

CA - general

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Draft of brief w/ factual & legal
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STATEMENT OF FACTS

Dunellen, located at the northern end of the county, is a small Borough bounded on two sides by water courses that sometimes overflow. (Greenbrook and ^{Bongout} Boundbrook) In addition thereto, there are two or three streams that run through the Borough.

According to figures compiled by the Middlesex County Planning Board, Dunellen has a population of 7,072 according to the 1970 census. It has 2,282 housing units of which 785 are two or more units. Page 17 Selected Population and Housing Statistics for Middlesex County based on 1970 census. Thus, 34% of the housing units according to the survey are for multi-family units. There were 1,600 persons renting in Dunellen or ²³30% of the population. Page 29 (Housing report (supra)). Of the rental units, 63% of them rented for under \$120 per month rental. Page 35 Housing report (supra).

At the present time, there are 155 two family houses in Dunellen, there are ^{an additional} 25 units where three or more families are housed; this includes apartments. There are three ^{plots} ~~units~~ which have received Zoning Board approval for 72 apartments; they are not yet built, ~~and~~ since 1967, 44 apartments have been built. The above figures were obtained from the Tax Assessors rolls.

At the present time, according to the current figures in the Borough Assessors files, 45% of the single family houses have a value of between ^{\$}15 and \$25,000 and a similar 45% have a value between ^{\$}25 and \$35,000. 8.1% are above \$35,000. The remaining amount is \$15,000 or under.

FACTUAL AND LEGAL CONTENTIONS

The Township of Old Bridge consists of 42 square miles and approximately 55,000 people. Its Zoning Ordinance was previously declared unconstitutional by the Superior Court of New Jersey, Chancery Division. However, an Appeal is presently pending before the New Jersey Supreme Court. A decision is expected shortly.

Old Bridge Township has ample housing for low and moderate income families including a numerous facilities for detached single family dwellings and multi-family apartment units. In addition, of the available vacant land, much of it is zoned to provide for cluster developments and Planned Unit Developments. Much of the other vacant land adequately provides for low and moderate income housing. Under the existing realities of the economic conditions in the nation and in the region, because of high land taxes and general inflation it is submitted by the Township of Old Bridge that much vacant land in its area is priced beyond low and moderate incomes and said income groups could not purchase homes or land in the Township regardless of zoning without some provisions for subsistence which provisions are not in existence. It is furthermore the position of Old Bridge Township that its zoning policies are not exclusionary, are not discriminatory and presently meet the needs of the region for all types of housing.

Additionally, unusual circumstances exist in the Township regarding protection of the Old Bridge sands and water aquifers, Deep Run, other streams and bogs which also require zoning in many areas to prohibit dense housing and dense population. Furthermore, the Township has a distinct characteristic and it is one which should be protected and recognized.

Dunellen is 93% developed. It has 478 acres and there is a total of 32 acres still vacant. Of the 32 acres that are still vacant, there are 18 acres which are either undersized, have a brook running through the parcel, or are adjacent to one of the water courses and are prone to frequent flooding. Those 18 acres includes one tract of 5 $\frac{1}{2}$ acres for which a green-acres application is pending by the Borough. The particular site is not suited for houses or apartments since it would require considerable fill.

There are 9 acres of buildable land, of which about 2 to three acres includes land already approved for apartments. The remaining vacant land consists primarily of single lots throughout the town. There is a five acre tract in an industrial area in the western end of town that could be considered vacant but which would be suited for commercial or industrial use.

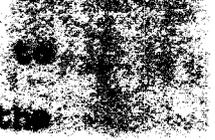
As can be seen above, there are 2,282 housing units in the Borough. Only Perth Amboy, New Brunswick, and Highland Park exceed the density by square mile. If one compares the population of these four towns, Dunellen, Perth Amboy, New Brunswick, & Highland Park, to housing density, one will see that Dunellen has 3.17 persons per unit, the second highest figure among the four most densely populated communities in Middlesex County.

Attached herewith is a copy of zoning ordinance. One will see that there is no prohibition against either apartments or trailer. The only regulation being the number of families per acre. In the A family zone, ^{9.0}~~48.4~~ families per acre are permitted. In the B zone, 18 families per acre are permitted.



It is contended by the Borough of Bunellen that there exists no present law or court decision, either State or Federal, which imposes a duty upon a municipality, to provide a housing authority or subsidized housing. Such matters are purely political decisions which are electorate of a local municipality to determine.

It is further contended that any attack on the racial composition of housing patterns is a matter directed to real-estate selling and leasing practices, which is the subject of a pending law suit in the Federal District Court and soon the subject matter of this instant case.



FACTUAL AND LEGAL CONTENTIONS

Defendant questions whether the Plaintiffs constitute a proper class particularly because of the scope of its alleged membership. There is a serious question whether the interests of low income persons are the same as the interests of moderate income persons and furthermore whether the Plaintiff-representatives can represent both interests adequately.

Defendant contends that the corporate Plaintiff lacks standing under N.J.S.A. 40:55-47 because it fails to show any more than a theoretical interest in this case. The standing of organizations was not recognized even in the far reaching Mt. Laurel decision nor in the more liberal concurring opinion of Justice Pashman. Furthermore, Defendant maintains that all of the Plaintiffs lack standing on the federal issues. Robert Warth, et al vs. Ira Seldin, 43 U.S.L. Week 4906 (U.S. June 25, 1975). In addition the Leagues of Women Voters by their acknowledged lobbying attempts since 1971 to implement Plaintiffs' claims for relief through legislation are partisan and therefore their entrance as amicus curiae would be improper because their partisan position is inconsistent with the impartial role as advisor to the Court.

Defendant submits that Plaintiffs' action against the municipalities is in fact an action against a class, R.4:32-1, and that the class of Defendants named in the Complaint is improper because it fails to define the entire class which should include most municipalities in the counties of Bergen, Morris, Passaic and Somerset. Moreover, the only claims to common law or fact are those pertinent to the larger class noted above; failure to treat

Defendants as part of this larger class is to acknowledge that each Defendant's set of land use policies and practices is unique. Such an acknowledgment undermines the Plaintiffs' claim to meeting the requirement of commonality for permissive joinder thus justifying a severance for Cranbury Township. Even if Defendants are not treated as a class, the additional municipalities mentioned above are necessary parties since they have a very definite interest in the manner in which the needs of the Plaintiff class are determined. Their municipal land use policies and practices affect the named Defendants' policies and practices and vice versa. Finally, the State and County governments are necessary parties because any determination of a fair share formula would affect the State and County planning not only with respect to housing but the capital budget for other public works projects, environment and ecological concerns and agricultural plans.

Cranbury Township maintains the Court lacks jurisdiction. If all necessary parties are in fact joined the only ruling which the Court could issue would be an advisory opinion which is not within its power. New Jersey Turnpike Authority vs. Parsons 3 N.J. 235, 240, 69A.2d 875, 877 (1949). Even if the Court could render more than an advisory opinion it would still lack jurisdiction because the issue involved is a political question reserved for the legislature. Such discretionary directions as to how the state will accommodate its housing needs, the structure of local government and land use policy are all within the exclusive domain of the legislature. To require a new mechanism for planning by local governments based on regional approach would require an act of the legislature and is beyond the power of this Court.

