

VL v. Cartoet, S. (Main field) → Nov (1985)

2 letters purporting to have Affidavits of Mellach

Neisser attached (3)

Affidavit of Mallach (11)

PI #302B
14 PGS

CACCO 696V

THE STATE UNIVERSITY OF NEW JERSEY
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Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

November 7, 1985

Clerk
Superior Court of New Jersey
Hughes Justice Complex
CN 971
Trenton, NJ 08625

Re: Urban League v. Carteret, No. C 4122-73
(South Plainfield)

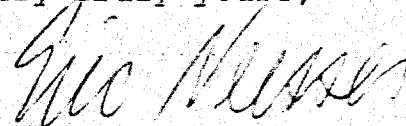
Dear Sir:

Enclosed please find for filing the original of the Affidavits of Alan Mallach and Eric Neisser and the Urban League Plaintiffs' Brief on South Plainfield Compliance, in Opposition to Harris Structural Steel's Motion to Intervene and in Response to Massaro et al.'s Motion to Intervene and Lift Restraints. I am simultaneously mailing copies directly to Judge Serpentelli.

I also enclose a Certificate of Service on all parties. A copy of the papers is enclosed which I would appreciate your returning, after stamping FILED, in the enclosed stamped return envelope.

Thank you for your attention to this filing.

Very truly yours,



Eric Neisser
Co-Counsel for Plaintiffs

encls

cc/Judge Serpentelli
South Plainfield Service List

School of Law-Newark • Constitutional Litigation Clinic
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15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

November 7, 1985

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, NJ 08754

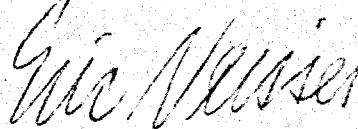
Re: Urban League v. Carteret, No. C 4122-73
(South Plainfield)

Dear Judge Serpentelli:

Enclosed please find two copies of the Affidavits of Alan Mallach and Eric Neisser and the Urban League Plaintiffs' Brief on South Plainfield Compliance, in Opposition to Harris Structural Steel's Motion to Intervene and in Response to Massaro et al.'s Motion to Intervene and Lift Restraints. We have Express Mailed a copy today to Ms. Lerman and hand delivered copies to Messrs. Santoro, Calderone, Dalto, Miller, George and Barcan. I have sent copies to the remainder of the Service List by regular mail. I will file the original with the Clerk along with the Certification of Service as soon as the hand delivery is completed.

I wish to inform the Court that Mr. Mallach is only available in the morning on Tuesday, November 12, and thus we request that we be allowed to present his testimony at the earliest possible time during the compliance hearing.

Respectfully yours,



Eric Neisser
Co-Counsel for Plaintiffs

encls

cc/South Plainfield Service List

SERVICE LIST

Urban League v. Carteret, Civ C 4122-73 (Superior Court, Chancery
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ATTORNEYS FOR PLAINTIFFS

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,	:	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY/OCEAN COUNTY (MOUNT LAUREL)
Plaintiffs,	:	DOCKET NO. C-4122-73
v.	:	AFFIDAVIT OF ALAN MALLACH RE BOROUGH OF SOUTH PLAINFIELD
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.	:	
Defendants	:	

STATE OF NEW JERSEY

:ss:

MONMOUTH COUNTY

ALAN MALLACH, of full age, being duly sworn according to law,
deposes and says:

1. I am a housing and planning consultant, a licensed professional planner in the State of New Jersey, and a member of the American Institute of Certified Planners (AICP). I have been retained by the Civic League (formerly Urban League) of Greater New Brunswick in the above action, and have participated in all aspects of this litigation since the initial trial before Judge Furman in 1976.

2. In my capacity as consultant to the Civic League, I was actively involved in the activities leading up to the Judgment regarding South Plainfield entered by the court on May 22, 1984. Those activities included inspection of the sites proposed

by the Borough for rezoning in order to meet their Mount Laurel obligations. In addition, I have, subsequent to its being filed with the court, reviewed the materials submitted by Harris Steel Corporation (henceforth "Harris"), seeking to have certain provisions of the South Plainfield zoning ordinance set aside. In addition to legal documents, these materials include three memoranda by planning consultants to Harris, dated March 11, April 10, and May 14, 1985.

