

Discontinuity (1985)

1/25

2 Expert Reports ⊕ Cover letter

pgs = 17

Yellow PI #3140

CA 000 ~~798~~ E

~~811~~ 815

MANDELBAUM, SALSBERG, GOLD & LAZRIS

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW155 PROSPECT AVENUE
WEST ORANGE, NEW JERSEY 07052
(201) 736-4600IRVING MANDELBAUM
LESTER P. DUBOW, P.A.
BARRY R. MANDELBAUM
RICHARD M. SALSBERG*
AVROM J. GOLD
YALE I. LAZRIS
RICHARD H. STEINBERG**
JOHN R. DUSINBERRE
JOSEPH J. DISCENZA*
BARRY M. PACKIN
MERYL J. TOPCHIK
LYNNE STROBERWILLIAM A. MILLER
CARMINE D. CAMPANILE
OWEN T. HUGHES**
STEPHEN B. HESSINGER
PETER E. ROYAL
WILLIAM J. BERMAN***
EMIL RESTAINO
MICHELLE S. SILVERMAN***

January 25, 1985

* CERTIFIED CIVIL TRIAL ATTORNEY
* MEMBER OF NJ & PA BAR
** MEMBER OF NJ & FLA BAR
*** MEMBER OF NJ & NY BARALAN L. SUSSMAN***
OF COUNSELEAST ORANGE OFFICE
141 SOUTH HARRISON STREET
EAST ORANGE, NEW JERSEY 07018Bruce S. Gelber, Esq.
National Committee Against
Discrimination in Housing
733 Fifteenth Street, N.W.
Suite 1026
Washington, D.C. 20005Re: Urban League of Greater
New Brunswick vs. Township
Piscataway

Dear Mr. Gelber:

I enclose the following, to wit:

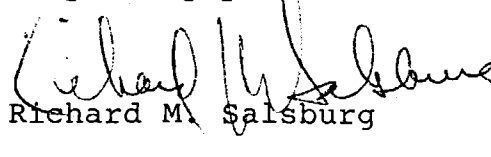
1. Engineer's report prepared by Abbington-Ney Associates. We anticipate that Thomas Krakow will testify as to the report. Please note that there are at least two inadvertent omissions in the report. The first is the relocation of approximately 2,000 linear feet of gasoline transmission line at minimal cost of \$121,000.00 and the relocation of existing brooks in creation of drainage basin on site for a minimal cost of \$150,000.00.

2. Report of Hudson Partnership, Inc. We anticipate that Lester Nebenzahl will testify on behalf of the client to the report.

In addition, there is a possibility that Arthur Bernard, a license planner, will also testify regarding the site in form substantially similar to that as set forth in the Hudson Partnership, Inc. report, concentrating on its unique character which leads to the development of a shopping center.

Again, my thanks for your kind assistance in this matter.

Very truly yours,


Richard M. Salsberg
RMS/kg(d)
Encl.
ZAP cc: All Counsel

PISCATAWAY SHOPPING CENTER DEVELOPMENT

LOTS 33 THROUGH 67 AND 134

BLOCK 228

SITE ANALYSIS

Township of Piscataway

Middlesex County

New Jersey

PREPARED BY:

ABBINGTON-NEY ASSOCIATES
Consulting Engineers and Planners
20 Gibson Place
Freehold, N.J. 07728

January 22, 1985



THOMAS KRAKOW, P.E.
LICENSE NO. 22309

The following narrative addresses development of Lots 33 through 67 and 134 of Block 228 situated in the Township of Piscataway. Comprised of 24.9 acres, the tract is zoned for shopping center development. As such, the applicant proposes construction of 205,200 square feet of retail space. However, a recent court ruling has effectively rezoned this parcel among others for low to moderate income housing per the Mount Laurel II decision. Consequently, the tract has been reviewed by this firm as to its potential for residential development at a density of ten (10) units to the acre. In light of this comparative analysis herein, it is our contention that a retail use such as that which has been proposed, is the preferable and most feasible option.