Cranbury Township contends that its zoning ordinance and other land use policies and practices are a reasonable and valid exercise of the police power delegated to the municipality by the state legislature. Defendant further asserts it is not a developing municipality within the terms of Mt. Laurel; rather it is a historical, rural and agricultural community with serious environmental and ecological problems. This position is fortified by the state policy to preserve New Jersey's best agricultural land of which Cranbury is recognized to have an abundance. However, if Cranbury is found to be a developing community because of its location within a particular region the above stated facts present peculiar circumstances which meet the burden of proof required by the Mt. Laurel decision to allow an exception to the dictates of that case. Furthermore, if Cranbury Township is found to be a part of an expanding region as conceived of in Mt. Laurel, such region must be defined as all of Northeastern New Jersey.

The basis for the relief sought by Plaintiffs is founded upon an antiquated assumption that so called "natural forces" must be accommodated and fails to comprehend the need for adequate planning and the discretionary character involved in such an undertaking which is clearly outside the judicial arena.

has occurred in the suburban parts of the County. Much of the growth in employment has been in low- and moderate-wage jobs; most of the population growth has consisted of white, middle-income persons and families. Most of the housing that has been made available has been inadequate for plaintiffs and the class they represent, in terms of number of bedrooms and rental and sales prices. This has resulted in the systematic exclusion of low- and moderate-income persons, white and nonwhite, from the defendant communities. Plaintiffs contend that the defendants' liability for this economic and racial exclusion will be established by the following facts:

(i) each defendants' exclusionary zoning and other land use policies and practices.

(ii) statistical information on the past and present population, racial characteristics, income levels, housing type, and employment patterns of the suburban defendants as compared to the central cities of New Brunswick and Perth Amboy.

(iii) projections of the growth of employment opportunities, population increases and housing needs throughout Middlesex County;

(iv) projections of housing need in each defendant municipality to provide adequate housing for its current residents and for low- and moderate-income persons expected to reside there because of employment opportunities.

(b) Legal Contentions

Plaintiffs rely on the principles enunciated by the New Jersey Supreme Court in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) and on various federal court cases interpreting Title VIII of the 1968 Civil Rights Act and related federal civil rights provisions. The New Jersey Supreme Court stated that municipalities must make "realistically possible" various types and sizes of dwelling units to satisfy the needs of low- and moderate-income families, and that the failure to provide such opportunities is presumptively unlawful. The Court also stated that certain zoning and other land use restrictions specifically detailed in the opinion are presumptively invalid. Plaintiffs contend:

(i) that if a defendant municipality is shown to maintain at least one of these presumptively invalid land use restrictions, plaintiffs have satisfied their burden of making out "a facial showing of violation," shifting the burden to the defendant municipalities to justify these restrictions through "peculiar circumstances" which dictate continued maintenance of such regulations.

(ii) that, in addition, Mt. Laurel outlaws such other practices that in fact prevent provision of low- and moderate-income housing. Proof that such other practices are maintained also makes out a "facial showing of violation" and shifts the burden to the defendant municipalities. Among



these other practices is the failure of a municipality to take the steps necessary to facilitate provision of low-income housing, including establishment of a local public housing agency;

(iii) that the zoning and other land use policies and practices are racially discriminatory, in violation of 42 U.S.C. §§1981, 1982, and 3601, et seq. , and the Thirteenth and Fourteenth Amendments to the United States Constitution.



submitted that Helmetta has met its burden under Mt. Laurel.

The Borough of Helmetta also believes that if the plaintiffs are successful then it is incumbent upon the Court to fashion an appropriate remedy. The Borough believes that even if its zoning ordinance were to be changed it would nevertheless not have a multitude of applications for building permits, if any were received at all; this, too, relates to the question of whether the plaintiffs have standing to sue.

The Court in Mt. Laurel stated that exclusionary practices were maintained in order to keep down local taxes on property people, either within or without municipal boundaries

Carteret has properly zoned for industrial ratables as part of a reasonably comprehensive plan for the zoning of the entire municipality.

Carteret has an established residential character which should be preserved in order to maintain the value of property.

Low and moderate income housing is available in the Borough of Carteret in the same proportion to low and moderate housing needs in the region as the low and moderate income population of Carteret is to the total population of Carteret.

(c) That no plaintiff has ever applied for a pad or space to accomodate a housing trailer in the Borough of Helmetta.

(d) That no plaintiff has ever been refused occupancy as a tenant in an apartment dwelling situated in the Borough of Helmetta.

(e) That no plaintiff resided in the Borough of Helmetta in the years 1974 and 1975.

Defendant, Borough of Helmetta, has admitted certain things which are requested by the plaintiffs and those admissions are incorporated by reference as if set forth in length herein.

3-4. FACTUAL AND LEGAL CONTENTIONS:

HELMETTA

The Borough of Helmetta takes the position that it presently is meeting its fair share of regional low and moderate income housing needs. The Borough has a population of under 1,000 persons and the type of existing housing reflects a wide choice with respect to those residents and the needs of the surrounding region. Over eighty (80) percent of the single family homes in the Borough sell for under \$35,000.00. The entire Borough has an area of 512 acres, a large portion of which is low swampy land with a high water table. Middlesex County is condemning the majority of vacant land in the Borough for park purposes, approximately 200 acres. Further, there are no sewers or City water supply in Helmetta. Helmetta provides only one elementary school for its residents and that only takes care of students until the fifth (5th) grade.

It is submitted that the corporate plaintiff has no standing to institute the within action on the Federal claims pursuant to Warth v. Seldin, 43 USLW 4906 (1975). The Borough further contends that Construction Industry Association of Sonoma County v. City of Petaluma, 375 F.Supp. 575 (N.D. Cal. 1974), affirmed, 44 USLW 2093 (9th Cir. 1975) controls with respect to the rights of builders, potential residents, and land owners and the inherent zoning power of the municipality.

The Borough believes that it is exempt from the Supreme Court's opinion in Southern Burlington County N.A.A.C.P. v. Mount Laurel Township, 67 NJ 151 (1975). It believes that it, rather, comes under the aegis of Segal Construction Company v. Zoning Board of Adjustment of Wenonah, 134 N.J. Super 421 (App. Div. 1975) wherein a decision was rendered which eliminates municipalities which are not of "sizeable land area" from the decision in Mt. Laurel.

Mt. Laurel requires a developing municipality by its land use regulations presumptively to make a realistic and appropriate variety in choice of housing. It is submitted that Helmetta is not a developing municipality, but if Mt. Laurel applies then the Borough's fair share of present and prospective regional needs applies solely to low and moderate income housing. It is then

FACTUAL AND LEGAL CONSIDERATIONS ON BEHALF OF THE BOROUGH OF MIDDLESEX

The Borough of Middlesex is situated in the north-western portion of Middlesex County. It is bounded on the north and west by the municipalities of South Bound Brook, Donald Brook, Bridgewater and Edison, all of which are located in Somerset County and is bounded on the south by the Township of Plainfield. The Borough is a developed municipality wherein 80% of the total land area of the municipality is developed for public or private purposes. In addition, of the 300 acres of land in private ownership and as yet undeveloped, considerable amounts of same are classified as flood hazard areas and, therefore, development is severely restricted.

