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SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION - MIDDLESEX COUNTY

DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,	:	
Plaintiffs,	:	
v.	:	
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,	:	
Defendants.	:	Furman, J.S.C.

PLAINTIFFS' POST-TRIAL REPLY BRIEF

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INTRODUCTION

This Reply Brief is submitted in response to arguments made by those defendant municipalities filing initial briefs with the Court. This Brief covers eight points:

Point I	- Plaintiffs Have Standing to Maintain This Action
Point II	- Less Populated Defendant Municipalities are not Exempt from the Ruling in Mt. Laurel
Point III	- Plaintiffs Have Established a Prima Facie Case of a Violation of the New Jersey State Constitution by the Defendant Municipalities
Point IV	- Defendant Municipalities are no Longer Permitted, With Impunity, to Prohibit Totally the Provision of Mobile Homes as a Housing Resource for Low and Moderate Income People
Point V	- Defendants are Overzoned for Industrial Use
Point VI	- Defendants have Failed to Meet Their Burden of Demonstrating Peculiar Circumstances to Justify Their Exclusionary Conduct
Point VII	- The Present Efforts of the Defendant Municipalities do not in Fact Meet Their Fair Share of the Regional Need for Low and Moderate Income Housing
Point VIII	- The Defendant Municipalities ALL are Part of Middlesex County, Which is the Relevant Geographical Unit Into Which Radiates the Low and Moderate Income Housing Need of the Larger Region

Plaintiffs wish to call to the attention of the Court that the initial Briefs of defendants Cranbury and Sayreville were filed well after the deadline established by the Court. According to R. 1:6-5(a), briefs may not be filed after the time fixed without leave of Court. Plaintiffs are not aware of any request for such an extension of time, and wish to indicate that they are opposed to any such extension.

POINT I. PLAINTIFFS HAVE STANDING TO MAINTAIN THIS ACTION

Defendants Cranbury, East Brunswick, and Plainsboro contend that the plaintiffs lack standing to sue. Specifically, Cranbury and East Brunswick argue that on the basis of the decision by the Supreme Court of the United States in Warth v. Seldin, 422 U.S. 490 (1975), all federal claims should be stricken. East Brunswick also contends that the plaintiffs do not properly represent a class. In addition, both East Brunswick and Plainsboro argue that plaintiffs lack standing to maintain the action generally. Each of these contentions will be discussed separately.

A. Standing to Pursue Federal Claims

The contention that plaintiffs lack standing to assert their federal claims is precisely the same as the one made by a number of defendants during the summer of 1975 in a Motion for Partial Summary Judgment. In a Memorandum dated September 8, 1975, plaintiffs opposed the granting of that Motion, and the Court, in fact, denied it. Without repeating in detail the various reasons, set forth in that Memorandum, why defendants' contention that plaintiffs lack standing to pursue their federal claims is baseless, plaintiffs here summarize those reasons:

First, the decision by the Supreme Court of the United States in Warth v. Seldin, supra, is not dispositive of the issue whether plaintiffs have standing to press federal claims in the courts of New Jersey. Rather, plaintiffs' standing is determined under New Jersey standards.

The Supreme Court of the United States, in Doremus v. Board of Education, 342 U.S. 429, 434 (1952), strongly indicated that standing to pursue federal claims in state court is properly determined under state standards. There, the Court specifically declined to rule that state courts (there, the courts of New Jersey) could not decide federal constitutional questions under their own criteria for standing, noting only that its own jurisdiction is cast in terms of the "case or controversy" requirement of Article III of the U.S. Constitution. In that case, the New Jersey courts did decide the federal constitutional question. The United States Supreme Court dismissed the appeal on grounds that plaintiffs lacked standing to satisfy the federal "case or controversy" requirement. In so doing, the Court did not question the propriety of the New Jersey courts to determine standing under their own criteria. As the Supreme Court of New Jersey has specifically noted: "The New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases." Crescent Park Tenants Assoc. v. Realty Eq. Corp. of N.Y., 58 N.J. 98, 101 (1971). And as the Supreme Court held in So. Burl. County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) (hereafter Mt. Laurel), plaintiffs such as the ones in the instant case have standing under New Jersey law to challenge the defendants' discriminatory conduct.