SANITARY DEMAND

A comparison of the sewer system demand resulting from development of the site as the proposed retail center or as a residential use indicates the retail facility will utilize less than half the demand of a residential use. The retail center will comprise 205,200 square feet of retail space. By applying the standard multiplier of 0.125 gallons per square foot times the given floor area, the resulting usage estimated for the project will be 25,650 gallons per day.

$$\begin{aligned}\text{Area (S.F.)} \times 0.125\text{G} &= \text{GPD} \\ 205,200 \text{ S.F.} \times 0.125\text{G} &= 25,650 \text{ GPD}\end{aligned}$$

In contrast, residential development per the Mount Laurel II decision would prescribe a dwelling unit density of ten (10) units per acre or a maximum of 249 units. Accordingly, the least demand from this type and density of development assumes a minimum of three (3) persons per dwelling unit. By applying the standard multiplier of 75 gallons per day, per person, the overall estimated sanitary demand would be 56,025 gallons per day.

$$\begin{aligned}\text{Number D.U.} \times 3(75\text{G}) &= \text{GPD} \\ 249 \times 225\text{G} &= 56,025 \text{ GPD}\end{aligned}$$

Based on the above calculations, development of the site as proposed will require less than half the sanitary volume necessary to serve a high density residential project on the same tract.

DRAINAGE

Drainage from the property in question flows to a tributary of Bound Brook which crosscuts the tract from southwest to northeast. Due to current downstream drainage problems, any development will require on-site detention to regulate flows to this downstream area. Accordingly, a detention area has been designed with a maximum elevation of 70.0 and a maximum 100 year storage capacity of 8 acre feet. Based on a 100 years storm frequency, the maximum outflow from this system will be 142.1 C.F.S.

With regard to potential residential development of the site per the Mount Laurel II decision, the State of New Jersey restricts construction within the 100 year floodplain and within the one (1) vertical foot above the floodplain elevation. By subtracting the floodplain area within elevation 71.0 as described by Department of Environmental Protection regulations, the developable acreage of the tract is limited to 10.6 acres of the original 24.9 acres. This total land area is segmented due to the natural floodplain into four (4) isolated areas. These noncontiguous areas are prohibitively small as well as isolated from one another, thereby lacking the ability to be developed as a community oriented residential project. Further, given a dwelling unit density of ten (10) units to the acre, the greatest number of units allowable on these upland areas is 106 units or 43 percent of the theoretical total for the site as a whole. Gross density would be four (4) units to the acre which severely limits the number of low to moderate housing opportunities if the tract was developed consistent with Mount Laurel II guidelines.

Moreover, larger scale residential development on site would necessitate considerable fill to bring the site up to the developable upland elevation of 71.0. As above, elevation 71.0 describes one (1) foot above the 100 year flood level. Accordingly, approximately 19,000 cubic yards of fill will be required at a cost of \$10.00 per cubic yard. Ultimately, the cost of filling would reflect in individual unit costs. Assuming a dwelling unit density of 10 units to the acre, or 135 units within the 13.50 acre filled area, the overall cost of filling, \$190,000, would be borne by these units at an additional cost of \$1500 per unit.

In summary, from a monetary standpoint, the limited housing on a relatively large tract of land would result in increased costs per unit. Likewise, the extensive filling required to develop a larger portion of the site would incur a substantial cost of \$190,000 to be ultimately reflected in the per unit costs. These factors run contrary to the intent of the Mount Laurel guidelines to provide low cost housing.

In contrast, retail development of the tract as proposed will utilize the greatest available lot area which retaining site elevations and keeping municipal ratables low. Firstly, the site design can be achieved utilizing the existing contours to the maximum extent practicable. This will be achieved by placing some parking within the flood fringe area next to the detention system. Parking for the shopping center use is compatible with the flood fringe. Due to the long term nature of residential parking, the parking use is not compatible with the flood fringe. Secondly, though there will be some expense involved in drainage improvement relative to the retail project, overall construction costs will be slight in comparison with costs requisite to land improvements for a residential development. Further, the expenditure for drainage improvements on the retail use will be of benefit to downstream landowners and residents, thereby warranting the added expense.