Approximately 107 plus acres, which is slightly less than 5% of the total land area of the Borough is used for commercial purposes. Eleven per cent of the total land area is used for industrial purposes. (Attached hereto is Exhibit entitled "Table 1" showing existing land uses in the Borough of Middlesex as of May 1973.)

With respect to the land in the Borough of Middlesex which has been developed, 48.9% has been developed as residential land, 5.9% has been developed commercially, 13.5% has been developed for industrial purposes, 8.7% has been developed for public and quasi-public uses and 26% has been developed for streets and railroads.

As can be seen from the table which is attached hereto, the Borough of Middlesex is a single family residential community bounded on the north by the Edison Brook and on the south by the Passaic River. Of the total land area of 300 acres, 49.5% is used for single family residential purposes. In addition, the single family residential development consists of 100 acres of land which has been developed for residential purposes (single family and multi-family units).

The area along Lincoln Boulevard, East of Southbrook Road, which area is not generally developed, is a developed area which has existed in this area for further development.

Business development exists along Lincoln Boulevard. This was developed primarily as an area for single family and multi-family dwellings in the area. The area is now being developed for commercial purposes, although the area is still primarily residential. The area is still being developed for commercial purposes.

Railroad right of way. Relatively small amounts of vacant land exist within the industrial district north of the railroad line and further, the vacant land areas north of the railroad zoned for industrial uses are restricted as to future development owing to flood plain and property access considerations.

There is considerable vacant land areas south of the railroad lines zoned for industrial development. In many cases, the vacant areas are considered future expansion areas of existing industrial uses. Several industrial operations occupy large acreage parcels and over a period of time, it is anticipated that expansion will take place at the industrial sites.

The location of the bulk of all public land area is along the Bound Brook and the Ambrose Brook, which run in a southerly to northerly direction as tributaries to the Green Brook. With minor exceptions, the public lands along Ambrose Brook are flood plain areas. Substantial portions of the public lands along the Bound Brook are also flood plain areas. However, considerable public acreage located to the West of Bound Brook and to either side of Mountain Avenue are not subject to flooding.

The Borough of Middlesex, therefore is predominantly a residential community featuring two corridors of industrial and commercial development running in an east-west direction along the major traffic and transportation corridors within the municipality. The two major traffic corridors are Route 28 and the New Jersey Central Railroad.

The majority of all vacant land not subject to flooding (as per the flood hazard map of the Borough Ordinance #583) are located in the industrial districts along the New Jersey Central Railroad right of way.

The Zoning Ordinance of the Borough of Middlesex provides for eight different zones. The Borough Zoning Ordinance permits two family residential development and conversion of single family residential homes to two family homes in the R-60(B) residential district. In most cases, the area of two family residential development is located within the R-60(B) zone. However, there are other locations wherein a predominance of two and three family residential buildings exist, although zoned otherwise. (In most cases in the R-60(A) zone or the general business zone).

The locations exhibiting a one and two family residential character not included in the R-60(B) zone are as follows:

- a) residential development located between Route 28 and Rock lane.
- b) residential development located between Lincoln Avenue and Parker Street
- c) residential development east of Pond Street between Runyon Avenue and Bound Brook Road

An R-4 high-rise residential zone is located in the approximate geographic center of the Borough. The district extends from Mountain Avenue westerly to Woodland Avenue. Marlborough Avenue crosses through the center of the aforesaid district. The portion of the R-4 district located between Marlborough and Mountain Avenues is currently carried as tax-exempt land and owned by the Borough. However, considerable litigation involved with (1) sale of this property by the Borough to private developers and (2) ultimate utilization of said property has existed. Based upon current estimates, the subject area will ultimately be used for both multi-family and commercial purposes. The section of the R-4 district located west of Marlborough Avenue used for multi-family and single family residential purposes. The area located south of Hancock Street is developed exclusively for single family residential and owing to the very limited amounts of vacant land (two lots), a replacement of single family residential homes by new multi-family construction is highly unlikely. Single family residential dwellings are not a permitted use in the R-4 district.

There are five large garden apartment complexes located within the Borough of Middlesex. The largest of these is Middlesex Village which has a total of 218 rental units. The four other garden apartment complexes are Hamiltonian Apartments with 140 rental units; Hampton Gardens with 120 rental units; Grammercy Gardens with 76 Rental Units and Parkbrook Apartments with 42 rental units. The total number of garden apartment rental units in the Borough of Middlesex at the present time, therefore is 596.

The Borough of Middlesex has experienced substantial sustained land development over the last twenty five year period. The population of the municipality has increased from approximately 6,000 persons in 1950 to nearly 16,000 persons today. The sustained rate of residential development within the community experienced from 1950 to 1970 has decreased sharply in the past five year period. The following table shows the number of dwelling units constructed in the Borough from 1970 through 1974.

**HOUSING CONSTRUCTION BY NUMBER OF DWELLING UNITS
BOROUGH OF MIDDLESEX
1970 - 1974**

Year	Single Family	Two Family	Three or more Family	TOTAL
1970	17	6	0	23
1971	20	8	0	28
1972	16	0	0	16
1973	14	0	0	14
1974	20	0	0	20
Total 1970-1974	87	14	0	101

A sharp decline in the amount of residential dwelling construction is a result of the extremely limited amounts of buildable land suitable for residential construction as well as the economic depression associated with the housing industry during this same time period.

According to the 1970 census figures, the Borough of Middlesex had a total population of 15,038 people, which was broken down as 14,769 whites, 233 negroes and 36 others. According to those same census figures, there were 3,497 single family dwellings in the Borough of Middlesex and of these 7 were valued under \$15,000; 53 were valued between \$15,000 and \$25,000; and 1,485 were valued between \$25,000 and \$35,000; and 1,892 were valued over \$35,000.00.

According to these same 1970 census figures, there were a total of 4,349 housing units located in the Borough of Middlesex and, of these, 3,266 were owner occupied and 1,022 were renter occupied, which indicates that approximately one fourth of the units located within the Borough of Middlesex are renter occupied.

The Borough of Middlesex has commissioned its Planning Consultants to do a comprehensive re-examination of the land use plan and policies of the municipality as part of its ongoing comprehensive planning program. One of the unique factors affecting the industrial land of the Borough of Middlesex is the fact that the Middlesex industrial base is characterized by high hazard industry. Due to the high hazard nature of many of the existing industrial uses, protection to residential areas and provisions for the general public safety requires that the industrial areas contain substantial physical separation from residential areas.

Defendant, Borough of Middlesex, maintains that the principals of the Mount Laurel decision does not apply to the Borough of Middlesex, taking the position that the Borough is basically a fully developed municipality. The Borough further takes the position that its zoning ordinance is designed to preserve the character of a fully developed community and all zoning provisions are authorized under the criteria set forth under the zoning statutes. The Borough of Middlesex provides a large variety of choice of housing for all categories of people. There are no provisions in the Middlesex Zoning Code that discriminates against any race or economic class.