3. The central planning issue raised by these materials is whether the site owned by Harris (the "Harris site") is suitable for development as contemplated by the recently-enacted zoning ordinance; i.e., multifamily residential use (townhouses or apartments) at a gross density of 12 units per acre, and with a 20% lower income housing setaside. In order to evaluate this question, in addition to reviewing various documents, I made a second and more extensive visit to the Harris site on November 3, 1985.

4. The Harris site is an elongated and roughly rectangular parcel of land containing approximately 85 acres immediately to the east of New Brunswick Avenue, a major north-south artery. The site is level, with no significant grades. A substantial part of the site is currently being farmed, with the balance of the site in woodlands/1. The Soil Survey maps prepared by the Soil Conservation Service indicate that 2/3 or more of the site is or was recently farmed, confirming a generally high level of suitability for development. Map 1 attached to this affidavit shows the

1/There are a number (at least 6) scattered single family houses in the area of the northern part of the site. Some of these houses may fall within the site boundaries.

general location and configuration of the site.

5. The site is bounded by a variety of different land uses. Map 2 shows land uses adjacent to the Harris site. The most important adjacent land uses are those facing the site along New Brunswick Avenue, since it can be expected that principal access to the site, if and when developed, would be from New Brunswick Avenue/2. With the exception of a small, attractively landscaped, light industrial building facing the southwest corner of the site, all of the land uses along New Brunswick Avenue (in Piscataway Township) are residential or vacant land. These include a large garden apartment development facing the northern part of the site.

6. Along the southern border of the site, on the other side of Tyler Place, is a buffer strip approximately 100' deep, beyond which is a freight rail line. Between the site and Clinton Avenue, which parallels New Brunswick Avenue to the east, are a mixture of low density light industrial buildings and vacant land. In all but a few locations there is substantial existing wooded land between the site and existing structures; in any event, such buildings are not incompatible with residential use, and are to be found in close proximity to residential development in a number of other locations within the Borough of South Plainfield. Finally, the Harris Structural Steel factory is located to the north of the site; a substantial heavy industrial building is located approx-

2/Based on the information regarding New Brunswick Avenue elicited in the site suitability hearing for Piscataway Township, that street is capable of handling the additional traffic flow that would result from this development, in conjunction with additional potential residential development in Piscataway. Widening to four lanes, if necessary, could be accomplished by acquisition of right of way from the Harris site.

imately 750' north of the site boundary.

7. A careful examination of the site surroundings makes it clear that, with careful buffering at a few sensitive locations, there are no conditions rendering the Harris site unsuitable for residential development, or imposing significant constraints on such development. The statement in the Radway memorandum of March 11, 1985, that "70% of the property abutting the buildable area of the site is currently developed or zoned for light industry", which may be technically correct, is misleading, since it does not take into account (a) which uses are most visible, and relate most directly to the site; (b) what is the character and compatibility of the existing nonresidential development; and (c) what buffers exist and can be provided as a part of development on the site.

8. The second issue raised is the environmental suitability of the site, or the number of acres out of the total of 85 rendered unbuildable by virtue of flood plains, wetlands, and similar natural features. According to materials submitted by Harris Steel, only 30 out of 84 acres are buildable (March 11 memorandum), or, in the alternative, 41.5 out of 85 acres are buildable (April 10, 1985). No documentation of how either of these two figures was established, or why the two are so much at variance, was provided to the Civic League.

9. In order to determine the extent to which the site contained recognized wetlands or flood plains, I spoke to Mr. Richard Neberezny, Borough Engineer for the Borough of South Plainfield. Mr. Neberezny indicated that (a) A flood plain within the site has been delineated by the United States Department of

Housing and Urban Development, a copy of which map is attached as Map 3; and (b) no recognized mapping of freshwater wetlands within this site exists, to his knowledge.