In light of the constraints posed by the existing site and the excessive costs to be incurred in the implementation of a residential development per the Mount Laurel II decision, such residential use of the site is not a realistic option.

In contrast, the retail use as proposed will improve drainage, thereby alleviating existing downstream problems. Further, the greatest portion of the site will be utilized, improving the cost benefit for this property to the municipal tax base. The retail use represents the preferred option for development of the site in question.

**THE
HUDSON
PARTNERSHIP, Inc.**

Engineers, Planners, Environmental Analysts

PLANNING REPORT

BLOCK 228

LOTS 33 THROUGH 67 AND 134

PISCATAWAY TOWNSHIP

NEW JERSEY

JANUARY 24, 1985



Lester Nebenzahl, P.P., AICP
License #1977

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Description of the Property	2
Proposed Project	2
Zoning	4
Existing Land Use	4
Master Plan Designation	4
The Need for Commercial Facilities	4
Summary and Conclusion	9

INTRODUCTION

This report will address the planning related issues concerning the application of Mr. Peter Saker, Jr. to construct a shopping center on South Washington Avenue in Piscataway Township in light of the recent court order which prohibits the Township Planning Board from approving applications for development on specific parcels where the application does not include provision for low and moderate income housing.

The following documents have been reviewed for the preparation of this report:

- "Site Plan for Shop Rite Shopping Center, Lots 33 through 67 and 134 in Block 228" prepared by Abbington-Ney Associates, dated November 1, 1984 revised November 15, 1984.
- "Piscataway Shopping Center Development, Lots 33 through 67 and 134, Block 228, Site Analysis" dated January 22, 1985.
- Piscataway Township Zoning Ordinance, dated 1978, revised through April 26, 1984.
- Piscataway Township Zoning Map, dated December 6, 1983.
- Piscataway Township Zoning Map, dated July, 1968.
- Piscataway Township Zoning Map, dated May, 1978.
- Piscataway Township Master Plan, dated October 12, 1983.
- Piscataway Township Master Plan, dated March, 1978.
- Piscataway Township Master Plan Report and Program Summary, dated May, 1968.
- "Report on Existing Land Use in Piscataway Township" dated June, 1981, prepared by Richard Scalia.

- Report prepared by Carla L. Lerman, P.P., dated November 9, 1984 sent to the Honorable Eugene D. Serpentelli under cover letter dated November 10, 1984.
- United States Census Tract Data, 1980.

Field investigation of the property and surrounding area was undertaken on Wednesday, January 23, 1985.

DESCRIPTION OF THE PROPERTY

The property in question is known as Lots 33 through 67 and 134 in Block 228 as shown on the Piscataway Township Tax Map and has been identified as site number 3 throughout the prior court proceedings.

The site is comprised of approximately 25 acres and is heavily wooded. As shown on Exhibit 1, an underground pipeline traverses the property from the northwest corner to the southeast. A tributary of the Bound Brook traverses the site from southwest to northeast.

PROPOSED PROJECT

Approximately one and one-half years ago, the applicant purchased the subject property and proceeded to prepare detailed engineering plans required for submission to the Piscataway Township Planning Board for site plan approval, and in November of 1984, the application was submitted to the municipality.

As shown on the site plan submission prepared by Abbington-Ney Associates, the proposed shopping center would include the construction of a Shop Rite Supermarket of 56,600 square feet, an 83,100 square foot retail store and additional retail space of 61,500 square feet with provision for 1,173 parking spaces.