The rental range can be summarized as follows:

\$100 to \$149	\$150.00 to \$199.00	\$200.00 to \$249.00	\$250.00 and over
None	109	457	78

According to the 1970 census, the median family income in the Borough of Middlesex was \$12,258.00.

The Borough of Middlesex further questions whether the

Plaintiffs constitute a proper class due to the fact that it is combining both low income persons and moderate income persons and Defendant raises the question whether the interests of these two classes of persons are sufficiently diverse so that the Plaintiff representatives cannot represent both interests adequately.

The Borough of Middlesex further takes the position that the Corporate Plaintiff lacks the standing to institute suit in connection with any Federal claims under the rationale set forth in the recent United States Supreme Court case, Robert Warth et al vs. Ira Selvin 43 U.S.L. Week 49: 06(U.S. June 25 1975). It is also submitted that the Plaintiffs have not sought to rent or purchase in Middlesex Borough and therefore, lack standing to institute this suit. The Borough of Middlesex further contends that Construction Industry Association of Sonoma County v. City of Petaluma, 375 F.Supp. 575(N.D. Cal. 1974), affirmed, U.S.L.W. 2093(Ninth circuit 1975) controls with respect to the rights of builders, potential residents, and land owners and inherent zoning power of the municipality.

The Borough of Middlesex contends that it is not a developing municipality, as was the case with Mount Laurel, and takes the further position that it is a municipality which is not of "sizeable land area" and thereby is not governed by the Mount Laurel decision. Segal Construction Company v. Zoning Board of Adjustment of Wenonah 134 N.J. Super 421(App.Div. 1975).

The Borough of Middlesex further takes the position that any substantial increase in population beyond that presently provided for by its present ordinances would prevent the establishment or preservation of "green belts" within the municipality.

TABLE I

Existing Land Use
Borough of Middletown, May 1975

	<u>Acres</u>	<u>% of Total Land</u>	<u>% of Developed Land</u>
<u>RESIDENTIAL</u>	<u>816.78</u>	<u>36.3</u>	<u>44.6</u>
Single-Family	743.52	33.7	43.3
Two-Family	33.42	0.9	1.1
Apartments	39.44	1.7	2.1
<u>COMMERCIAL</u>	<u>107.74</u>	<u>4.9</u>	<u>5.9</u>
General Business	40.70	1.9	2.3
Office Professional	3.37	0.2	0.2
Wholesale/Nursery	54.34	2.4	2.9
Automotive/Gas Station	9.33	0.4	0.5
<u>INDUSTRIAL</u>	<u>249.67</u>	<u>11.1</u>	<u>13.5</u>
Heavy Industrial	193.70	8.6	10.5
Light Industrial	55.97	2.5	3.0
<u>QUASI-PUBLIC</u>	<u>16.45</u>	<u>0.7</u>	<u>0.9</u>
<u>DEVELOPED PUBLIC</u>	<u>144.01</u>	<u>6.4</u>	<u>7.8</u>
Recreation	93.81	4.2	5.1
Other	50.20	2.2	2.7
<u>RIGHTS-AWAY/WATER</u>	<u>519.88</u>	<u>23.2</u>	<u>28.0</u>
Street and Water	443.76	19.9	22.8
Railroad	57.12	2.3	5.2
New Jersey Central	45.25	2.0	2.4
Del. & N. Y. Valley	35.57	1.6	1.9
Misc. Loading	16.33	0.7	0.9
<u>TOTAL DEVELOPED</u>	<u>1,853.98</u>	<u>82.7</u>	<u>100.0</u>
<u>VACANT LAND</u>	<u>386.02</u>	<u>17.3</u>	<u>-----</u>
Private	300.63	13.5	-----
Public	85.39	3.8	-----
<u>TOTAL LAND</u>	<u>2,240.00</u>	<u>100.00</u>	<u>-----</u>

SOURCE: E. Eugene Cross Associates

FACTUAL AND LEGAL CONTENTIONS
ON BEHALF OF THE TOWNSHIP OF
EAST BRUNSWICK.

It is submitted that the corporate plaintiff has no standing to institute suit on Federal claims under the recent U.S. Supreme Court case of Warth v. Seldin, decided on June 25, 1975, 43 Law Week 4906. In addition, under the Petaluma case, East Brunswick may phase its growth over a long period of time.

East Brunswick takes the position that it presently is meeting its fair share of regional low and moderate income housing needs. It further contends that it provides a wide choice and variety of housing including very small homes on very small lots, rental apartments, condominiums, mobile homes, middle income housing and luxury single family housing. There is very little dilapidated housing. Much of the vacant land remaining in East Brunswick serves as an intake and recharge area for a water supply which is essential not only to East Brunswick but to many communities in Middlesex and Monmouth Countys. The County of Middlesex has acquired several hundred acres for Jamesburg Park. Approximately 120 acres of land indicated on the zoning maps to be P-1 Industrial, in fact are the subject of a variance obtained by Joaldan, Inc. which will permit the construction of not more than 180 single family homes.

It is submitted that East Brunswick presently has ample existing housing on lots with 50 foot widths and less than 1,000 square feet of living space. Accordingly, it is meeting its fair share of regional needs and is free to zone the remaining vacant land in such a way as to create a balanced community.

As distinguished from the Mt. Laurel case, there is no section or substantial portion of East Brunswick's population living in substandard accommodations. There is no evidence that segments of the population residing in low and moderate income areas of the Township of East Brunswick desire new or better housing within their means.

The Court in Mt. Laurel stated that exclusionary practices were maintained in order to keep down local taxes on property without regard to non-fiscal considerations with respect to people, either within or without municipal boundaries. East Brunswick is prepared to forego ratables and advantages of property in order to protect the environment and preserve a valuable aquifer recharge area.

The Mt. Laurel opinion requires a developing municipality by its land use regulations presumptively to make realistically possible an appropriate variety and choice of housing. It is submitted that the municipality's fair share of present and prospective regional needs applies solely to low and moderate income housing. Regional needs do not apply to "a wide choice and variety of housing" including housing for those of middle income.

East Brunswick presently has cluster zoning and subdivision ordinances which permit economical development of land.

If the Court should determine that the plaintiff has made a facial showing of a violation of substantive due process or equal protection, East Brunswick can establish a valid basis for its action based upon ecology and environment.

East Brunswick has properly zoned for industrial ratables as part of a reasonably comprehensive plan for the zoning of the entire municipality.

Special circumstances exist in East Brunswick which would have an effect on the fair share of housing units to be met by the Township. The development of much of the land in question would create a substantial and very real danger and impact on the water supply for the region. The regulations adopted by East Brunswick are reasonably necessary for public protection of a vital interest.

With regard to zoning for industrial uses, East Brunswick's ordinance is reasonably related to present and potential uses. The New Jersey Turnpike Authority has proposed a widening between Exit 9 and a new exit to be known as 8B with an interchange at or near the southern border of the Township. The County of Middlesex has proposed the widening of Cranbury Road to a four lane highway with a center median. If either of these proposals becomes a reality, the vacant land presently zoned for industry may well be utilized for that purpose.

East Brunswick has an established residential character which should be preserved in order to maintain the value of property.

Low and moderate income housing is available in the Township of East Brunswick in the same proportion to low and moderate housing needs in the region as the low and moderate income population of East Brunswick is to the total population of East Brunswick.