10. A small stream traverses the Harris site, flowing from southwest to northeast, and draining into Bound Brook some distance from the site/3. The 100 year flood plain associated with this stream, and shown on Map 3, is on the average approximately 300' wide, and encompasses approximately 15.6 acres out of the total site acreage of 85, or approximately 18% of the site. In the absence of further evidence, which can only emerge from a formal and systematic environmental engineering study, this is the only acreage within the total site area which can reasonably be held to be unbuildable/4.

11. As a part of my site visit on November 3, I identified the outlet of the stream onto the site at New Brunswick Avenue, and followed the stream for a modest distance. On this part of the site there was no evidence of freshwater wetlands; indeed, the high water mark of the stream (perhaps from Hurricane Gloria) was clearly visible on the side of the culvert carrying the stream under New Brunswick Avenue, and was at least 1' below the elevation of the immediately adjacent stream bank. Support for the

3/A second intermittent stream shown on the SCS soil survey map, generally following the eastern site boundary from north to south, appeared upon field inspection to be a man-made drainage ditch rather than a natural feature.

4/It should be noted that the only land that is completely unbuildable is the land in the floodway, which represents roughly half of the area in question. Under New Jersey law, limited filling and construction is permitted in the flood fringe area (the area outside the floodway but within the 100 year flood boundary).

conclusion that there are no significant wetlands on the site is also found in the soil survey map of the site, attached as Map 4, which indicates no soil types characteristic of wetlands on the site/5. In fact, soil characteristics on the Harris site are generally more favorable for development than many adjacent areas, including the intensively developed area to the west of the site in Piscataway Township.

12. The fact that up to 18% of the Harris site may not be buildable, as indicated above, does not mean that the number of units to be built on the site must be reduced by that percentage. The proposed development of the site is based on a gross density of 12 units per acre; it is generally accepted that multifamily developments can be successfully and attractively built up to net densities of 16 units or more per acre. If we accept the conservative standard of 16 units per acre as an upper limit on net density, it follows that the gross density of 12 units per acre can be achieved even where 20 to 25% of the site area is unsuitable for the location of structures. Thus, the assertions in the memoranda of March 11 and April 10, as well as the general contention of Harris, that the amount of development possible on the site can not be more than 12 units per buildable acre is in error.

13. Finally, given that it only represents a small part of the overall site area, the existence of the flood plain represents a site amenity rather than a constraint; a flood plain area, to

5/There may be some wetlands within the floodplain in the downstream portion of the stream traversing the site, which is more difficult of access and was not inspected. This would not, of course, affect the amount of unbuildable land on the site.

the extent that its character is upland rather than wetlands, is admirably well suited for open space and recreational uses for the benefit of the residents of the proposed development. Such recreational uses of flood plains are widespread, and considered highly appropriate from both a planning and environmental standpoint.

14. Based on my investigations, which are summarized above, I have reached the following conclusions regarding the site:

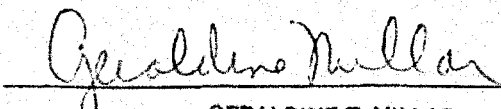
(1) The surroundings of the site, with appropriate site treatment, are completely suitable for residential development, and pose no serious constraints for such development.

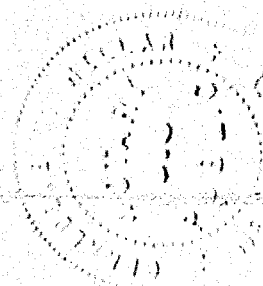
(2) The physical and environmental characteristics of the site are entirely compatible with moderate to high density multifamily development, and place no serious constraints on such development.

From a planning and environmental standpoint, therefore, the Harris site is both suitable and appropriate for multifamily development at 12 units per gross acre, as presently zoned by the Borough of South Plainfield/6. There does not appear to be any substantive basis, except for the matter of the owner's preference, for the objections raised by Harris.

