCR-24 -- and you pointed out the obvious problem. The problem is that it will probably not be enacted in time.

When you have a problem, you ought to go to the root of your problem to try to find a solution. The root of the problem which everyone has been skirting around has been mentioned a few times, but everyone has been skirting around the issue. We talk about a separation of powers and we don't have it. If we maintained the separation of powers, we would have it. And, it would seem to me that the only way we can restore it-- You said we didn't vote for the Chief Justice, and that is true. This is a policy decision, and people in a democratic society expect policies to be made by the people they elect, not by people who are appointed.

There is only one mechanism I know of, and it can be done quickly.

MS. DiGIULIO: Tell us how.

SENATOR CARDINALE: There is only one mechanism. It is drastic, but let me give you a little background for it.

MS. DiGIULIO: (interrupting) Go ahead.

SENATOR CARDINALE: There is a newspaper editor who happens to live in Saddle River, and that newspaper editor called me about three or four weeks ago; he had just become aware of Mount Laurel. He is a newspaper editor, and he wanted to know what was going on.

MS. DiGIULIO: Terrific.

SENATOR CARDINALE: We had just come back, and he didn't know. The problem you have can only be handled quickly if the Assembly would bring forward an impeachment of the entire court and the Senate would act on it. That is the only answer.

MS. DiGIULIO: Well, now wait -- if we can't get a bill, I don't know how we can do that quickly. I think the man had a wonderful dream. I think when he had that dream, he should have ordered the Legislature, whose hands it should have been in, to act, instead of taking it upon himself. He is not a planner, and he has given the builders carte blanche. I think it is time you take back the power, and you have the carte blanche. If we can't have faith in you, the people we elected, then what are we supposed to do?

I think it is a great idea. I will tell you what I was going to do: I was going to go down to Park Avenue and over to 8th Avenue,

to all those people from 8th Avenue with the short skirts, and bring them over to Park Avenue where he lives. However, that may defeat what we are here to accomplish. I am not here to throw Wilentz out or to throw Senator so-and-so out; I am here to get a bill. What do I have to do to get a bill to protect us? You tell me; I will do it.

SENATOR LIPMAN: I think you are really doing your part. I think you have expressed, quite well, the urgency of this situation. I just want to point out that as Chairman of this Committee, although Senator Cardinale is a member, his call to impeach the Chief Justice does not reflect the thinking of the Committee.

SENATOR STOCKMAN: Madam Chairlady, let the record be accurate, Senator Cardinale didn't limit himself to the Chief Justice; he said we ought to get rid of the whole court. So, let's not fool around.

MS. DiGIULIO: I'll tell you what, if there is no legislation passed, maybe we should get rid of the whole Senate. (laughter)

I know you have spent long hours with me on the phone and meeting with me -- you all have. Now I am asking you to please, please act. Thank you for your time. (applause)

SENATOR LIPMAN: Thank you very much. Since we have already missed lunch, Miss Mary Lou Petitt of the League of Women Voters wants to make a statement.

MARY LOU PETITT: Thank you, Madam Chairperson. I hope Senator Cardinale is going to stay for my testimony. I am from Bergen County. He is a representative from my county, and I would hope that he might listen to my testimony also.

I am Mary Lou Petitt. I am Housing Director of the League of Women Voters of New Jersey. The League, which has been actively involved for over 20 years in housing issues in New Jersey, appreciates this opportunity to testify in support of Senate Bill 2046, which is known as the Fair Housing Act and which provides a mechanism for implementing the Mount Laurel II court decision.

We support the concept, as delineated in the original legislation, without amendment. However, I would like to add that I think the League will study some of Mr. Pozycki's amendments. I think

perhaps the League might be very willing to study and endorse some of them because some of them were in areas of concern that we also have.

The League has testified frequently in support of housing legislation over the years, and it has a strong record in support of legislative and executive action to meet New Jersey's housing needs. In fact, the League was almost a lone voice in support of Governor William Cahill's Balanced Housing Plan of 1970/1971. The legislative failure of those proposals, and the total lack of local municipal support for them is well-known, and Governor Cahill's statement that, "unless communities voluntarily address their housing needs, the courts will force them to do so" was clearly prophetic in light of Mount Laurel I and Mount Laurel II.

Mount Laurel I, a decision reached in 1975, was made by the Supreme Court because of the inaction at State and local levels. It did not mandate numbers, but relied on the good faith of communities to use their zoning powers to promote the general welfare of all people, rich and poor. However, like Governor Cahill's proposals, this decision generated little or no response. During this period the League testified in support of several fair share housing bills, and continued to call for legislative action on housing.

SENATOR LIPMAN: (interrupting) I have to ask you to keep your conversations down. (speaking to audience)

MS. PETITT: I appreciate that.

SENATOR LIPMAN: The lady is trying to give testimony.

MS. PETITT: Yes. We sat and listened to their remarks; I wish they would listen to ours.

It was the League's belief then, as it is now, that it is the responsibility of State government, the Legislative and Executive branches, working with local municipalities, to develop a housing policy which meets the needs of all of New Jersey's citizens. However, because of the failure of these branches of government to act, the League has supported the actions by the Judicial branch of State government, the Supreme Court, which was forced to act not out of some desire to suddenly descend on some municipalities but because of the legislative failure to act. And, it was over many years that this failure took place.

After exhausting all other approaches, the League of Women Voters joined as an amicus in two zoning suits -- the original suit in Mahwah, and in the Middlesex County suit which became a part of the Mount Laurel II decision.

The Mount Laurel II decision, which brings us all here today, followed Mount Laurel I by almost eight years. The Supreme Court waited eight years for some kind of response from either the State or the local governments, and it was necessitated by the continued failure to address housing problems at those levels. Mount Laurel II was not, as many of us have been led to believe, a sudden, rash, and totally unexpected action by the court. Mount Laurel II was necessary because the State and local levels did not develop a positive response to increasing housing needs, and the League of Women Voters of New Jersey is on the record as supporting the Mount Laurel II decision.

It is our hope that at long last the State of New Jersey can develop a legislative structure to respond to the growing housing needs of our citizens, and the League feels that S-2046 is a positive step in that direction. We commend the work that has been going on in connection with it. We also feel it is appropriate to mention -- and the grass roots was mentioned earlier -- that the League of Women Voters is largely made up of residents of suburban communities, most of whom are facing Mount Laurel II implementation requirements. Our support of S-2046 is based on the recognition that all communities must share in meeting the State's critical housing needs, and that those needs exist in both urban and suburban communities. In fact, in the eight-year period between Mount Laurel I and Mount Laurel II, those needs have dramatically increased. New Jersey has an aging housing stock -- most pre-dates World War II -- and with no real housing policy, it has neither rehabilitated nor built sufficient housing to meet the needs of young couples, families, single parent families, or the elderly. This lack of housing is beginning to impact seriously on economic development issues in the State. Job creation depends on housing growth, and in New Jersey that growth is far behind.

The League feels that S-2046 is a serious attempt to develop housing in an orderly, phased, and rational way. It does provide a

legislative structure which utilizes existing administrative agencies and it calls for executive involvement through State agencies and the appointment process, and, most importantly, it includes participation and representation at the local level, and that has always been a major tenant of the League of Women Voters. If adopted, it will enable the State and local communities to move away from costly and lengthy litigation to an approach which can better deal with these complex housing issues.

The League understands that certain amendments to S-2046 are being discussed. Our testimony today, therefore, is limited to support for the general thrust of the legislation, with comments expressing some concerns. We reserve our options to speak to some of the amendments.

1. While we support the need for a phase-in schedule, we remain concerned that many municipalities will see this as providing them with yet another delay period. The need for municipalities to permit immediate construction of a substantial amount of fair share housing is vital to implementing phase-in development. The League would like to see a more detailed section covering this point. And, I know Mr. Pozycki did allude to that this morning.