East Brunswick has created a natural resources inventory which classifies vacant land areas in terms of suitability for

development. Much of the vacant land remaining in East Brunswick is unsuitable for further development.

In the event that the court finds that East Brunswick's zoning practices are in any way invalid, it is submitted that the Township is in the midst of master plan review and should be given a reasonable time within which to complete that review, but in any event not less than one year. In any event, the Township should not be required to eliminate all minimum lot, size, or density requirements not mandated by health statutes or regulations. If the Township is required to revise its zoning regulations, it should be permitted to assume that a degree of subsidization will be forthcoming.

FACTUAL AND LEGAL CONTENTIONS ON BEHALF OF THE TOWNSHIP OF EDISON

The geography of Edison may be generally described as being centrally located within the County of Middlesex, which in turn is centrally located within the State of New Jersey. Although it encompasses in excess of 32 square miles of area, it completely surrounds the Borough of Metuchen, which is more or less situated in its center.

One of its boundaries is the Raritan River that contains a deep water channel for most of its length, where its channels are adjacent to the Township. It is served by three major railroads, all of which have mainlines, trunks and spurs (many of which were installed and extended by the railroad and the Federal Government to facilitate the movement of troops to the Port of New York from what use to be Camp Kilmer during World War II). The Penn Central mainline runs through the heart of the Township with an Amtrack stop on the Woodbridge-Edison line, a major commuting stop in Metuchen and a local stop a few miles to the West of Metuchen. Route #1 and the New Jersey turnpike traverses the long axis of the Township, together with a great number of lesser, but heavily trafficked arteries, Route #9, #35 and the Garden State Parkway come within scant feet of the Woodbridge-Edison border with many of its exchanges and access roads directly leading in the direction of Edison. The New Jersey Turnpike has a major exchange in Edison. Route #287 joins up with major highways to the South and to the North as well as the New Jersey Turnpike at the Edison interchange.

As will be noted later, Edison represents an industrial as well as a residential center, but nevertheless, serves as a corridor for East-West and North-South traffic.

The post war development of the Township of Edison was not as swift or as loose as many large municipalities experienced in the post World War II years. The oldest sections of the Township remain virtually unchanged in character and use during the stages of development to the present date. In the process of expansion (within the last 18 years), the Township built and operates, together with its older schools, no less than 12 new institutions of learning. The Middlesex County College is within the Township and it must be noted that the expansion of Rutgers, The State University, has been in a direction toward the Edison borders, so that its newest facilities are vitually at the Township's lines.

The capital improvement programs of the last 18 years (in addition to the building of over a dozen new schools), encompasses projects that saw the building of a substantial number of miles of new roads, storm sewers and sanitary sewers.

A Master Plan for the entire Township was undertaken in the late 1960's, and after many revisions, culminated with its implementation by the adoption of a new Zoning Code in December, 1972, which has been amended from time to time down to the present date.

The Township's Building Code is largely based on the BOCA Code, which is amended annually and there is nothing unique about the minimum requirements in the building code.

It may fairly be stated that of the open spaces remaining within the Township, much of it is in a marshy area bordering the railroad and much of it is in the northern sections of the Township that are not yet sewered and where drainage is a problem. In that same geographic location, a large Urban Renewal Project is in progress, which presently contains low income housing in existing buildings, and contracts have been let for the early stages of a project which contemplates the eventual building program that will accommodate in excess of 400 dwelling units in multi and single family dwellings. (All of which is funded by the Federal Department of Housing and Urban Development).

While the Zoning Ordinance does not list trailer or mobile homesites as a permitted use, there are several in operation within the Township as non-conforming uses.

The historical and current consideration for a viable, equitable and legal zoning plan are honestly aimed and practically oriented; moreover, there is nothing in the zoning scheme that violates in letter or in spirit any of the constitutional guarantees of equality. Stated in another way, there is nothing in motive or in fact contained in the Zoning Code that discriminates against race or economic classes.

In evaluating those areas set aside for industry, it must be borne in mind that Edison's proximity to highways, rails, deep water, the Newark Airport and the labor market makes it uniquely attractive to industry. It must also be borne in mind that the locations of large and basic industries in the area, together with Edison's proximity to institutions of advanced learning (Princeton, Rutgers, the Middlesex County

College, Seton Hall, and Rider, makes it uniquely attractive to research centers. In short, allocation of sufficient industrial zoning merely expresses a realization of the land resources and is not and was never intended to restrict other legitimate land uses.

Another unique attribute lies in the expanse of Edison Township, in that the various land uses need not intrude upon each other.

Finally, the Township is truly concerned that it might conceivably be ordered by the Court to set aside land for low cost housing without any remedy that could or would permit the eventual development and make that housing a reality. In effect, it is a jeopardy that if only half measures appear in the remedy, that land might conceivably be relegated (for practical purposes) to fallowness.

3-4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT, BOROUGH OF MILLTOWN

The Borough of Milltown is one of the smallest municipalities in Middlesex County consisting of only 1.6 square miles with a population of approximately 6,470.

The facts pertaining to Milltown reveal a Borough with an established character which should be preserved. A fully developed community consisting primarily of one-family, owner occupied residences with significant multi-family housing spread throughout the community; a compact downtown business section and a comparatively small industrial area basically separated from the residential portions; and zoning regulations consistent with the actual uses in the Borough, with appropriate zones for single-family, multi-family, business and industry. Physically, the Borough has a low profile where structures conform to the 35 foot height limitation; and the small amount of vacant land still available for residential use is widely dispersed and thus unsuited for mass housing projects or apartments. Population wise, the community already represents a mix of moderate and low income people.

3-4. FACTUAL AND LEGAL CONTENTIONS

It is submitted that the corporate plaintiff has no standing to institute suit on Federal claims under the recent U.S. Supreme Court case of Warth vs. Seldin, decided on June 25, 1975, 43 Law Week 4906. It is also submitted that the plaintiffs have not sought in Monroe Township and therefore, have not standing under the Warth vs. Seldin case, supra. In addition, under the Petaluma case, Monroe Township may phase its growth over a long period of time.

Monroe Township takes the position that it is primarily a farm area and some development in housing and industrial needs. It is presently in the position of conducting an ecological inventory and drawing up of a new master plan. Upon completion of a master plan, appropriate zoning ordinances will be adopted to conform with said plan. The continuation of this suit against the Township of Monroe would be a waste of the Court's time until such time as Monroe Township has completed its master plan and has adopted a new zoning ordinance.

Monroe Township is approximately 43 square miles and is located on the outer fringe area of Middlesex County. It is bound by the municipalities of South Brunswick, Helmetta, Spotswood, Jamesburg and Madison Township. To the south and east it is bound by the municipalities in both Monmouth County and Mercer County. Parts of Monroe Township may be part of the region encompassed by the city of Trenton, Heightstown, East and West Windsor. Another portion of Monroe Township is encompassed by the region of Freehold and Asbury Park.