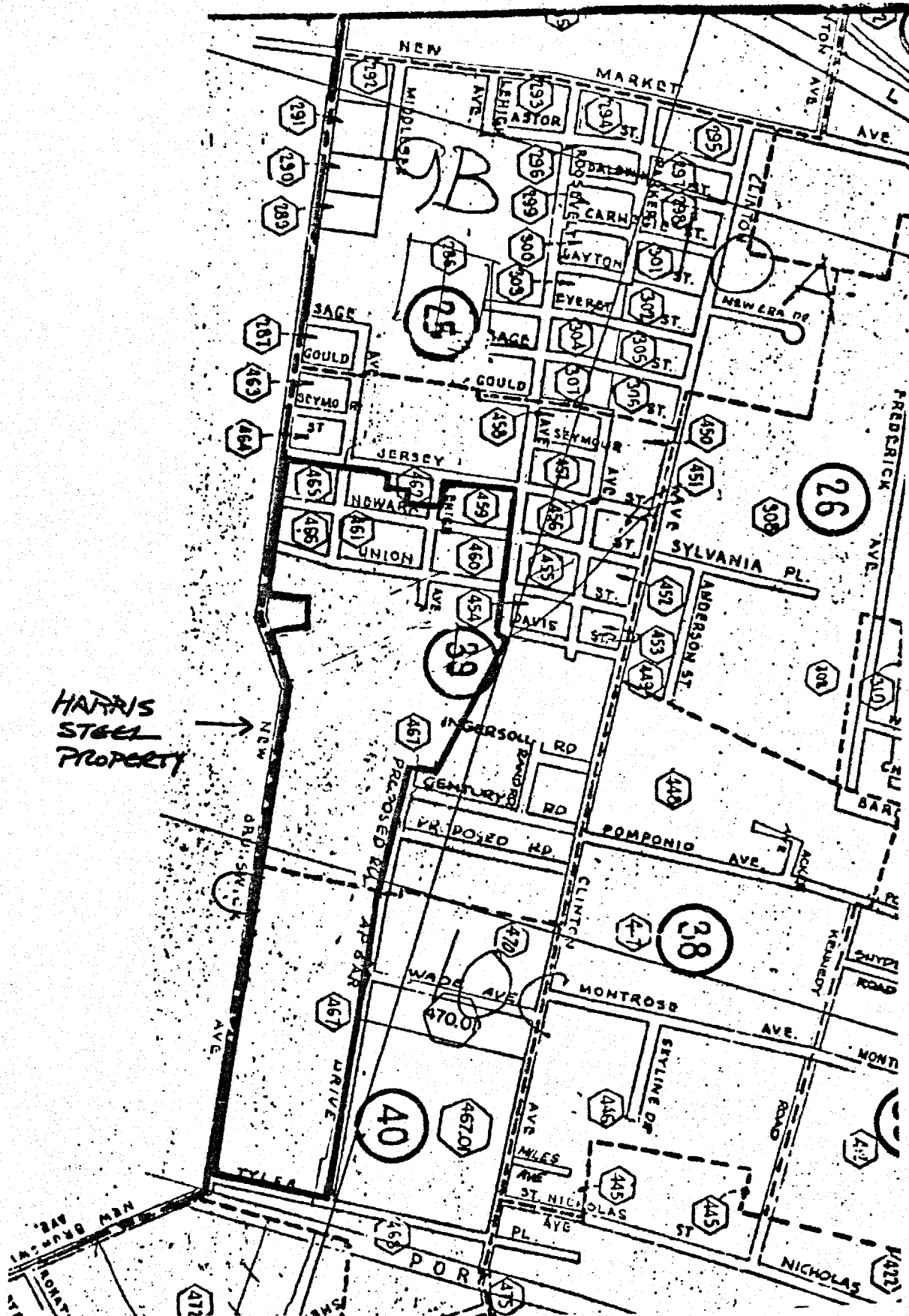

Alan Mallach, PP, AICP

Sworn to and subscribed before me
this 5th day of November, 1985


GERALDINE T. MILLAR
Notary Public of New Jersey
My Commission Expires Aug. 11, 1987