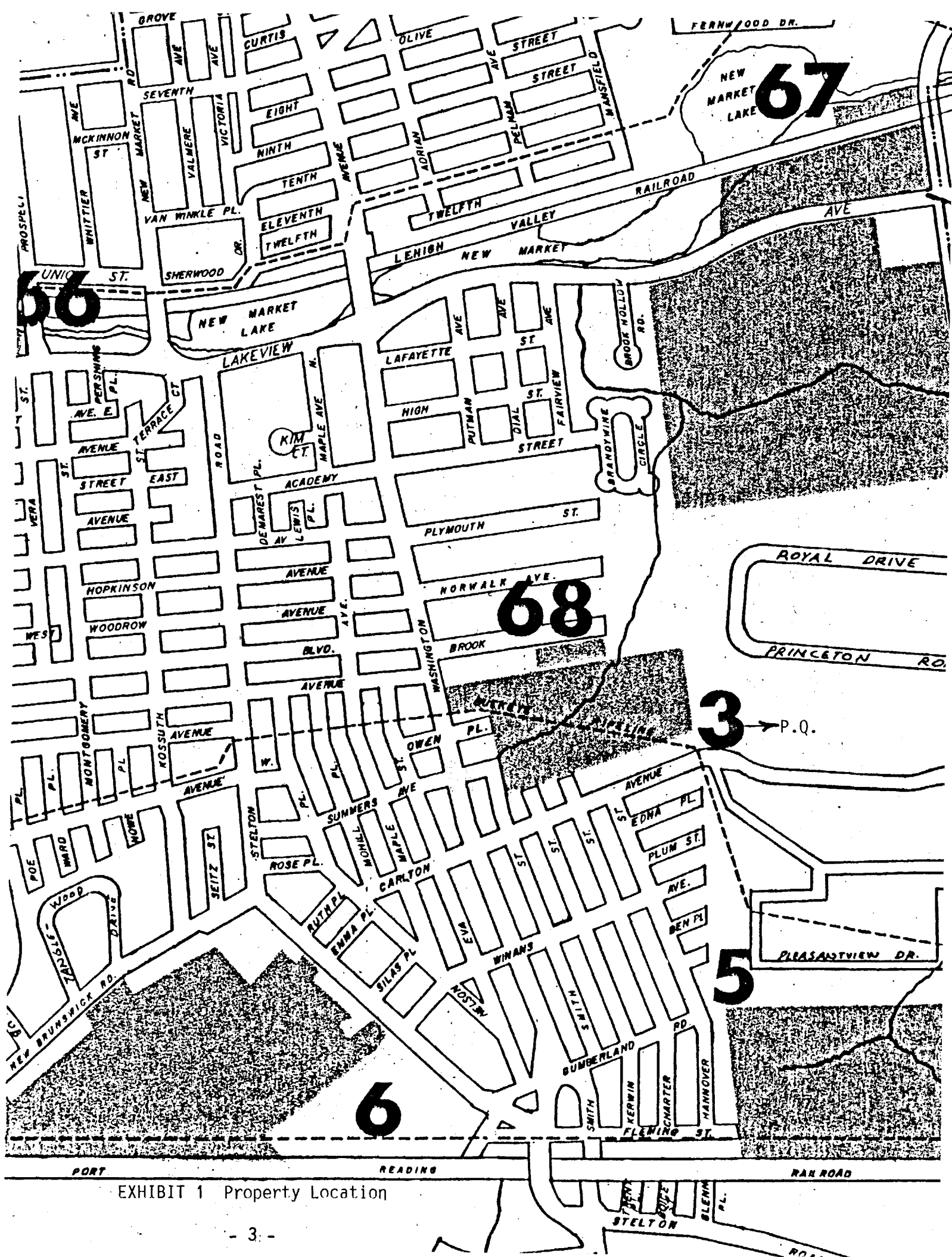


EXHIBIT 1 Property Location

ZONING

The portion of the subject site to be developed is currently zoned SC, Shopping Center, as illustrated on Exhibit 2. The current Piscataway Township Zoning Ordinance permits the proposed facility as a principal permitted use with appropriate bulk regulations as noted in Exhibit 3. As illustrated, the proposed project would comply in all respects with existing zoning regulations.

It should be noted that this property has been zoned for the intended use for many years. Available records indicate that the 1968 Zoning Map of the Township designated the subject property as Shopping Center.

EXISTING LAND USE

The subject property is bordered by three garden apartment complexes comprising 1,950 dwelling units to the east, single family detached housing on 7,500 square foot lots to the west and south and a fire station and school to the north.