2. As an organization which has long supported participation in statewide councils and commissions, the League has serious concerns about the makeup of the Council on Affordable Housing. This Fair Housing Act will be only as good as the Council's ability and effort make it. Those individuals named by the Governor to the Council should be representative of both municipal and county government, as county government is too frequently overlooked in structuring such councils. This may necessitate enlarging the number of representatives from that category. A clearer definition is needed for "representatives of the interests of households in need of low and moderate housing, and who shall have an expertise in land-use practices and housing issues" -- we find that rather vague. Also, a clear definition is needed for the understanding of what "public interest" group means. The League recognizes the great difficulty in establishing a council which truly reflects all points of view. We urge that in the search for these

appointees, an open, publicized approach be taken by the Governor's office, with resumes requested from a broad cross-section of the State.

3. The League realizes that the mediator role for the Council, as spelled out, is an extremely important task and will require real dedication and effort. Therefore, we might wish to consider that the development of the fair share numbers could be made the responsibility of the newly-proposed State Planning Commission, and, if so, should include local input.

4. Since it is our understanding that the State funding mechanisms will be covered in separate legislation, we would like to reserve comment. However, we are concerned about the ongoing commitment by the Legislature to provide a source of State funding for low and moderate-income housing. This obligation by the legislators should be clearly understood.

We also look with favor on consideration of a trust fund, as proposed this morning in the amendments by Mr. Pozycki.

5. Our last suggestion for amendment consideration: Our last area of concern deals with the staff provided for the Council. The League questions whether the sum of \$250 thousand is sufficient to provide an effective and efficient Housing Council. We believe proper funding should include adequate staff, clerical outreach activities, travel, mail, phone, and printing expenses. Too often such councils fail because they were under-funded to do their task in a proper way.

The League would like, as I said earlier, to reserve the option of addressing further written comment if the need and future amendments arrive. We thank you very much for this opportunity to present our thoughts on S-2046, and for giving us one more opportunity in almost a 20-year period to talk on housing needs.

We wish you well in your efforts on behalf of housing in the State, and the League promises to be available for further input or help, as needed or requested. Thank you, Senator Lipman.

SENATOR LIPMAN: Thank you very much. We really need your input. I am glad you touched on the subject of staff for the Housing Council. Very little thought has been given to the many duties we have assigned to this Housing Council -- the bill assigns them -- and the

need for some kind of expertise in staff. I think you have hit a problem here.

Are there any questions?

SENATOR CARDINALE: I think you have put your finger on what I think is the key to this bill. Correct me if I am wrong, but you seem to see the bill, by virtue of creating a council, establishing an authority -- and I think this is the sponsor's intent -- which takes the issue out of the court forum and puts it before what would essentially be a planning agency. I think that is very consistent with everything I have seen the League supporting, in terms of every kind of prerogative they come out in favor of.

MS. PETITT: I think we feel, Senator, that we never like to have to go to the courts. The League only went to the courts as a last resort. The courts themselves wish they didn't have to be involved in this issue. We see that this kind of administrative agency -- if that is what you want to call the Housing Council -- if set up, is representative of all, the Executive branch, the Legislative branch, the local municipalities, and citizens themselves. I think it is a better way to go.

SENATOR CARDINALE: You may well be right, but concerning your new remark, I think the court absolutely had a choice. You disagree with that, but I think the court had the same choice the Legislature did, and that was to allow the same mechanisms which were in place to remain in place. I don't think they were compelled in any way to go this way. But, they did; they chose to do it, and we are here.

MS. PETITT: They wanted to represent all the people.

SENATOR CARDINALE: We are here, and I think we have the problem to face now. You touched on the makeup of the Council. I think that if authority is going to be vested in someone, one has to be careful about who that authority is vested in. Just by passing the buck to another group to take and make the decisions, how do we ensure, really, that while it represents all points of view it is not biased toward a particular point of view?

My chief concern with this bill -- establish the fact that we cannot change this State policy -- is, how do we make up this Council in such a way that it has a truly unbiased approach towards establishing what it set out to do, which is really to establish new housing allocations? How do you see that happening? Do you see that as possibly happening? And, how would you make this group up in order to ensure that that would be what would occur?

MS. PETITT: I don't think you can ever ask of any commission or committee that each individual should not bring certain biases, or certain directions, with it. But, if you are extremely careful in developing the makeup of that commission -- we have had other commissions and committees deal with controversial issues before -- and you make sure that all points of view that need to be represented are on that commission, I think you can expect the kind of compromise and work that this country is sort of founded on. That is how we reach decisions in this country. We don't just say, "You have to come with a certain point of view, and this is it." We say we have to have varied points of view, because this is that kind of an issue: "We want you, as a part of that group to be represented on this Council, so that when we hear the cases before us and we try to work with the municipalities, there will be people on all sides of the issue," and then you trust the decision to the Council itself, when it comes to making a decision. That, to me, is the way most decision-making is done in this country.

SENATOR CARDINALE: I have to differ with you. Decision-making, as to policy decisions -- and they are going to be making policy decisions -- has been traditionally left in the hands of people who are elected. So, if the policies were policies which dissatisfy the majority of the people, then the majority of the people would take the voting lever in their hands and vote for different people at the next election. So, the people had an input to policy.

Now, what is proposed under this bill, and what has happened in the Mount Laurel decision is, that option is being taken away from the people, and we must now ensure that we establish a group that is going to be insulated from public vote and, yet, it is going to -- previously, zoning policy was left to municipal officials; they could

be unelected as well as elected -- have to make policy that will be responsive, if you will, to the public view of the questions on which they are going to rule.

MS. PETITT: Senator Cardinale, number one, we are not going to go back, given Mount Laurel II, to any do-nothing policy that existed before. What we have to do is to develop a policy. If the Legislature sets up this Council, then the Legislature of the State of New Jersey has set public policy by setting up a Housing Council. But, we cannot go back to the do-nothing policies that existed before Mount Laurel II. The courts will not allow us to. The most responsive step is not to try to talk about going back to that kind of a policy, leaving it the way it was in the past, and continuing to have court cases, but to move to policy which the Legislature has the right to set up by passing this bill, then getting it to the Governor in the hope that he will sign it. That is public policy, and it is much more responsive than that which happened, which forced Mount Laurel II to develop.

SENATOR CARDINALE: Then I have only one other question for you. You have made yourself very clear; you like this setup. But, you have not answered. You have no way to ensure, or you have no magic formula that you are going to give us to ensure--

MS. PETITT: (interrupting) Well, I have more faith in the representatives of the Council, that they will represent all points of view, than I gather you do.

SENATOR CARDINALE: Yes, especially since I don't know who they are.

MS. PETITT: I'm hoping for a good policy. I think the League set that up, to choose those people.

SENATOR CARDINALE: The only other question I have for you is -- and it is because I have asked it of just about everyone else who has appeared today -- why is it that your group has not, with all of your ethics, historically, to register people so that they could vote and express themselves -- that is, I guess, how your group got started; you are dealing with other things now too -- come out forcefully in favor of giving the public a chance to vote on this particular policy?

There is something before this group, SCR-24, which is a measure that would give the public an opportunity to vote on this policy.

MS. PETITT: Senator Cardinale, the League of Women Voters will not be defensive on this issue. We probably have the longest record of urging municipalities, through education, and through support of legislation, to meet housing needs before the court did it. It would be the most irresponsible act I can think of to go in the other direction on a bill that can't even get into operation in time. We have a long track record of urging municipal action on this, and of urging State action, not court action. We don't need to be defensive about not having to support putting this on the ballot. It hasn't been done in the past. We are now saying, "Let's move with what we have." We think that is a much more responsible way than to try to go with a bill that many people think is unconstitutional in the first place, and that will not be set up in time to meet the needs. We feel that what we are saying is a much more responsive position than anything else that is before the Legislature.

SENATOR CARDINALE: I don't want to argue the point with you; I was just making an observation for the record that the League has supported many other initiatives which have been placed on the ballot on much less serious questions.

MS. PETITT: Well, we have too long a track record in support of housing needs for me to deal with that.

SENATOR LIPMAN: The League is well-known for its studies on housing. What Ms. Petitt has to say about having the opportunity, one time in 20 years, to discuss it before the Legislature is rather a shameful record for us. Thank you so much for your presentation. We will look forward to your amendments, and your discussion when we get the other amendments in writing.

MS. PETITT: Thank you, Senator.

SENATOR LIPMAN: I would like to ask if there is someone else who has testimony to present because Mr. Hornik wanted to come back once more to testify. (no response)

MR. MURTAUGH: Madam Chairwoman, I had asked, if it is conceivably possible.