A large percentage of Monroe Township has soil consisting of sand and gravel and is a primary in-take and re-charge area for water supply not only for the Township of Monroe, but for many of the adjoining communities. Portions of Monroe Township are located in the Englishtown sands and also in the Farrington sands, both being a water supply for municipalities such as South River, East Brunswick, Englishtown, Freehold, South Brunswick and many other communities. Within the past five (5) years, Monroe Township has created the Monroe Utilities Authority, which is presently in the process of developing a sewerage and water system throughout the Township as well as Jamesburg and Helmetta. All of the water supplies for the Township of Monroe come from wells located either in the Englishtown Sands or the Farrington Sands and supplies the wells of Forsgate Water Company and wells developed by the Monroe Utilities Authority.

There is presently proposed to construct in the Township of Monroe, either the Governor Driscoll Expressway, which is a spur of the New Jersey Turnpike or mass transit system either of which will go to the City of Toms River. This highway or transit system as well as all of the aforesaid facts are being taken into consideration by the Municipal Planner and the Planning Board of the Township of Monroe in order to ascertain the needs and requirements of the Township and its orderly growth in order to bring about a zoning ordinance which should meet the requirements of the law.

3-4 FACTUAL AND LEGAL CONTENTIONS ON BEHALF OF THE TOWNSHIP
OF NORTH BRUNSWICK:

The Township contends the plaintiffs have no standing to maintain this suit both generally and individually as to North Brunswick.

The Township of North Brunswick takes the position that its appropriate ordinances, policies and practices have resulted in its offering, within its limitations imposed by geography, topography, etc., its fair share of low and moderate housing. Since region in the context of this litigation has yet to be defined, there cannot be advanced at this time contentions as to actual proportions. The Township does contend, however, that region is not synonymous with the area encompassed by the defendants in this action.

The Township contends that substantial dwellings, if they exist at all, are inconsequential in the Township. As to other housing, the Township has a mix of old and new, including very small homes on very small lots as well as ample multiple dwelling units in all economic ranges. It has a public Housing Authority. There is presently underway a Senior Citizens Housing Project under the New Jersey Housing Legislation.

There has been no indication of housing needs being frustrated by the zoning policies and existing housing pattern in North Brunswick. The ordinances are a valid exercise of police power and are appropriate to the Township in its present state of development. The Township is not a developing municipality in the same context as was Mount Laurel.

The Township has unique characteristics in consideration of which its ordinances have been formulated in a reasonable manner. The exercise of discretion by the governing body in these policies has been proper and within the legislative intent. The governing body is reviewing all aspects of the zoning ordinance.

PRETRIAL MEMORANDUM OF DEFENDANT, TOWNSHIP OF PISCATAWAY (CONT'D)

Re: Urban League of Greater New Brunswick,
et al. -vs- Mayor and Council of the
Borough of Carteret, et al.
Docket No. C-4122-73

3-4. FACTUAL AND LEGAL CONTENTIONS.

Jean White, a welfare recipient, the only plaintiff who resides in Piscataway, has withdrawn from the suit. None of the other plaintiffs reside or work in Piscataway. None of the plaintiffs hold title or have ever held title to or have any interest in any real property in the Township. None of the plaintiffs pay taxes to Piscataway. None of the plaintiffs has ever sought a building permit or a variance from Piscataway for the construction of housing. None of the plaintiffs ever applied for a pad or space to accommodate a trailer or mobile home in Piscataway. None of the plaintiffs has been refused occupancy as a tenant in any apartment dwelling or any residence or dwelling in Piscataway. There are vacant dwelling units available in Piscataway.

On March 18, 1975, Piscataway adopted a resolution that there is a need for moderate income housing in said municipality and the same has been filed with the secretary of the State of New Jersey Housing and Finance Agency.

On May 20, 1975, Piscataway approved the First Baptist Church for New Market as a sponsor for Senior Citizen Housing Project with authority to take such steps as necessary to implement senior citizen housing in Piscataway.

On January 7, 1975, Piscataway adopted a resolution that it desires to cooperate with the County of Middlesex to implement an application under the urban county approach, and the authority and Mayor Ted H. Light entered into necessary agreement with the County of Middlesex in order to make application for funds.

On May 30, 1975, Piscataway entered into an agreement with the County of Middlesex for the establishment of cooperative means of conducting certain development activities (H. U. B. Program).

Until June 5, 1974, Piscataway entered into a contract with Suburban Planning Associates in connection with the preparation of:

- A. Revised and updated Master Plan.
- B. Housing study of the Township.

C. Land subdivision ordinance which will lead to amendments or to a new zoning ordinance.

There are peculiar circumstances relating to Piscataway which requires the maintenance of the zoning ordinance and the land use provisions but complete facts cannot be given at this time and will be upon the report and recommendation of the Suburban Planning Associates. The following are part of the facts:

Location of part of Rutgers University in this municipality, an instrumentality of the State of New Jersey for the purpose of operating the State University has approximately 12% of the total acreage of the Township on which are located institutions on Livingston campus and Busch campus and elsewhere in said Township, Rutgers football stadium, apartments, dormitories, and single family housing.

Rutgers University has a substantial number of research facilities, centers, laboratories and institutes located on the two campuses in Piscataway. A list of those facilities is found below:

Livingston (Kilmer) Campus

Bureau of Government Research
Center for Urban Policy Research
Beck Hall - Chemistry Laboratories

Busch (University Heights) Campus

Center for Alcohol Studies
Institute for Environmental Studies
Bureau of Biological Research
Institute of Microbiology
Bureau of Engineering Research
(Civil, Mechanical, Environmental,
Thermal, Biological, Chemical,
Mechanics, and Materials, etc.
Engineering Laboratories)
Marine Sciences Center
Radiation Science Center
Institute of Mental Health Sciences
College of Pharmacy
College of Medicine & Dentistry of N. J.

Hill Center (Math, Statistics, Computers)
Soil Mechanics Laboratory
Soil Stabilization Laboratory
Soil Dynamics Laboratory
Rock Mechanics Laboratory
Mineral Research Laboratory
Geology Laboratory
Physics Laboratory
Nuclear Physics Laboratory
Wright Chemistry Laboratories
Nelson Biological Laboratories
Polymer Research Laboratories
Concrete Structures & Material Laboratory

Also in the municipality are a County Vocational School, the County Park and land belonging to the United States.

The defendant further contends that none of the plaintiffs have any standing to bring this suit; that Rutgers University and its affiliate institutions within the borders of Piscataway, the County Vocational School, the County Park, land belonging to the United States, are not subject to the zoning ordinance of Piscataway; that there are peculiar circumstances which require maintenance of the zoning ordinance for land use provisions in Piscataway; that the region of which Piscataway is a part is not confined to Middlesex County, but includes the surrounding municipalities, specifically, Franklin Township; that the revised zoning ordinance of the Township of Piscataway adopted on May 23, 1972, and the amendments thereto was a proper exercise of the zoning power by said Township; and said ordinance is in all respects reasonable and within the proper scope of its zoning power and is valid and in compliance with all statutory law and does not violate provisions of the State or Federal Constitution; that neither Piscataway nor any of the other defendant municipalities have any authority to allocate or fix the amount of rent paid to welfare recipient; as far as housing needs are concerned, that Piscataway is a balanced community; that its zoning ordinances, land use and practices are not of an exclusionary nature nor discriminatory.