MASTER PLAN DESIGNATION

The subject property is designated in the current Piscataway Township Master Plan as commercial, consistent with the zoning designation. As was the case for zoning, available records indicate the subject property designated for the intended use since 1968.

THE NEED FOR COMMERCIAL FACILITIES

As shown on Exhibit 4, the project site is located within Census Tract 5.02. All of census tract 5.02, and the majority of census tracts 5.01, 4.01 and 4.02 lie within a one and one-half mile radius of the subject property. As shown on Exhibit 5, approximately 21,000 persons live within this area.

2-6-83
BY TOWNSHIP COUNCIL

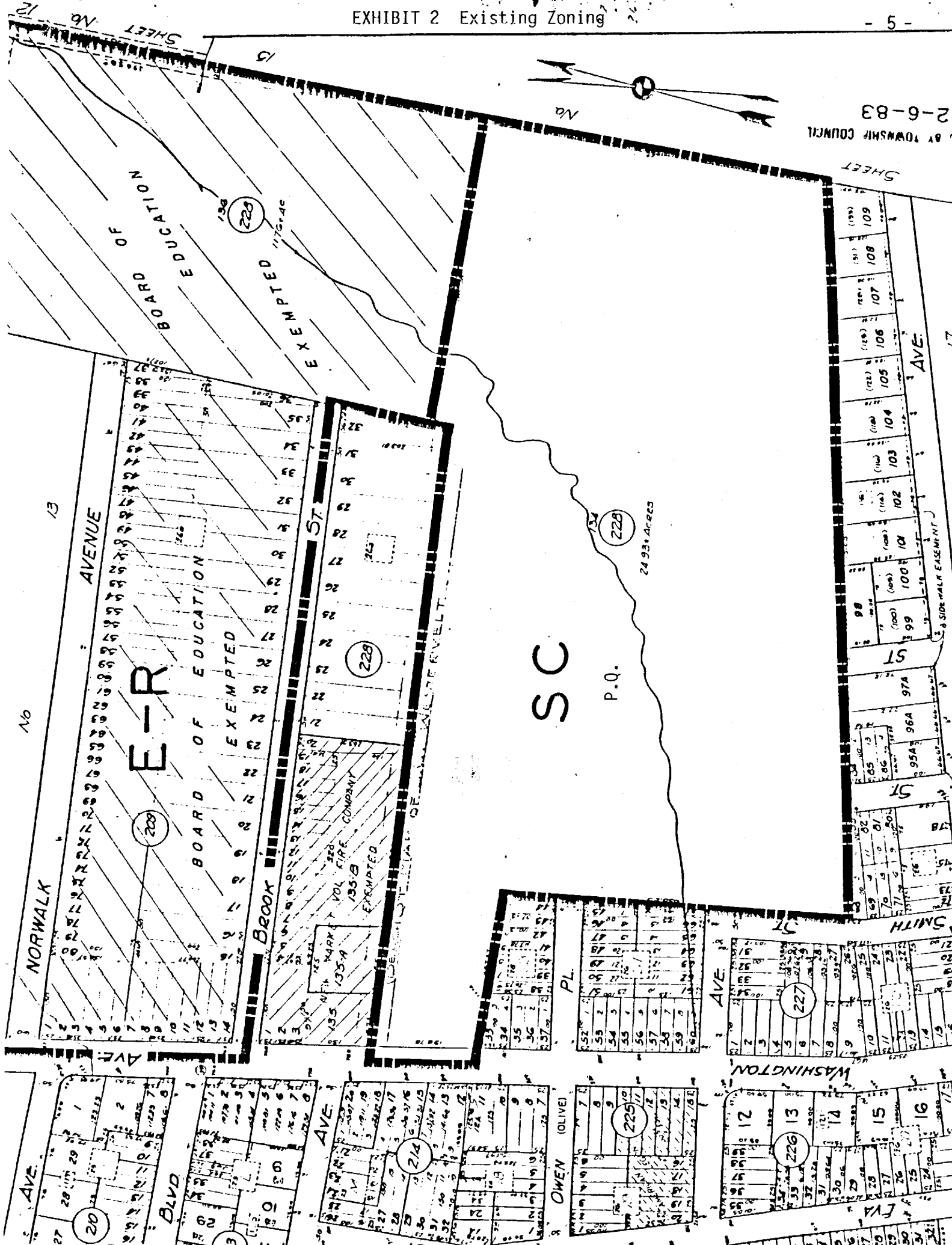


EXHIBIT 3

SCHEDULE OF GENERAL REQUIREMENTS, SC ZONE

PISCATAWAY, NEW JERSEY

	<u>Required</u>	<u>Proposed</u>
Minimum Lot Area	10 acres	24.9 acres
Minimum Lot Width	300 feet	790 feet
Minimum Lot Depth	500 feet	1,140 feet
Minimum Front Yard Setback	100 feet	400 feet [±]
Minimum Rear Yard Setback	100 feet	100 feet
Minimum Side Yard Setback	50 feet	85 feet
Maximum Lot Coverage	20 percent	18.9 percent
Minimum Floor Area	40,000 sq. ft.	205,200 sq. ft.
Maximum Height	35 feet	24 feet

Source: Piscataway Township Zoning Ordinance, 1978 as amended, 1984.