SENATOR LIPMAN: It is.

MR. MURTAUGH: Maybe no one is interested in hearing any more, I don't know.

SENATOR LIPMAN: Oh, we are interested. The Senator is not going to leave before everyone has spoken. That's absolutely correct. Neither is Senator Cardinale going to leave; they are both here.

MAYOR HORNIK: Senator Lipman, I want to thank you for your invitation, by letter of September 11th, inviting me back. The first thing I would like to do is to go back to Marlboro Township, since a very important issue happens to be the State SDGP, with regard to the formulation. We were looking for some type of memorialization of that line. To illustrate what that means to Marlboro Township -- if I may get up for one second -- this is the line that was put in by the State Planning Commission, right here (indicating). In essence, it divided the Township into a 35 percent/65 percent relationship, this being the moderate growth; this being the growth area.

For purpose of explanation, this whole section of Marlboro Township is developed right in here. The bulk of the population is below 18 and just on the other side of 19. I suspect, from what we could pick up from the pending law suits, we will be attacked on this particular line, that our fair share, based on the formulation, should have included this area -- in other words, that this line is possibly incorrect.

Senator Gagliano came in on our behalf, that this line should be memorialized in some way. It is not, at this particular point, despite the existence of the commission. It was never voted on, as far as I know, by the Legislature. We would like this done as fast as possible.

Number two, this map also graphically illustrates, in our opinion, that despite the fact that we, in trying to comply with the Mount Laurel decision, developed an ordinance which covers the properties in red, and which is, I might add, an expansion of multi-family development that was passed in 1978 and 1979. In view of a settlement, to try to comply with Mount Laurel I, this is being challenged in court right now before Judge Serpentelli, in 15 different law suits that have been either filed, pending, or we know will be

coming in. The 16th will be filed, I suspect, this week. This is the property in yellow, right along here. Even the people who have been included in the ordinances have filed law suits for these two properties here.

This is by Kaplan Associates. They are very large developers in the State of New Jersey. This piece of property was zoned, or put in, for eight to the acre, and there was a senior citizen with a 20 percent donation. Apparently they weren't satisfied with that; they are looking for more.

The problem is that your legislation, at this particular point, seems to us not to be timely, timely in the sense of its completion in order for us to be protected with what we passed. In the original testimony I gave previously, I said we have to govern the townships, based on what we can see will be protection from you. Unless, as the previous speaker from Mahwah stated, something is done within the next 60 or 70 days, or so, then it becomes a moot question. It is quite frustrating, because one is put in a position of, "Are we, in essence, backed against a wall? Will we have to now sit with developers and settle with them, giving them, in essence, what they want?"

In the end, none of the legislation will be of help, and probably in the end you won't see the low to moderate-income housing that you think you will see.

There are a couple of points I would like to address with regard to the bill itself. Going back, very briefly, with regard to State subsidies, or aid of some form, I am glad Senator Stockman brought up some points I had raised in a letter to you with regard to the rebate -- some adjustment on the State taxes for the local communities that have to suddenly pay more money to accommodate what can be an almost doubling of the situation.

There is one thing, though, in your bill, which to me should not be in the bill because it goes beyond the point of fairness to a local municipality, and that has to do with Section 9 of the bill. It is number six, I believe. Yes, it would be six, where you say, "A plan for infrastructure expansion, if necessary, to ensure the construction

of the municipality's fair share of low and moderate-income house to take place." Now, everyone knows that the most important thing in order to continue development is sewer capacity. Right now, the Western Monmouth Utilities Authority, which services both Marlboro Township and Manalapan, is at its limit as far as capacity goes. And, to demand, or to put into a bill, a burden of this magnitude on the municipality -- and, in today's market, to build a sewer plant to accommodate what would be our fair share, based on our planner, is about 760, and that is going by the Lehrman formula with certain types of adjustments for the characteristics of Marlboro Township -- is a serious problem, which is compounded when you have to multiply this five times -- in other words, building close to 5,000 units, or 4,000 units. That is a major sewer construction job, which in today's market can reach, possibly, \$10 million. I don't think that Marlboro Township can afford that.

I think some of these aspects should be looked into very seriously. Your bill should take into consideration certain types of infrastructure complications, or requirements to accommodate the formula, and if that is unrealistic then some other mechanism should be put into place.

I believe the DEP gets sewer construction money, is that correct? They get a certain amount. I believe in past years they were to receive \$400 million, and then there was a drastic cut. It was almost cut in half, to possibly \$250 million. There was a long list of municipalities that were in for sewer construction grants. I would say you should look at that type of Federal money, if it is still in existence, and impose yourselves upon the DEP to readjust the allocation of that type of funding for those communities that have to expand sewer facilities if this were to remain in the bill, because it is physically impossible for a township to accomplish that.

The other thing that I would ask you to look at is -- and which you mentioned to me in the letter -- you talked about the fact that there was funding available under the Income Trust Fund account. I don't believe that is going to solve any funding, nor give relief to Marlboro Township or the communities in our area. I think the whole

approach right now is based on the fact that there isn't any Federal housing money and that in the end, a five-to-one ratio formula is what is going to be implemented.

So, addressing what I said to Mr. Pozycki, even though the cap requirements I have asked to be changed are not in your realm at this particular time, this should be put somewhere in the bill, as a suggestion or something.

SENATOR LIPMAN: It is not in the realm of this Legislation.

MAYOR HORNIK: It isn't. But, possibly it could be, in light of the long-range planning Gene Schneider mentioned to me in the back room.

The fact remains, we are here today with this type of accommodation, and to wait years to try to provide the social services for this mandated court legislation -- for want of a better word -- is going to create the same type of problems we find in some of the inner-cities in the suburban areas. We will not be physically able to supply the services without some type of cap adjustment to allow us to go into the surplus that is just laying there, which would be large enough to satisfy all the debt service. That is just earning income to some degree, but it would at least give us some type of relief in order for us to provide the police and road services.

The other areas I would ask you to provide-- The big problem for us, very frankly -- and it has been mentioned before -- is the Lehrman formula. It is the only ball game in town. The fact remains that no matter what you suggest at this particular point, it is the only guideline we have, and the municipalities -- as I see it -- are in shell-shock from this Lehrman formula.

Every single municipal leader we have spoken to has based all of his settlements and all of his projections on that one formula. Based on the fact that it looks as though this bill will not be completed in order to offer relief, there is a tremendous disservice being done to the municipalities. The whole character of the State of New Jersey is being changed as a result of this particular formula.

But, there are things I believe you can do. In listening to you and to the testimony that has been given, there isn't a single

person, as I see it, sitting in front of me who does not agree that the five-to-one ratio is inappropriate. If the five-to-one ratio was such a social benefit, we wouldn't have 15 lawsuits by developers running in our township, to have their land changed to that five-to-one ratio to satisfy the Mount Laurel II decision. Obviously, with so many lawsuits being filed by developers for settlements, the Lehrman formula has become a working tool for developers to blackmail municipalities. What we are asking for, very simply, just as I understood from Gene Schneider -- that what I requested before, regarding the memorialization of the Commission's lines, be done. I think you are for that also. You can agree to disagree, but you can also agree to agree on certain points, and I think you are all agreeing that the five-to-one ratio is inadequate. It is in your realm, legislatively speaking, to let the courts know, by passing -- the same way this commission line is being memorialized -- something which says that the formula -- the satisfaction of the Mount Laurel II decision -- should not be five-to-one, but maybe two-to-six. That can be done in an emergency way, getting away from this type of waiting for everything.

It seems as though too many things are being pushed at once and then nothing will be accomplished. We would be happy -- at least our town would be happy -- to have something done piecemeal, because we know at this point that there is a social obligation; but, the problem is really in the ratio, and to make it five-to-one will almost double Marlboro's size in six years. Despite what Mr. Pozycycki stated with regard to the economics -- and what I mean by that is, I mean the income that would be coming in from town houses and densities -- it will not solve the problem as far as our building another school, or two schools, or three schools, because what you will have is a sudden influx and a disruption of the normal cycle in the educational system. We have that problem already, from testimony given by our own school board, and this is something that is bothering us.

