MOUNT LAUREL UPDATE

*by Senator John A. Lynch**

Very few issues that have confronted the Governor and Legislature in recent years have been as thorny or as persistent as the one called *Mt. Laurel*. Taking its name from the *Mt. Laurel I*[1] and *Mt. Laurel II*[2] decisions rendered by the New Jersey Supreme Court, this issue has centered on the "exclusionary zoning" practices of many suburban communities. The supreme court ruled that zoning could not be used in such a way as to render it impractical for a builder or developer to construct homes affordable by low and moderate wage earners.

This matter began with all the trappings of a "no-win" nightmare. The Governor remained virtually silent on it for quite some time and very few legislators were interested in tackling it. The result was a legislative vacuum filled only by hundreds of lawsuits filed by real estate developers, the State's Public Advocate and various special interest groups.

The *Mt. Laurel I* decision was ignored by everyone. Very few communities in the state actually modified their zoning to accommodate the housing density required by builders to earn a profit while constructing and selling low and moderate income housing. The Legislature itself moved slowly and remained silent until 1984. In retrospect, the *Mt. Laurel II* decision was inevitable. The New Jersey Supreme Court was confronted with the reality that its first decision was not only ineffective, but ignored, and that the Legislature had not acted to provide the subsidy funds necessary to make affordable housing "affordable".

The *Mt. Laurel II* ruling, in effect, put teeth into *Mt. Laurel I*. It created the so-called "builders' remedy," which allowed devel-

---

* Senator Lynch (D-Middlesex) is one of the co-sponsors of the Fair Housing Act. He graduated from Holy Cross College (1960) and received his law degree from Georgetown University Law School (1963). He was elected to the Senate in 1981, and re-elected in 1983. Mr. Lynch is also Mayor of New Brunswick, New Jersey.

[1] Southern Burlington County NAACP v. Twp. of Mt. Laurel, 67 N.J. 151 (1975).

[2] Southern Burlington County NAACP v. Twp. of Mt. Laurel, 92 N.J. 158 (1983).

opers to construct four or more houses for sale at market prices for every low or moderate income housing unit constructed. The effect upon impacted communities was a five-times multiplier of their fair share allocation of low and moderate income housing. In other words, if a community had a fair share allocation of 500 low and moderate income housing units, they were confronted with court orders to zone for 2500 total housing units.

A major provision of the *Mt. Laurel II* decision called for the Legislature to enact a remedy.[3] In effect, the court was saying that it would provide for the state's low and moderate income housing needs until the Legislature acted to provide for those needs. As time passed, however, scores of communities were still caught up in "no-win" litigation while attempting to defend themselves against massive new housing and all the infrastructure problems that would follow. Many communities reached court-approved settlements with developers while legitimately complaining that they were settling "under the gun."

As these ensuing problems continued, the Legislature was finally stirred into action. In 1983 and 1984, I was among the several legislators and members of the Governor's staff who attempted to create the base for the legislation requested by the court in its *Mt. Laurel II* mandate. Countless meetings were held and wide disagreement existed. Some opposed any legislation responding to *Mt. Laurel II* based on a belief that it would institutionalize the decision. Others felt that, because the *Mt. Laurel* rulings involved constitutional questions ultimately heard by the state's highest court, the only answer was a constitutional amendment to exclude the courts from zoning matters. Still others felt that the state should not be involved in the business of subsidizing housing.

It is essential to point out that the "builder's remedy," four houses at market value for each low or moderate income house, was the court's way of subsidizing the construction of affordable housing units. My belief, all along, was that legislation was needed to provide for that subsidy in a different form. In other words, if a workable law was to be created to provide for low and moderate income housing construction, money had to be a part of it. Without such an enactment, developers could not make a

[3] *Id.* at 212, 213.

profit with the construction of housing units and they simply would not be built.

Finally, S-2046, the Fair Housing Act,[4] emerged with Senators Wynona Lipman, Gerald Stockman and myself as co-sponsors. Several weeks later, the Governor issued his conditional veto which was ultimately sustained by both Houses. After various amendments, the Fair Housing Act became law.

The essential purpose of the bill, as amended, was to provide a mechanism to reassess the so-called fair share allocations assigned to each affected community, to get the communities out of court, and to provide a funding mechanism so that low and moderate income housing could be viable without the "builder's remedy." It was both my intent as sponsor, and what I believe the intent of the Governor and the Legislature, to substitute the Fair Housing Act for earlier court mandates.