RADIUS MAP

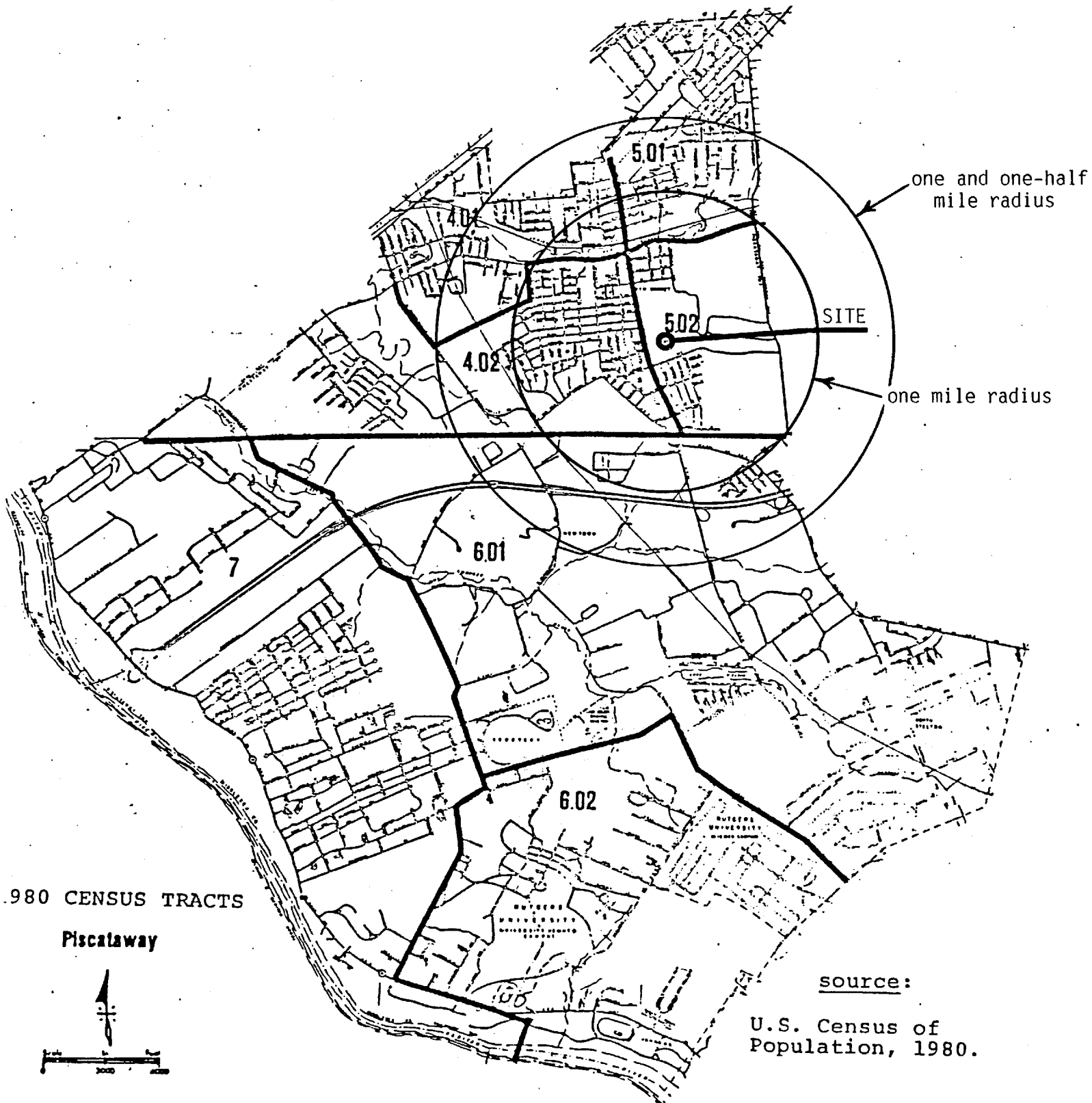


EXHIBIT 5

1980 CHARACTERISTICS, CENSUS TRACT DATA

<u>Tract</u>	<u># Persons</u>	<u># Households</u>	<u>Household Size</u>
4.01	3,952	1,151	3.43
4.02	6,307	2,181	2.89
5.01	4,892	1,478	3.31
5.02	<u>5,693</u>	<u>2,407</u>	<u>2.37</u>
Total	20,844	7,217	2.89

Source: U. S. Census, 1980.

There is a severe lack of adequate shopping facilities for this population. The nearest supermarket is located outside the Township in the Borough of South Plainfield approximately 1.6 miles from the project site.

Another supermarket facility is located in Dunellen approximately 1.8 miles to the north. It should be noted that the existing commercial area on Stelton Road approximately one-half mile to the west of the project site is comprised of office, banking and other service establishments. The only retail facilities other than automotive service stations include three delicatessans, two dress stores, 1 pool supply store, 1 ice cream store, 1 card shop, 1 restaurant, 1 convenience food store and a tavern.

The lack of commercial retail areas is a Township wide problem which requires all of the 44,000 residents to travel outside of the municipality to purchase required food and other necessary items. The land use inventory prepared by the Township Planning Division in 1981 illustrated that only 1.8% of the Township land area was used for commercial purposes. To this day, there does not exist a supermarket in this 20 square mile municipality. In this regard, the Township has designated two sites for Shopping Center development: the subject property and a tract in the southeastern corner of the municipality, commonly referred to as site number 40. Proper land use planning requires the provision of adequate commercial uses in order to meet the needs of the population. If all remaining vacant developable tracts in Piscataway are required to be developed with medium density housing, this need will not be met.