Income, as a result of increase in population, does not become a burden on the school system, as long as you do not have to have further bonding to build new schools. The minute you have to start new construction, the income doesn't justify the structure. That

pressure will come from the five-to-one ratio. It is very important, in my opinion, that you pass emergency measures, to let the judicial system know that you have come to some understanding that the ratio should not be five-to-one.

Now, I wasn't here for all of Mr. Pozycki's testimony, but I do think something is wrong, if you are going to establish a Housing Authority. I think it is very important that you have an economist on that Authority, or that Commission, an economist who has expertise with regard to what is, and what can be considered fair profit on the part of a developer. We all know some of the mechanisms and some of the things that will go on, because if he has a five-to-one ratio, he is liable to build the 20 percent with the lowest possible building requirements, or the lowest end of the BOCA code that is possible -- the smallest type of rooms.

He could turn around and take the lowest end of the HUD requirements and build the worst type of housing for the low to moderate-income, and then at the other end he could reap the biggest type of profits. I see nothing in the bill to guarantee that the type of housing that would be built for low to moderate-income, in the end, won't be shacks, or of the poorest material, etc. That is why this is a very complicated type of bill that is being proposed.

There are so many intricate mazes to this web that a developer can get away with, with regard to increasing his profit on the five-to-one ratio; it is just beyond belief.

Other points that have to be taken into consideration are: From the local level, how does a township have protection from a bonding standpoint? What I mean by that is, if a developer sues and he is given the right to build houses on the low to moderate-income basis, on whatever ratio is involved, what is the bonding going to be? What type of bonding structure do we have in order to guarantee that he completes the work?

By way of an example, we have one development that is on one-half an acre, and it is based on all the engineering requirements of today. To put up 33 houses, he has to post \$400 thousand in bonds. The fact is, has this been addressed by any of the aspects of this

Committee? Can there be some type of State bonding to cover that particular area so the bonding doesn't fall on the township, and so that the State could pick it up if, in essence, this guy fails?

In essence, one might say we are in the twilight zone, because we see nothing happening on this end, and the debate goes on.

In summary, everything has been said. Just to quickly reiterate, we would like to see the cap adjustment, and we would like to see a change in the ratio, to be acted on immediately, if necessary, before the bill goes forward. To me, that is very, very important, because that seems to be the crux of the whole problem: It seems to be leaning so heavily toward the developer, from a profit standpoint, that they are willing to have 15 and 16 lawsuits against one municipality. That is going to hurt us. I think there has been an injustice done to the Township of Marlboro, as well as to the community.

I grew up in Brooklyn, and I lived on Southern Boulevard in the Bronx. I grew up, being raised by various sets of grandparents along the way. I grew up in housing that is not too different from Newark's and Camden's. They were five-story walkups. I can empathize with the situation that is being attempted under the Mount Laurel II situation. But, on the other hand -- and I said this previously -- there are many people, citizens, who live in communities such as Marlboro, and who have lived there for many, many years. They also have certain rights, and those rights have to be in the form of protecting their tax situation, based on their income. I am talking about people on fixed income, on Social Security, and so on.

We have retirement villages in our community, and these are people who will subsequently have to pay for this type of legislation, because we personally see no relief in the way of funding. In order to reduce that tax burden, I beg of you to please have an emergency set of formulas set up so that the five-to-one ratio is erased in the court's mind. Some direction from this Committee, or some type of indication, I feel, will set a tone for Judge Serpentelli to follow, because I don't think he is working with developers, and once he sees some type of legislative movement-- He reads newspapers. I mean, the man has 83 cases already, since June. It is unbelievable.

This, basically, is what it is about. So, if we could walk away today with three things, and the removal of the need for a municipality to demonstrate an ability to provide an infrastructure, especially in the sewage area, that is very important, because that goes beyond reason, in my opinion. It is a \$10 million ticket for the municipality, based on the five-to-one ratio. If you eliminate the five-to-one ratio and do something else, then it may not be.

The other factor has to do with the cap, and the others I have already stated, so it becomes redundant. Thank you very much.

SENATOR LIPMAN: Mayor Hornik, we have-- I think Senator Stockman has addressed one of the problems that you brought up at your first appearance before this Committee. I think I have to reiterate what Mr. Pozyski pointed out this morning.

This legislation cannot address all the problems. We wish to help the municipalities return to some sense of home rule, which seems to have been taken away. When you asked that this legislation remove the necessity for providing a plan about infrastructure, for example, the plan could also show that you don't have the capability for \$10 million in infrastructure.

In implementing the philosophy behind the Mount Laurel decision, I don't think the structure that this legislation puts up is an attempt at tyranny, as it has been called many times today, on municipalities. I think we are seeking a reparable solution, and the presumption of validity that municipalities had in the first place, which seems to have been somewhat removed by the Mount Laurel decision, we are seeking to return by establishing this Housing Council.

Once we set up the Housing Council and give it the guidelines we think it can work with, then I think we will have taken a great step in ameliorating what municipalities feel has been a severe injustice.

The Lehrman formula, as you suggest, is the only guideline now because there has been no legislation passed, and it is the only formula which has been used up until now. It is hoped that with the help of the State Planning Council and this new legislation, with its promise of relief in subsidies and remedies -- not five to one -- that adjustments may be made.

As Mr. Pozycki pointed out this morning, rulings that have already come down can only be reversed by another court action. However, if municipalities show that they have reasonable plans, and if the Housing Council backs up the municipalities, then I have a feeling that the courts are going to be reasonable.

MAYOR HORNIK: May I address something you said?

SENATOR LIPMAN: Yes.

MAYOR HORNIK: First of all, I am a firm believer that just as you had Mount Laurel I, you have developed into Mount Laurel II. You have Lehrman for plan one. In the interim, you could modify the Lehrman formula by looking at what represents its worst parts to a community and immediately implement that. That happens to be some of the five to one, the 123% factor--

SENATOR LIPMAN: (interrupting) Well, that is not in this legislation. This has been a formula that has been used, but we are addressing that. It is the formula which the courts set up, and now we are attempting to establish a mechanism to provide other rationales for a number of units, to allow the municipalities to set up their own plans, and the Council to agree or disagree. So, we have a new pattern, other than the Lehrman formula.

MAYOR HORNIK: All right, but the problem is, number one, we disagree with Mr. Pozycki's suggestion that you can appeal. The way the three-judge panel is set up, an appeal is almost nonexistent after one of these three judges acts on a court case. To win an appeal is almost impossible. So, the term "appeal" becomes a useless exercise, and that has been stated over and over again by everyone involved with regard to the legal system.

I guess the power that can be attested to these three judges is one that would consider a bankruptcy situation -- a bankruptcy judge. It is almost a fait accompli. It is not dealing in the normal areas of the court where you are going to say, "Well, we'll appeal the decision." It is a very, very difficult situation. Appealing is almost nonexistent, so I disagree with Mr. Pozycki when he says they can appeal.

SENATOR LIPMAN: I think Mr. Pozycski was referring to the manner in which an appeal is made. If a town shows that it has made progress, and if the Housing Council backs that town and it has a strong presumption of validity, then the court is apt to be more reasonable. I think that was his suggestion.

MAYOR HORNIK: But, that is after something is in place. I am not debating with you on the subject matter, but the fact is that from the municipal standpoint, the completion of this legislation is not going to be timely enough to save a municipality such as Marlboro, Old Bridge, or any of these communities from what will be a court-mandated, in essence, type of legislative ordinance, or a court-mandated ordinance, based on the Lehrman formula. That will not be appealable. This is the reason why I am asking that even though the formula, or a modification of the formula, may not be in the realm of legislation, if everyone recognizes and agrees that the five-to-one ratio is something that is so one-sided, then why can't something be quickly put in in a couple of lines saying that this ratio should change? Maybe it should be two and three ratios that should be considered. That is all we are asking.

SENATOR LIPMAN: I'm going to let Senator Stockman describe-- Didn't you just introduce--

SENATOR STOCKMAN: (interrupting) No, Senator, the amendment will take care of this guide plan issue, and it will attempt to urge the court to abide by the State Development Guide Plan lines, at least pending some affirmative action by the State Planning Commission.