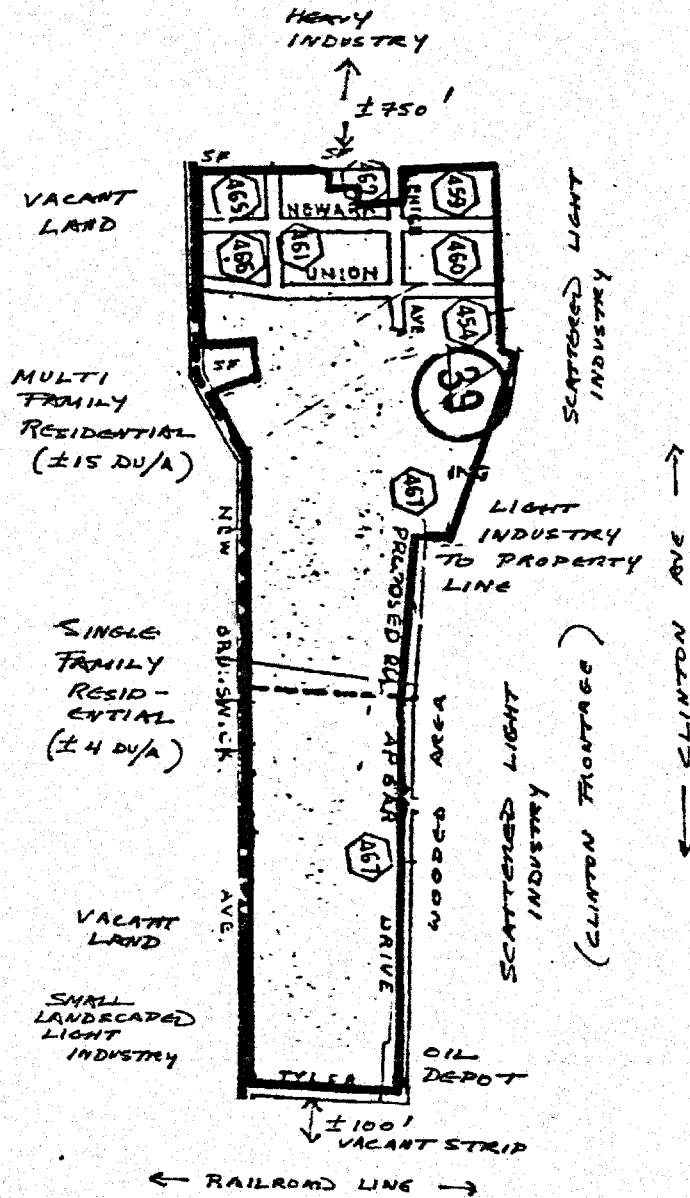
6/The concept of "highest and best" use, used by Radway in the April 10 memorandum is a real estate marketing term, and is meaningless from a planning standpoint.