Those of us who played active roles in all phases of this bill's enactment including the deliberations following the Governor's conditional veto, anticipated that the constitutionality of this law must ultimately be resolved by the New Jersey Supreme Court. Several sections were obvious targets for legal challenge, including those providing for a twelve-month moratorium,[5] a period of repose for communities that had settled[6] and transfer of matters currently in litigation from the courts to the newly-created Fair Housing Council ("Council").[7]

From the moment I began my work on the bill, I was convinced that the courts wanted to relinquish jurisdiction over housing matters. After all, the New Jersey Supreme Court asked for the Legislature to act and the Legislature acted. I must confess, however, my surprise when, after the bill became law, several impacted communities were still denied the right to transfer their cases from the superior court to the Council. It appeared that, despite the new law, the courts were either unwilling or reluctant to, in fact, relinquish jurisdiction.

The Fair Housing Act does permit communities to transfer

---

4 Ch. 222, 1985 N.J. Sess. Law Serv. 222 (West) (to be codified at N.J. STAT. ANN. §§ 52:27D-301. to -334.).

5 N.J. STAT. ANN. § 52:27D-328. (West Supp. 1986).

6 N.J. STAT. ANN. § 52:27D-322. (West Supp. 1986).

7 N.J. STAT. ANN. § 52:27D-316.(a) (West Supp. 1986).

their cases to the Council unless a "manifest injustice"[8]to a litigant would result. Indeed, in recent rulings denying the right to transfer,[9] the superior courts have found such "manifest injustice" by claiming that an inordinate amount of time would elapse before the Council could establish itself, set its guidelines and consider the various housing components submitted to it by communities having fair share allocations.

In an October 8, 1985 press statement, I urged the New Jersey Supreme Court to quickly rule upon the constitutionality of the Fair Housing Act because of these rulings.[10] While I have the greatest respect for the judges involved, I felt they had misinterpreted the intent of the Legislature. I believe that all affected communities wanted to work cooperatively with the Fair Housing Council and that it is not their intent to duck their responsibility to provide for affordable housing. While we had thought our bill, though imperfect, would take a giant step toward solution of the so-called *Mount Laurel* crisis, very little progress was made because of these court decisions denying transfer.

It will take some time for the nine-member Council on Affordable Housing to establish itself, to set its guidelines and to act upon petitions from communities seeking approval for their low and moderate income housing projects. It was certainly the intent of the Governor and the Legislature to give the Council a chance to perform its function.

On November 8, 1985, during a "Mt. Laurel Update Forum" sponsored by the State Department of Community Affairs, I again called for supreme court review of the transfer matter. Several days later on November 13, the New Jersey Supreme

---

[8] *Id.*

[9] AMG Realty Company and SkyTop Land Corp. v. Facey, No. L-23277-80 P.W., L-67820-80 P.W., C-4122-73, L-56349-81, C-4122-73, L-076030-83 P.W., L-28288-84, L-32638-84 P.W., C-4122-73, L-15209-84 P.W., L-33910-84 P.W., L-54998-84 P.W., L-67502-84 P.W., L-37125-83, L-630039-84 P.W., C-4122-73, L-079309-83 P.W., L-054117-83, L-070841-83 P.W., L-055956-83 P.W., L-59643-83, L-058046-83, L-005652-84, L-6583-84 P.W., L-7917-84 P.W., L-14096-84 P.W., L-19811-84 P.W., L-213070-84 P.W., L-22951-84 P.W., L-25303-84 P.W., L-26294-84 P.W., L-33174-84 P.W., L-49096-84 P.W., L-071562-84 P.W., L-010381-85 P.W., L-20127-75 P.W., L-34263 P.W., L-6404-79 P.W., L-085321-84 P.W. (Law Div. 1985); Morris County Fair Housing Council v. Boonton, No. L-6001-78 P.W.; L-42898-84 P.W., L-55343-85 P.W., L-29176-84 P.W., L-38694-84 P.W., L-86053-84 P.W., slip op. (Law Div. 1985).

[10] *See* The Star-Ledger (Newark, N.J.), Oct. 17, 1985, at 49, col.2.

Court announced that it had accepted jurisdiction for all such cases and that it would begin hearing arguments on the matter in January 1986.[11]

This was a most welcome step. The court that had issued *Mt. Laurel I* and *Mt. Laurel II* would now review the constitutionality of all the provisions of the law and, of course, the issue of transfer.

On February 20, 1986, in a decision widely applauded by virtually every affected community, the Legislature and the Governor, the New Jersey Supreme Court declared the Fair Housing Act to be constitutional and that communities involved in litigation could transfer their cases to the Fair Housing Council. The final step had been taken. We can now go forward and solve the affordable housing problem in an atmosphere of reason and law.

I will sponsor any legislation necessary to solve the problems identified by the *Mount Laurel* decisions. I believe that we are on the right track and that soon a fair and equitable path to providing housing for all our citizens will be in place.

---

[11] The New Jersey Supreme Court heard arguments on January 6, 1986.