On the subject that the Mayor has brought up, my own feeling on it is this: It is a feeling borne of lateness and conger, but I'll share it with you anyway. Mayor, to substitute arbitrarily a numerical alteration to the Lehrman formula, I think, would raise very serious constitutional questions, and it would be very difficult for us to do without some input. I think the design of the legislation we are talking about here in front of us is to develop what the numbers should be.

I know you are caught in a tough situation, your town's moment of truth is about here, and you would like some relief from the

Legislature. As I said earlier, the history of this issue and problem is such that I'm not sure we can grant you that kind of relief. I'm not sure, in a sense, how we could pick a number -- instead of five to one. Sure, I'm uncomfortable, and I think as you pointed out, sir, certainly, Senator Cardinale is and I think Senator Lipman is, that it may be an overkill. There are, however -- and it hasn't been talked about very much today in the minutes and hours of testimony -- three judges who are administering this problem and who are sensible. I don't think they are insensitive to local problems. The question of timing as to when this construction will be built-- Even in the Warren Township case, it has been said that it is going to destroy the town overnight. The fact is, as I understand it, the final say has not been had about the time frame span within that construction. I think the courts are open to modification. I think as they see us act, they are going to slow down and react to that, as you yourself pointed out. I think there is some hope, but I don't think the answer is to amend this bill to, in couple of sentences, as you suggested, throw out the Lehrman formula.

There are ways that towns like yours -- Marlboro -- can reduce those numbers. We've talked about them, and you've talked about them. I'm sure you are aware of them. Some may be harder to do; some may be easier to do. That is my reaction to your proposal. I'm not absolutely rejecting it. I'm sure it will be talked about more among us over the next few days as we try to come to grips with the final formula for this bill, but I don't think it is so easy.

MAYOR HORNIK: I appreciate and thank you for the SDGP line -- the continuation of it -- but, I would disagree with you with regard to modification. I think in life, nothing is cast in stone. If enough people who are wise recognize that something is wrong with the formula, then you go in as fast as possible to change it.

As far as what you said with regard to the constitutionality of the formula, all, as I recall, the Mount Laurel II decision said was that they wanted to implement it.

The Warren Township decision is now putting in a formula and making it work. In my opinion, it sets it in a dangerous court

precedent. Albeit, for whatever reason it went that way -- whether it was because Warren Township at the time resisted, and the citizens at the time resisted an existing ordinance in an outcry -- that is all in the past.

In my opinion, that town has been seriously hurt, and I think basically it says something. It says that if the Legislature does not address those mechanisms that are causing or creating those types of numbers, I think there is going to be a serious problem.

We looked at 10 towns. I had given a presentation on this. There were 10 communities -- Holmdel, Old Bridge, Howell-- Howell has to take almost 2,900 units. With the formula, it was incredible. I think it was 2,000 units. You're talking about 5,000 to 10,000 more units in a town under the formula -- in a town that has a population of 30,000 people. If you figure four to a house, the numbers are boggling.

SENATOR STOCKMAN: Mayor, you keep describing the situation as if it is -- I'll use one of the phrases you used earlier -- written in stone. Those figures are based on a failure to act, and based on an assumption that if they do nothing else, that is the direction they will go. Even those numbers are such that there are questions of interpretation over what span of time it will have to be done in, etc. I think you are overstating your case a little bit. I'm not suggesting that I don't sympathize with a five-to-one builders' remedy ratio, but I am hesitant to think we can simply suggest that that number ought to be two-to-one or three-to-one. I think once the Council gets started, it may very substantially modify the situation. I think the courts will slow down when we put a program, such as the bill before the Committee, into place.

MAYOR HORNIK: Just one other technical point: Knowing how municipal government works, after six years -- and, it is very difficult -- I was just wondering if I may say that in reference to Section 10: "It shall notify a municipality of any deficiency, if within 45 days of the Council notification, the municipality shall refile its housing element with a correction. The deficiencies to the Council's satisfaction..." -- that 45 days in municipal government is a

very short period of time. We are volunteers, and it puts an unusual crunch-- This is not like a court 45-day appeal type of thing. I would say what would be more reasonable is possibly 60 or 90 days. It just puts too much burden on a municipality to respond. Throughout the whole thing, the 45-day term is used. It is not realistic. We work with planners who handle just one municipality. We don't have full-time planners on salary.

SENATOR STOCKMAN: You have at least two Committee members on your side on that.

SENATOR LIPMAN: We've heard that complaint before.

MAYOR HORNIK: It is just not a workable type of thing. The other thing I might add, which might also be in your realm is the master plan of the Municipal Land Act. It is a six-year plan. You might see fit under communities that are hit with this type of lawsuit -- that have to comply -- that the master plan have a longer life, possibly 10 years, or something like that. It has something to do with the fact that it gives someone time to absorb something. I think it is too short a period of time to make us absorb it.

SENATOR LIPMAN: All right.

SENATOR CARDINALE: In terms of the infrastructure point you made, it has been made by a number of people in various ways. I don't read the bill -- maybe I'm wrong -- as requiring that that be done totally at municipal expense. Just in reading what is here, it would indicate that the mechanism for providing that infrastructure would seem to be open to many options, one of which is the more traditional way that this has been done. It is assessment on the lands being subdivided.

MAYOR HORNIK: The problem then is that you are going to have a builder say, "Five-to-one won't be enough if I have to build a sewer company. I'm now going to want ten-to-one." The reality is that from history -- and, you might address this too -- there is a problem in the New Jersey law with regard to controlling a utilities authority. It is long overdue that the sewer authorities of this State should be placed under the utilities authorities, and not to operate in a quasi-free way.

SENATOR CARDINALE: That bill is in; I sponsored it.

MAYOR HORNIK: All right. Well, it should pass based on some of the abuses we have seen from past experiences with our local WMUA. In my opinion, it sometimes represents a license to steal.

The problem, Senator, very frankly, is, let's put it where it is at. Infrastructure can mean roads and sidewalks, and that is not the type of infrastructure I'm talking about. There are two things that affect and control growth. It is not zoning, as everyone says, because zoning laws have been overturned. It is the availability of sewer and water capacity. That is where it is. It will always be there. The burden on the expansion of sewerage authorities has always been on the backs of its customers, and those are the citizens of communities. If there is a plan within a town--

You see, I'm waiting for a lawsuit to come against an authority. Let us say that a developer says, "I'm going to sue our local sewerage authority under Mount Laurel II. It is its obligation to expand to provide for low and moderate-income housing." In the formulation that exists -- the five-to-one ratio -- that sewerage authority, if it is required to expand under the law or under a court ruling, means it has to go for new bonding.

Presently, the Western Monmouth Utilities Authority's sewer rates are about \$250.00 or more per year, and it will expand. I would say that 75% is interest payments, based on bonding that has been done, in what is my opinion, very poorly in the past. That was in 1972, 1973, and 1974. The authority would have to expand or almost double to accommodate the type of ruling that exists with low to moderate-income on a five-to-one ratio in both Manalapan and Marlboro Townships. It would have to go from an eight million capacity to almost a twenty-five million capacity, which is horrendous. It would be tens of millions of dollars, and that would fall on the backs of the communities. I would like to know, who is going to pay for that sewerage capacity?

If you could control the Federal sewer construction grant money and have it diverted to these types of situations, I would say fine, but, I don't think you will be able to do that. As a result, some developer is going to sue a local sewerage authority under Mount Laurel II, stating that it is their obligation to provide sewer needs.

In every preamble of every sewerage authority, they have to be chartered in order to become a sewerage authority to provide for the health needs within an area.

So, the citizens of the towns involved where these decisions are made are going to be wiped out. I'm telling you, what is being opened up here is something that is beyond anyone's immediate thoughts. Once you start something rolling, it hits something else, and you start a chain. I don't think this chain has been examined fully.

Infrastructure is a very important word, and the whole ball game is sewers. I can see what is going to happen. There are sewerage authorities that have available space left, and the towns that see nothing happening are going to run to pass legislation to receive hook-ups right away in order to get away from the burden of having to pay for sewers. It is a deadly game that is being played, because communities are going to be set against communities in order to take over sewer capacity in authorities that have limited capacity. In this way, they, as a community or a town, will not be forced to build a whole new treatment plant, or, their citizens will have to pay for an existing plant to be modified and expanded upon.