This defendant further contends that the plaintiffs have failed to exhaust their administrative limitations.

This defendant further contends that the plaintiffs are not entitled under the law to have low or middle income housing units made available to them nor can the Court compel the defendant to join with any other defendant for any joint plan or method or manner to pursue in order to adopt or change any provisions of its zoning ordinance.

7. LEGAL ISSUES AND EVIDENCE PROBLEMS.

Validity of revised zoning ordinance of Township of Piscataway adopted May 23, 1972, and amendments thereto; defendant's housing, zoning, land use ordinance controls, plans, policies and practices; standing of the plaintiffs to institute and prosecute this action; plaintiff's failure to exhaust their administrative remedies; failure to state a cause of action wherein relief can be granted by this Court; jurisdiction of the Court to direct by judicial decree how a municipality can be zoned or how it should use its discretionary powers; is there a justiciable question; was the defendant's action approximate cause of plaintiffs' alleged wrongs; the Court's jurisdiction to compel this defendant to join with any other defendant for any joint plan or the manner or method to pursue in order to adopt or change any provision of its zoning ordinance; are the provisions for decent, adequate housing or opportunities therefor a common state purpose and obligation of the State of New Jersey and not simply a local municipal matter; would the relief requested by the plaintiffs place upon this defendant unequal or discriminatory tax burden for the financing of housing as a common state purpose; would the imposition of the burden of financing housing on Piscataway be arbitrary, capricious and unreasonable.

3-4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT, Township of
Plainsboro

The Township of Plainsboro maintains that it has made "realistically possible" a variety of housing and is presently meeting its fair share of the regional need for low and moderate income housing.

The Township of Plainsboro provides within its borders for apartments, condominiums, townhouses, single family detached housing, clustered single family housing, and its proposed master plan provides for modular housing. Since this suit was instituted and the Supreme Court made its decision in the Mt. Laurel case, a developer who received approval for townhouses was required at the time of construction of those townhouses to show cause why 20% of the total housing units cannot be developed for low and moderate income families whether through Federal or State mortgage or rent supplement or subsidization programs or otherwise.

The 1970 census indicated that the Township of Plainsboro has a few substandard dwellings. The Township of Plainsboro contends that at the time of this action there were no substandard dwellings. The Township of Plainsboro provides the same proportion of low and moderate income housing for the region as the proportion of the low and moderate income housing population of the Township of Plainsboro bears to the total population of Plainsboro.

The Township of Plainsboro is composed of a considerable amount of Class I and Class II farmland and the State of New Jersey has declared through the Blueprint Commission on the Future of Agriculture in New Jersey that it is the public policy of the State that this farmland be preserved. The zone plan of the Township of Plainsboro conforms with the Middlesex County

Master Plan.

Any future development in Plainsboro Township must consider the possibility of pollution to the Millstone River and other environmental and ecological concerns.

The Township of Plainsboro has adopted a comprehensive zone plan which provides for the balance of residential, commercial and industrial uses.

The Township of Plainsboro is presently considering a revision of its Master Plan and Zoning Ordinance to eliminate the bedroom limitation in its apartment zone and to require all developers to show cause why they can't provide a percentage of low and moderate income housing in their development.

RIDER

3-4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT, BOROUGH OF METUCHEN.

The Borough of Metuchen contains 2.9 square miles, and is wholly surrounded by the Township of Edison. The total acreage of the community is 1,880, which, however, includes parks, playgrounds, streets, railroads, etc., leaving a net acreage for development of approximately 1,416. According to the 1970 census, Metuchen's population was 16,031. In 1960 the population was 14,041. The black population of Metuchen increased from 434 in 1960 to 860 in 1970. This percentage of black population is approximately the same as the percentage throughout Middlesex County. Taking size and population into account, Metuchen is the sixth densest municipality in Middlesex County.

Practically all of the 1416 acres which encompass all the private property in Metuchen are fully developed or built upon. The most accurate estimates obtainable reveal only approximately 40 acres of undeveloped land in the Borough. These include 24 industrial acres in the manufacturing zone, of which 20 are non-developable, because they consist of either old railroad rights-of-way, extremely marshy or hilly land, land in a flood plain or with no access in Metuchen. They also include 8½ acres in multi-family zones, with the balance scattered in small lots in the other residential and business areas.

There are approximately 5,000 housing units in the Borough of Metuchen. Of these, about 3,650 are one family dwellings while the balance are two family and multi-family dwellings. Defining multi-housing as containing three or more families, there are approximately 894 multi-family units in Metuchen, which is almost 20% of the total housing units. Owner occupied units comprise about 3,500 of the 5,000 units, while the balance is renter occupied. The R-1 and R-2 zones in which almost all of these one-family units are located, comprise approximately 1,000 acres of Metuchen, and give the Borough the appearance of being primarily a community of single family dwellings. However, the two family and multi-family zones (R-3, R-4, R-5 and B-1A) either have or permit two family and multi-family structures in at least nine different locations in the community. Few, if any, single family, two family or multi-family units exceed 35 feet or 2½ stories in height.

The Borough is criss-crossed by three railroads: The Penn-Central which runs east to west across the center of town; the Lehigh Valley Railroad, and the Port Reading Railroad. Also crossing in the center of town is a major traffic artery, New Jersey Route 27; Route 287 adjoins the southerly boundary line; while Route 1, the New Jersey Turnpike, and the Garden State Parkway are in very close proximity. The 200 fully developed

industrial acres in town are primarily in the northwest and southwest sections of the community, adjoining either Route 27 or the Lehigh Valley Railroad and Penn-Central Railroad. The industry is small and can be characterized as light industry. The business section of town is primarily in the geographical center of the community, with two neighborhood offshoots on Central Avenue and South Main Street. Like the other sections, it is almost fully developed and is a typical small retail business community. As in the residential sector, there are hardly any buildings that do not conform to the 35 feet or 2½ stories height limitation.

The zoning ordinance provides for garden apartments and has special provisions for senior citizen housing. The ordinance and amendments from 1962 to date as affecting multi-family units can be summarized as follows:

<u>Year</u>	<u>No. of Zones</u>	<u>Locations</u>	<u>Use or Type</u>
1962	1 (R-4)	3	Garden Apartments
1963	3 (R-4, R-5, B-1A)	5	Garden apartments High rise apartments
1975	4 (R-2A, R-4, R-5, B-1A)	8	Garden apartments Townhouses Moderate income senior citizen housing (4 stories)

Approximately one-fourth of the 5,000 housing units are renter occupied including 369 two-family units and 894 multi-family units. The values of single family homes can be summarized as follows:

- (a) Single family homes under \$15,000
31
- (b) \$15,000 to \$25,000
286
- (c) \$25,000 to \$35,000
1503
- (d) Over \$35,000
1955

The rental range can be summarized as follows:

Under \$100	\$100.00 to \$149.00	\$150.00 to \$199.00	\$200.00 to \$299.00	\$300.00 +
212	500	521	77	33

According to the 1970 census, the median family income in the Borough of Metuchen was \$13,703.00 for families totaling 4,218. The number of low and moderate income families in the four census tracts comprising Metuchen was estimated to be 1,592, or in excess of one-third of the number of total families. In terms of minority groups, the total number according to the 1970 census was 1,155, which included 860 blacks. The minority population was approximately 7% of the entire community.