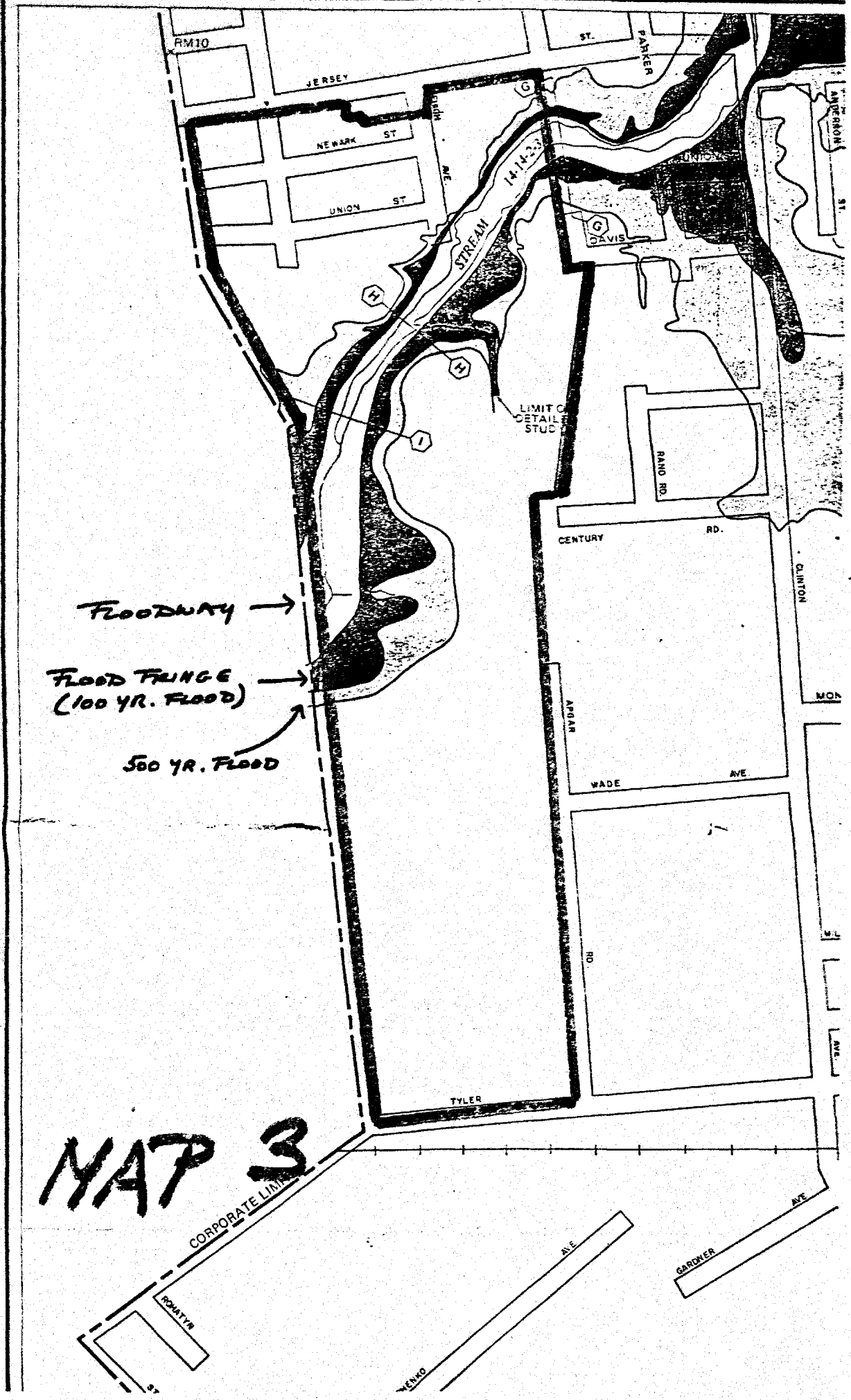


MAP 1: SITE LOCATION MAP

MAP 2

SITE SURROUNDINGS





MAP 3

CORPORATE LINES
ROMATY ST
VENNO AVE
GARDNER AVE

FLOODWAY →
FLOOD FRINGE (100 YR. FLOOD) →
500 YR. FLOOD

LIMIT OF
DETAIL
STUD

RM10

JERSEY

NEWARK ST

UNION ST

ST.

PARKER

DAVIS

BAND RD.

CENTURY

RD.

WADE

AVE.

TYLER

QUINTON

MON

ST.