You are talking about something that is going to be unbelievable in the future, and I don't know if it has been addressed properly, or looked at with much thought.

That is the problem with the sewerage authorities. It is a deadly problem, and just to say that the citizens in a community will not pay it is not true. Every single sewerage authority in this State is paid for by its customers. The bonding is paid by the customers in interest rates. For towns, such as Marlboro and Manalapan, to have to double their size with regard to a five-to-one ratio, in a six-year period, will necessitate an expansion of the Western Monmouth Utilities Authority beyond belief. I will tell you now that it will require a special type of expansion because the DEP will not allow an expansion beyond eight million gallons because of the capacity of the streams that are running through there. So, that will necessitate a certain type of mechanism beyond a tertiary plant. We, in this State, do not allow anymore primary and secondary plants; we require tertiary plants.

When you bring up infrastructure for a municipal plant, you are dealing in areas-- I'm not talking about roads; I am talking about sewer capacity, and that is going to destroy everyone.

SENATOR LIPMAN: Mayor Hornik, if it is any comfort to you, we have had builders who have testified that it is a real impossibility to achieve all of the building necessary in the period of time set by the court. There aren't enough carpenters, plumbers, and materials to accommodate such rapid expansion. If that makes you feel better--

The point of this legislation is not to declare a moratorium. It has a certain amount of staging contained in it; that is true. But, the point of this legislation is to provide some relief for municipalities that are, at present, being hit by court rulings to produce a certain number of units. That is the relief that this legislation seeks to provide.

We cannot answer all of the problems exactly that are there now, nor only the largest problems that may come up later. The way that municipalities seek to help themselves-- Part of the reason for the situation we are in is because of the lack of response from the Legislature in the past.

From Mount Laurel I, we got Mount Laurel II, and I do hope that before a Mount Laurel III occurs, the Legislature will act.

I want to thank you so much for your testimony; your points are well-taken. We're listening.

MAYOR HORNIK: The only thing I would like to say is, the conclusion we could reach -- or, I will ask you a flat-out question: Is this legislation going to pass in time for our lawsuits? Yes or no?

SENATOR LIPMAN: I can't really answer that. Is it going to pass in time before a court ruling? Well, I can say that there is a date in this legislation, and if it is of comfort to you, you come after the date that this legislation supposedly begins.

As for reversals of rulings, they can be adverse as well as helpful. So, I'm afraid we cannot answer in great measure, except to tell you what is actually happening at the moment. We cannot really address what has happened before, except to make it more liveable. We are not the court; we are a different body. We are moving in the direction in which we think will bring the most relief.

MAYOR HORNIK: My only comment is that I appreciate what you are trying to do with regard to providing social needs from a low and moderate-income standpoint. Right now though, there are going to be hundreds of thousands of people hurt as a result of a lack of movement on the part of the Legislature.

The only other point I would like to make -- and I would just like to remind you of this -- is, Mount Laurel was ruled in 1975. This was the original ruling. There were things that were occurring in the 13-year period, and there were definite signs that should be done. Judge David Furman of Middlesex County, when he expanded the decision from a regional standpoint, was another dead giveaway. So, it is not as though it was done in 1975, and then forgotten. There has been court activity on this all along.

Thank you.

SENATOR LIPMAN: Thank you. Mr. Murtaugh, Mayor of Clinton?

MAYOR GEORGE MURTAUGH: Madam Chairman and Senators, I am the recently elected mayor of a very small town in Hunterdon County. I am not related to anyone of the Commission. There are only about 1,100 voters in the town, and there are 700 taxpayers. I can't threaten that you will not be reelected; I can't even threaten to bring a large group of people down here and make a scene in your chamber, although--

SENATOR STOCKMAN: (interrupting) You can get Moose Foran after us. He's pretty big.

MAYOR MURTAUGH: Well, Senator Foran has been very helpful. He wrote a letter explaining to me, "As your representative New Jersey legislator, I share your concern," etc., etc., etc.

I came here today to see what I could find out rather than to tell you anything. I find that I agree quite a bit with practically everybody who is here and who has presented testimony. There are a couple of areas I disagree with. One is that the Legislature has been inactive in connection with this, and that the taxes aren't paying enough for low-income housing, and so on and so forth.

Thirty years ago, I lived in Jersey City when Marion Gardens was built as a low-income housing project. That was going to be the solution to the problem with the high apartment rents in Jersey City. They were built out of brick and mortar, and today they are gone.

Twenty years ago -- I knew Ms. Lipman then -- when I was working in Newark in a foundry, the Stella Wright projects were being built. They were supposed to be the salvation of Newark then.

A couple of things were addressed today about the jobs being moved away from there, and that is the reason that now -- 30 miles from Trenton or 40 miles from Newark -- I've been told that I have to put in low-income housing. The reason that the jobs left Newark -- in case somebody isn't already aware of it -- is not because there wasn't housing there; it was because taxes went up, and manufacturers or businesses found out that by getting the hell out of Newark, they could make more money someplace else.

I don't agree with everything everybody said, but I would like to-- Twenty years ago, I was an aid to a Senator in the Legislature. I know he was working on low-income housing for Essex County at that point, so it is not necessarily something new to me.

I would also like to quote an ex-legislator who was quoted in a local newspaper on Sunday. The ex-legislator, who is also an attorney, by the way, said, "The United States Supreme Court is the highest court in the land, but that does not mean New Jersey law and the New Jersey courts cannot extend more rights and freedoms to its citizens than the Federal Constitution does."

Another quote by the same ex-legislator and attorney is, "If a court continually decides matters in a way contrary to the wishes of a substantial majority of its citizens, then the remedy provided under the Constitution becomes more and more possible."

I have to assume that what I am reading here in the newspaper is correct. I was very much surprised to see that that ex-legislator, who felt it necessary to act because the Legislature hadn't acted fast enough, is now the Chief Justice of that Supreme Court -- Robert N. Wilentz.

My reason for taking up your time is, like I said before, I want to learn. I came here today feeling much like the crisis volunteer in a crisis center, or the father of a young girl who receives a phone call in the middle of the night, being told that she is being blackmailed into going out and meeting some guy in an alley,

and she is about to be raped. She wants to know from me whether she should give in willingly or whether she should fight. You have to know a lot of things to answer that question, such as how big the adversary is, and so on and so forth.

I would just like to paint a picture for you which might be much easier understood than some of the things that were presented before. On January 1, I was elected mayor of a town that has 1.3 acres and 700 taxpaying units. I have a piece of property in the town, which is 12.5 acres. A land speculator from New York had previously come before the planning board of the town--

SENATOR STOCKMAN: Excuse me, Mayor, can I stop you? I'm trying to follow you. I thought you said the town had 1.3 acres.

MAYOR MURTAUGH: I'm sorry; it is 1.3 miles. I'm sorry.

SENATOR STOCKMAN: Oh, okay.

MAYOR MURTAUGH: A land speculator from New York came in and applied to put in 35 units on that 12.5 acres. With our exclusionary zoning, we thought that was a few too many, or my predecessors did. All of a sudden, he found out that he had an obligation to the low-income people in the State of New Jersey, and he hired a very high-priced law firm in the Princeton area, which are specialists in the Mount Laurel II situation. He came in and wanted to put 124 units on that same 12.5 acres.

My magic figure for low-income housing is somewhere between 75 and 120, depending on which planner you talk to. Right now, I could easily use 75 low-income housing units. I could move the senior citizens who are losing their homes because of the increase in taxes into them, but I'm not allowed to do that under the law. With 700 units, I can't very well afford to fight this suit, because I've already spent more than my yearly five-percent cap in the last six months; someone recently alluded to that.

I can't even capitulate to this one builder because although my predecessors had planned to expand the schools someday when the town was completely developed, the State of New Jersey came along and took part of the property that the school was supposed to be built on and used it for a highway. Now, as a result of the highway, my magic

number is higher because of the traveling time from where I live to the 30-minute boundary. That is how the magic number is formed. Senator Stockman looks like he is a little bit confused. Am I missing something?

SENATOR STOCKMAN: I'm following you.

MAYOR MURTAUGH: Okay.