SUMMARY AND CONCLUSION

This report has demonstrated that the applicant has prepared and submitted detailed engineering plans for site plan approval for a Shopping Center consistent with the Piscataway Township Zoning Ordinance and Master

Plan. The designation of the subject property for the intended use has been contained in the Municipal Master Plan and Development Regulations since 1968 and has been done in accordance with sound land use policy in an effort to provide for necessary shopping areas which are severely lacking.

The court appointed expert in the pending litigation has determined that the subject site is suitable for residential development at a density of between 8 and 10 dwelling units per acre. Engineering considerations relative to sanitary sewerage capacity and drainage may not have been adequately addressed in that determination.

Regardless of the final determination for Piscataway's fair share housing obligation, the property in question is ideally suited for a shopping center and would provide a super market for a minimum of 21,000 people, most of whom are required to travel relatively long distances to purchase required food. Indeed, this shopping center would serve an existing moderate income population, and an area which has been developed at a density of 15 units per acre in addition to any further growth which may occur. The site is one of only two sites designated for the intended use in the entire municipality.

It is apparent that the applicant has expended great resources in purchasing the property and preparing the necessary engineering plans required for submission to the Township. This property owner should not be penalized because of the Mt. Laurel II decision. Both the concepts of equity and fairness as well as sound land use policy and planning would be served if this application is allowed to proceed before the Planning Board of Piscataway Township.