In respect to sub-standard or over crowded units, the 1970 census analysis indicates possibly 159 sub-standard units in Metuchen and approximately 205 units which were over crowded. The percentage of black families in such units varied very little with the percentage of blacks to the overall population.

Defendant, Borough of Metuchen, maintains that the principles of Mt. Laurel do not apply to the Borough of Metuchen, as Metuchen has no vacant land for practical purposes, and is a fully developed municipality. Furthermore, any zoning provisions objected to by plaintiffs either do not exclude low, moderate and minority group families, or are legitimate zoning provisions under the criteria of N.J.S.A. 40:55-32, as interpreted by New Jersey courts, since they preserve the character of a fully developed community.

Further, Metuchen meets the Mt. Laurel standards by providing an appropriate variety and choice of housing for all categories of people. The income range of its residents, the value of the dwellings, the rental ranges of its multiple family units, the percentage of renters to owners, the locations provided for townhouses and garden apartments, and its minority group percentage, show that Metuchen is a balanced community.

In accordance with the Order of the Court previously entered after presentation of the facts in respect to Metuchen's

vacant land, the Borough should be removed as a defendant in the case.

RIDER

COVERING 3-4 FACTUAL AND LEGAL CONTENTIONS and
7 LEGAL ISSUES AND EVIDENCE PROBLEMS

THE BOROUGH OF SAYREVILLE HAS AT ALL TIMES MAINTAINED AS FOLLOWS:

1. The following individual defenses as hereinafter enumerated:

(A) Its Master Plan, Sub-Division Ordinances and Zoning Ordinances and particularly its PUD Ordinances have at all times provided fair and reasonable housing needs to meet the legitimate and constitutional rights of the individual plaintiffs, and the alleged Class they represent.

(B) Sayreville submits that the Association not for pecuniary profit has no standing in this suit to raise any claims under the U.S. Federal Constitution and cites the recent U.S. Supreme Court Case of Warth v. Seldin, decided 6-25-75, 43 Law Week 4906.

(C) Sayreville also claims the right under the Petaluma case, to phase in or phase out any changes it may desire in any of the foregoing ordinances, or practices or policies over an extended period of time, rather than to be required to do so by any specific date.

(D) Moreover it asserts that in the event the Courts should determine that Sayreville's ordinances, practices or procedures fail to provide reasonable housing needs for some unspecified class or classes in some specified or unspecified regions, the Borough of Sayreville asserts and will prove that the plaintiffs have failed to establish the existence, size, location or areas covered by any such Class with the degree of particularity required in order to cast upon Sayreville any additional legal or constitutional burdens other than that which it is now carrying.

(E) With respect to such areas of Sayreville's remaining lands which the plaintiff may allege should be made available for low or medium income families, there is the overriding municipal obligation of protecting the Borough and its people as it now exists against the following:

(a) Flooding - Since large areas of the Borough have been incorporated within the flood plain areas as defined by various agencies of the State of New Jersey;

(b) There are also grave drainage problems which render much of its available acreage unsuitable for residential purposes.

(c) Any substantial increase in population beyond that presently provided for by its present ordinances would overtax and drain the available potable water supplied;

(d) And that any untoward or substantial increase would prevent the establishment of preservation of the so-called "green belts";

(e) That Sayreville's present Zoning and Planning Ordinances have not been designed for fiscal purposes nor to achieve or maintain any low tax rate;

(f) None of Sayreville's present ordinances or subdivision ordinances have any specific limitation on their use for residential purposes because of the alleged absence of utilities which might otherwise make them feasible for low or medium income housing requirements.

2. Moreover, Sayreville alleges and will prove at the trial that it has not only dedicated all of its available unimproved areas suitable for residential purposes to that specific purpose, but that over, above and beyond that it has adopted a PUD Ordinance under which it has placed approximately 2500 acres which would normally be unfit for any housing use.

(A) These include the heavily scarred and mined out areas formerly owned by the Sayre & Fisher Company (approximately 800 acres) now PUD; property of The Crossman Company (approximately 500 acres), formerly used for mining of clays and sands, and miscellaneous properties in the same heavily mined category owned by other individuals approximating 1,000 acres, more or less - now PUD.

(B) Moreover, as the Court knows, PUD has the additional virtue and advantages that the developers are required to provide a so-called "mix" wherein said developers are likewise required to commit proper proportions of said lands to industrial uses, commercial uses and open or recreational uses.

(C) Thus Sayreville, by its adoption of PUD and its inclusion in PUD of practically all of its marginal lands which would otherwise be unsuitable for any purpose, has now rendered substantial additional acreage available for the construction of homes in the low and middle income brackets and has thus more than met any constitutional tests which may have been set up by the Mt. Laurel case.

3. In the event that the plaintiffs allege or try to establish that Sayreville has zoned more areas than required for existing industries or the legitimate expansion thereof, this defendant alleges and is prepared to establish and prove that the nature of Sayreville's industries are such that they are in lines of products which it has been established, require constant re-examination, modernization and expansion.

Moreover, Sayreville alleges and will prove that the industries within its borders and particularly the so-called "heavy" industries are of such a nature and character that it would be unwise, improper and possibly unsafe to permit residential areas in either close or near proximity to the active plants.

In particular these industries include the company formerly known as the National Lead Company, now known as N.L. Industries, which has purchased substantial areas surrounding its plant, not only for the express purpose of providing for its ultimate enlargement or expansion, but also for the purpose of establishing a safety buffer zone so that it may not be harassed by individual home owners who may challenge that its operation creates noxious fumes, odors, noises, fire hazards, health hazards and the like.

Similarly, such industries as the E.I. Dupont Co. consists not only of one plant, but two plants, one devoted to the manufacture of laquers and the other devoted to the manufacture of film in very substantial quantities. The Court, I am sure, will take notice of the fact that these products are of a volatile type and the question of a fire hazard is always present to some extent and at least to the extent where the owners of the factories themselves have established, trained and maintained its own fire fighting equipment.

A third or fourth factory is owned and operated by Hercules, Inc. The original name of the company was the Hercules Powder Co. It too has acquired acreage adjacent to it for the same purpose as the other industries mentioned and is in fact seeking to acquire additional acreage which it feels it requires.

In summary of the foregoing, it is respectfully submitted that the land Sayreville has zoned for industrial purposes is an absolute minimum, is not excessive in any respect, and in fact should be increased rather than decreased, and hence any attack on this phase of its zoning is unsound and invalid.

4. By virtue of the foregoing facts, Sayreville takes the position that every available acre presently unimproved is either included in the reasonable industry holdings required by its various

industrial plants to continue in profitable operation, or that it has actually exceeded its requirements with reference to providing additional areas for low and medium income housing by incorporating even its marginal and heavily mined out lands into its PUD ordinance so that every available acre of land suitable for this purpose has been made available for that purpose.

AS TO LEGAL ISSUES AND EVIDENCE PROBLEMS:

Sayreville refers to the facts and allegations set forth in the above Rider covering Paragraphs 3-4 to indicate the legal issues and evidence problems involved so far as the Borough of Sayreville is concerned.