SENATOR STOCKMAN: I often look that way; it is one of those things. (laughter)

MAYOR MURTAUGH: The next thing that happened was, we planned ahead again -- my predecessors did, so I don't have to take any of the political blame for this -- and, we built a sewage authority. But, the Department of Environmental Protection came along and said, "You can't run that sewage authority at full capacity to cover the one-acre zoning because you have to upgrade it." So, we went out and bonded for \$1 million to upgrade the sewer plant to where it is supposed to be.

The water authority came along and said, "You can't run water into this area because you have to have a complete looper. You have to put in another well." So, we just went out and bonded for another one-half million dollars for that.

Now, the developer came along and said, "I can't develop this piece of property to the full 124 units unless you give me a builders' remedy, which is six or eight units to the acre. Also, you are going to have supply me with sewer and water. Oh, by the way, there is another thing too. I need some help with the dealer's remedy so I won't have to pay anything that would be considered a cost-exacting mechanism, such as inspections, hook-up fees for the sewer, or anything of that nature. You're going to have to relieve me of those."

I was given 30 days to rewrite my land-use ordinances, or appear before one of the three judges that have been appointed by, I believe, the same Chief Justice that made the statement that the courts should be governed by the opinion of the people. Now, all of a sudden, all of us are down here and we're asking the Committee, which I think has been working very hard on this thing-- In fact, I know Ms. Lipman and the rest of you have been working very hard on it since February. I have been coming down here since then and following you very closely.

I really didn't come here for any assistance. I agree with almost all of the changes that have been requested in connection with this. Actually what I was doing was, I was trying to put myself in the position of the player in Atlantic City, where some of the money was supposed to come from to pay for some of this -- at least for the senior citizens in low-income housing.

I was in the Governor's office one day on a different matter, and the Governor said to me, "Well, the rest of these towns had better wise up because all of them are going to be faced with this pretty soon." I could see he was worried about it, I'm worried about it, and you are worried about it. Now, I've got to go into court, probably within the next week or so, and shoot crap. I have to try to cut a deal which will let me know whether I can convince a judge that four units to an acre, or 10 units to an acre, is going to be acceptable to him.

My reason, again, for coming here today and asking to speak was to thank you and express my appreciation for all that the Committee has tried to do, including the piece of legislation you and the other Senators have worked on. I think you are working on it, I think you are addressing it, and I think you are trying to do something. I think the people who haven't yet been dragged into court screaming and digging their nails in to avoid having to comply with some of the rules and regulations -- as I seem to be doing -- had better wise up. I can't give you the 60 days to pass your bill. I imagine that probably within the next 10 days, I'll be rolling the dice. What I'll be doing when I do that is, I'll be capitulating to try to avoid hurting the residents, citizens, taxpayers, and senior citizens of the town. As soon as I reach an agreement with this one developer, I do have five other larger developments in the town, and I am either going to have to give the same to those developers as I give to this one, or I'm going to end up with another five or six suits being filed.

In case you weren't aware of some of us out there who appreciate what you're doing, again, I feel that the Legislature has been involved in this. I think it probably has been a problem in that it is very difficult to come up with a piece of legislation that you

can get 40 people to agree with, or even 21 to agree with. Then, of course, you have a problem getting the Governor to sign it.

Again, I was only curious to see how well the piece of legislation was going so that I could maybe be like the card counter in Atlantic City casinos -- stand a better chance of drawing this.

It has already cost approximately \$50,000 to hire a planner, an attorney, and an engineer to reach this point. Anything I do beyond this is going to cost the taxpayers a considerable amount more.

I disagree with the people who say we're not going to need this low-income housing in the numbers that are being forced upon us. If they are forced upon us, there are a lot of people who are paying the freight and the whole rate, wherever it may be. They are going to lose their homes because they won't be able to afford the mortgage rates and the tax increases.

Just to give you a general idea, I have a very high tax rate in the county, mainly because there is no sewerage and water included in that. If I was a homeowner in the next municipality-- They put in their own septic systems and well water. The only thing that goes up or down on them is their taxes. I am required to supply sewerage and water to this developer.

The next township, by the way, has 30 square miles, and it has one industrial development -- I have none -- which pays taxes in the area of \$2 million per year. I am going to have a difficult time getting this developer to sign up with me on a regional basis.

That is the problem with this whole thing; it is very complex.

Another interesting item, by the way, that figures into this -- and, I don't know which direction to go in if it wasn't -- is, I follow the growth line right through the center of my 1.3 square miles. I don't know what is going to happen with the next move. I wish I was all the way inside of the growth zone or all the way outside of it. I don't know how you are going to write that into your piece of legislation.

Again, I want to thank everyone for his attention, and I want to thank you for allowing me to take up your time.

SENATOR LIPMAN: We want to thank you for coming. You have given us a real picture of what has actually happened.

Senator Stockman?

SENATOR STOCKMAN: No, I have nothing.

SENATOR LIPMAN: Senator Cardinale?

SENATOR CARDINALE: No.

SENATOR LIPMAN: Thank you for coming.

MAYOR MURTAUGH: Thank you very much for your time.

SENATOR LIPMAN: Mayor Cherry? Oh, I'm sorry. Mr. Cherry is the representative from Princeton Township.

WILLIAM H. CHERRY: Ladies and gentlemen -- Senators -- I have a problem. It is a psychological one. It is perfectly obvious (laughing) from Senator Stockman's visage, and also from all of you, that you are tired and hungry. I don't think it is really even fair to you, let alone fair to me, to try to discuss this further under these conditions. Do you have a better suggestion? I am available. I come from Princeton; I could come down some other time.

SENATOR STOCKMAN: Do you have a statement there?

MR. CHERRY: Not with me; it is an oral statement.

SENATOR LIPMAN: Why don't you just give it to us? Tell it.

MR. CHERRY: All right. To hit the two or three main spots-- I guess this is the most important thing because it is the most urgent. The State has a lot of surplus money around, and you know that all of these towns need some money to help them subsidize this affordable housing. Don't let this thing slip by without at least yelling pretty loud for it, please.

You know, this is sort of an emergency situation. We didn't plan on this. You didn't plan on this, but you can see that the so-called conditional bonus density technique for financing affordable housing -- or subsidizing affordable housing -- has enormous implications. Everyone here has said they are very bad.

As you recall, I was here before. I said it was very bad then. I gave you another thought of hope though, and that was, as I read Mount Laurel II, that particular method of subsidizing was suggested by the court as a suggestion, not as a mandated means. I

still believe that is the case. If Princeton Township goes to the wall, which we very likely will, we will appeal to the State Supreme Court, over Judge Serpentelli, on that issue, asking the Supreme Court what the meant. Was it something we had to do, or was it something we might do if it made good economic sense? And, quite frankly, it doesn't make good economic sense, not in our town and not in others.

Do you know what is going to happen, ladies and gentlemen? In the State of New Jersey, if we proceed with this technique all over, we will build more and more middle and high-income housing -- median and high-income housing -- and the price of that stuff will go down, the profit margin will go down, and then the builder will have to say to us, "Folks, for me to make enough profit to subsidize some affordable housing, I have to have a ratio of ten-to-one, not five-to-one. So, this is something we are faced with as a transient, changing economic situation.

Now, I would like to read to you a little word or two from the State Supreme Court's Mount Laurel II decision. It is extracted from pages 36 through 38. By the way, those pages are the page numbers of the League's copy, not the one in the State Supreme Court's book.

"We are obliged to adopt affirmative measures that, in fact, provide a realistic opportunity for the construction of the municipality's fair share of low and moderate-income housing, whether there is, in fact, a likelihood, to the extent economic conditions allow, that the lower-income housing will actually be constructed."

Now, those are all words which are incredibly difficult to define. But, I particularly call your attention to the phrase, "to the extent economic conditions allow." Even the State Supreme Court wasn't saying, "You have to buy up the developers to the point where they build that housing, no matter what." There was a qualification there in the State Supreme Court decision.

You know, I really should talk with you longer than this, but, gosh, I can't do that to you now. Thanks for listening for just these three minutes.

SENATOR LIPMAN: Well, we took note of your points. They were very good ones. Thank you for coming.