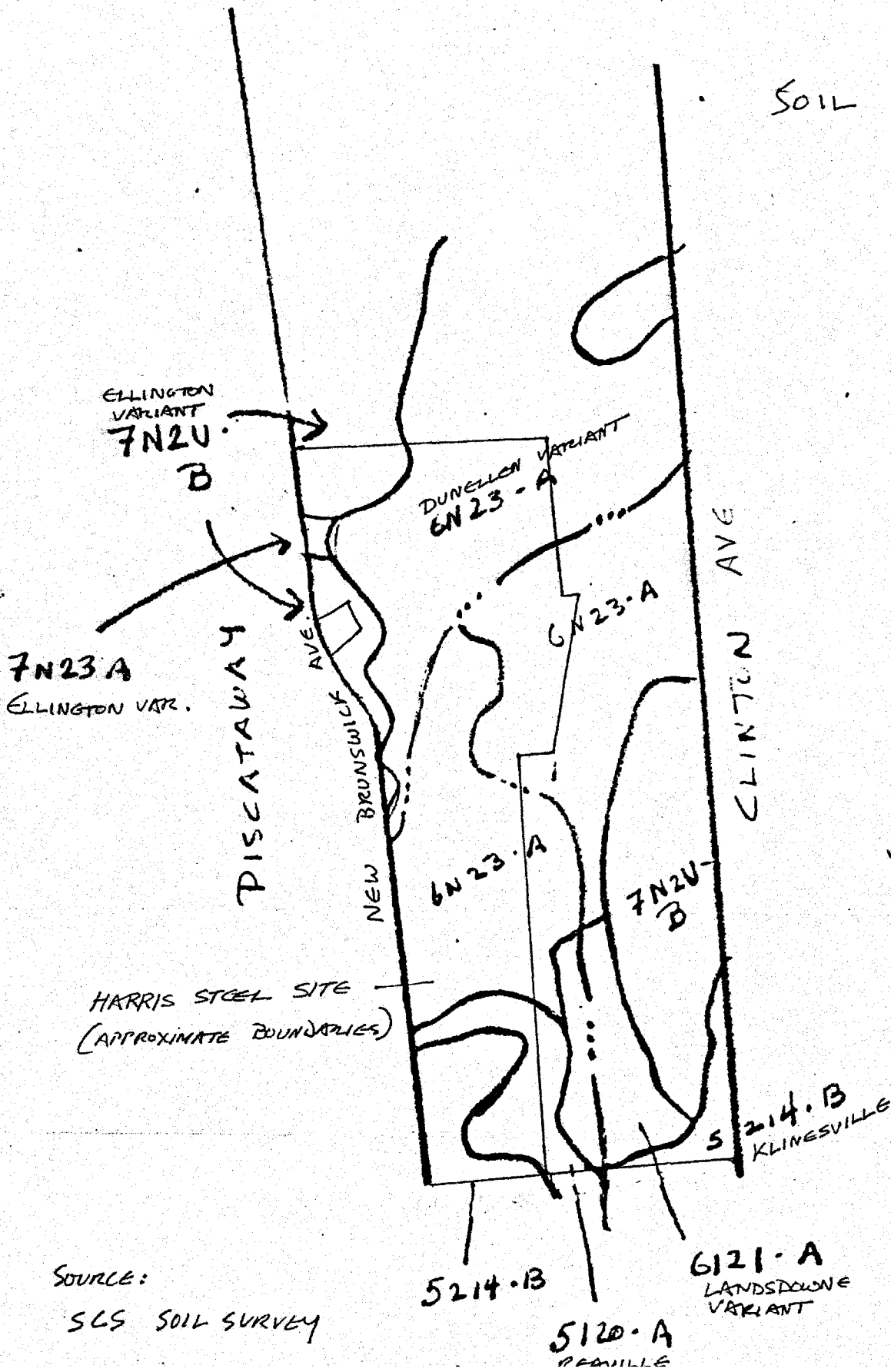
AVE.

AVE.

VENNO

MAP 4

SOIL TYPES



ELLINGTON
VARIANT
7N2U
B

DUNELLEN VARIANT
6N23-A

7N23A
ELLINGTON VAR.

DISCATAWAY

NEW BRUNSWICK
AVE

CLINTON
AVE

6N23-A

6N23-A

7N2U
B

HARRIS STEEL SITE
(APPROXIMATE BOUNDARIES)

5214-B
KLINESVILLE

SOURCE:
SCS SOIL SURVEY

5214-B

5120-A
REVILLE

6121-A
LANDSDOWNE
VARIANT