I would not justly say there will be another hearing. There will be a committee meeting on this subject, at which we will have to come to some sort of decision. The reason why I asked you to stay is, I am not sure but in about a month, I guess, we will be ready with all of the amendments. It won't help some towns, we know, but in any event that is the sort of schedule we have. All the amendments are supposed to be ready in about a month.

MR. CHERRY: Senator, let me have the privilege of giving you 30 seconds worth of philosophy. I believe that in this country the most important single right of a person, aside from those expressed by the First Amendment of the Constitution -- speech, religion, and so on -- the most important single right of a grown man or a grown woman is to a job. And, if we are going to expend governmental, municipal, social resources on anything, jobs come before housing.

Folks, if we could give people jobs, decent jobs, they will buy their own housing. Thanks a lot.

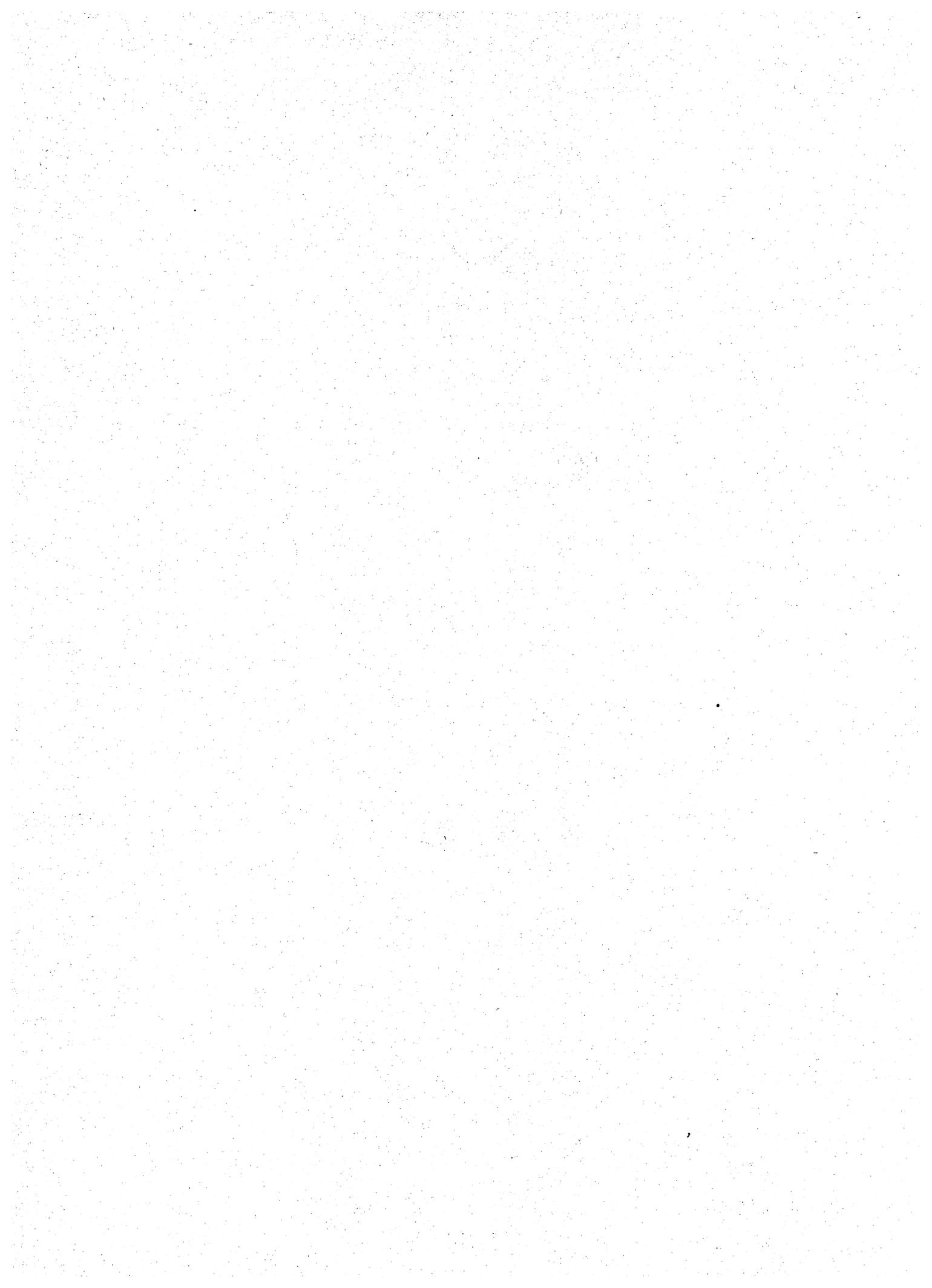
SENATOR LIPMAN: You're right. Are there any questions? (negative response) Thank you very much.

Are there other people present who want to present something to this Committee? (no response) If not, I will declare this hearing closed. This hearing is over, and let us hope that the next time we meet, the Committee will have all of its amendments in and will be ready to come to some kind of decision on this matter.

Thank you so much for attending, and, Senators, thank you for staying.

(Hearing Concluded)

APPENDIX



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CHRISTINE FALCO

September 10, 1984

Ms. Lisa DiGulio
101 Highwood Road
Mahwah, New Jersey 07430

Dear Lisa:

Enclosed please find an amendment that I would like to see added to the present Senate Bill which is being considered for adoption. I would like to see a section read as follows: "A municipality which has a judgment entered against it after the enactment of this act, or which had a judgment entered against it prior to the enactment of this act and from which an appeal has been filed, shall upon municipal request not be compelled to provide within any six-year period, Mt. Laurel housing individually or as coupled with 'density bonus zoning' for more than an increase of their population of 25% as of the date of the filing of the litigation which was the subject matter of the Judgment or one year prior to the date of the Judgment of the Court which ever date is later."

The purpose of this type of amendment would be to insure the gradual development of the community and avoid the harms that could take place by means of rapid growth without permitting the municipality to ready itself for same especially in regard to municipal facilities such as schools, water, sewer, traffic and roads. This type of limited phasing also assists the municipality in not having a sudden and rapid change of its character and the demographic makeup of its citizens.

This litigation is not harmful to low and moderate housing because for example in a town of a population of 12,000, one on one increased zoning would permit an increase of 4,000 persons in a 6-year period and if the Mount Laurel Court ordered housing were coupled with density zoning on a 20% basis, there would still be permitted housing for 800 low and moderate persons within the 4,000 figure. The lack of such a provision in our law at this time leads to the type of sudden and drastic change as Mahwah is facing without giving the municipality an opportunity to prepare itself for same.

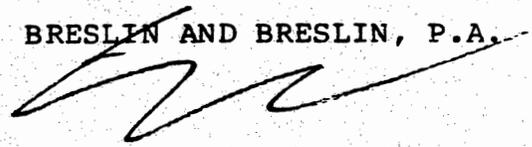
The period of six years has been chosen because

because that is a model period of time that phasing has been considered to be and is in accordance with the land-use law which compels a review of the zoning ordinances of a municipality and its land use provisions every six years.

Please do everything possible to see that this amendment is accepted.

Yours truly,

BRESLIN AND BRESLIN, P.A.



E. Carter Corrison

ECC:vec
Enclosure
cc: Frank Kraus

Recommendation in regard to Section 14.

14b. Any matter not adjudicated prior to June 1, 1984, insofar as builders remedies or mandatory zoning pursuant to Mount Laurel II shall upon motion by either party be referred by the Court to the Council in order to exhaust the mediation and review procedure established in Section 13 of this Act. The purpose of this Section is to afford municipalities presently under zoning challenge to have an opportunity for a uniform application of fair share numbers and equal treatment with those municipalities who would be subject to this act subsequent to the date of enactment.

In regard to the construction of inclusionary developments of which at least 20% are low and moderate income units, said development must be constructed in a manner that the low and moderate units are equally dispersed within said development. It shall be required that if the development is built in sections, that there be no more than 20% low and moderate income units in each section. The purpose of this provision is to guaranty that there be fair intregation of the housing units.

Section 20f.

Reimbursement to municipalities for any shortfall or additional expenditures caused by the installation of improvements

such as roads or municipal utilities which are not reimbursible
by the developer pursuant to the law as set forth in Mt. Laurel
in regard to municipal subsidy in behalf of such low and moderate
income housing construction