Second, plaintiffs argue that even under the more restrictive standard set forth in Warth, plaintiffs have the

requisite standing to maintain their federal claims. In this **case, unlike Warth, plaintiffs allege that the defendants' land use practices are racially, as well as economically,** discriminatory. Plaintiffs also allege a violation of the Federal Fair Housing Act and they challenge specific provisions of the defendants' zoning ordinances. In Warth, by contrast, the plaintiffs did not allege a violation of the Federal Fair Housing Act, nor did the United States Supreme Court find that such an allegation was intended. Further, the Court perceived the complaint as a generalized attack upon the entire zoning scheme, rather than one challenging specific provisions of the zoning law.

B. Plaintiffs Properly Represent a Class

Defendant East Brunswick seeks to show that the plaintiffs do not properly represent the class as certified by the Court: "Low and moderate income persons, both white and non-white, who are seeking and unable to find adequate or suitable housing within their means in the 23 municipalities." East Brunswick attempts to describe each of the plaintiffs in so narrow a fashion as to render them unrepresentative of other persons who are in similar circumstances. Thus, Mrs. Champion is described, not as a person of low income who is prevented from residing in the defendant municipalities because of a lack of standard housing within her means, but rather, as a "Caucasian divorced woman having two children, receiving no child support from her ex-husband, receiving welfare assistance and student grants, attending college on a full-time basis and not holding down a job." East Brunswick Brief at 18-19. On this basis, East Brunswick contends that

Mrs. Champion represents a "de minimus class." Id. at 18. But the key characteristics of Mrs. Champion, for purposes of representing the class certified by the Court, are that she is of low income and is prevented from securing standard housing within her means within the defendant municipalities. The fact that she is divorced, receiving welfare assistance, and attending school, is irrelevant for this purpose.

Defendant East Brunswick also fails to perceive how Kenneth Tuskey represents a class intended to be protected under the Mt. Laurel decision. Mr. Tuskey is quite satisfied with the physical environment of Kendall Park, where he and his family live. Mr. Tuskey's injury lies in the fact that because Kendall Park is an elite, virtually all-white community, he and his family are denied the benefits of living in a racially and economically heterogeneous community, and his children must grow up deprived of the valuable experience of associating with children of other racial and economic backgrounds. Thus, Mr. Tuskey and the class he represents are not the direct objects of the defendants' discriminatory conduct, but they are nonetheless injured by it.

The Supreme Court did not, in Mt. Laurel, deal with the the standing of persons like Mr. Tuskey and the class he represents. There were no such plaintiffs involved in the Mt. Laurel case. Plaintiffs point out, however, that the Supreme Court of the United States in Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972) specifically held that residents of a huge apartment complex, considerably

larger than the community in which Mr. Tuskey resides, had standing to challenge discriminatory conduct even though they were not the direct objects of the discrimination. Thus, even under the restrictive federal standard, plaintiffs such as Mr. Tuskey are accorded standing to challenge discriminatory conduct. Plaintiffs contend that under the more liberal New Jersey standard, Mr. Tuskey and the class he represents clearly have standing.

C. Plaintiffs Have Standing Under New Jersey Standards

Defendant Plainsboro argues that even under the Mt. Laurel decision, plaintiffs lack standing to sue. East Brunswick concedes that plaintiff Cleveland Benson has such standing and limits its attack on the standing of Mrs. Tippett as "questionable." Id. at 19. East Brunswick, as well as Cranbury, also suggests that plaintiff Urban League lacks standing. Plaintiffs argue that all have standing under Mt. Laurel and related decisions.

First, there is no question that plaintiffs Champion, Tippett, and Benson are persons of low and moderate income. They also represent, in combination, residents and non-residents of the defendant municipalities. In addition, they live in substandard housing (overcrowded in the case of Mrs. Tippett and Mr. Benson; poor condition for Mrs. Champion). Further, they have sought, but have been unable to find, suitable housing within their means throughout the 23 defendant municipalities. Under Mt. Laurel, this is clearly sufficient for purposes of standing. Mt. Laurel, 67 N.J. at 159, n.3.

Regarding the standing of plaintiff Urban League, the Supreme Court in Mt. Laurel declined to express an opinion

on the standing of such organizations. Earlier, however, the Supreme Court expressly granted standing to organizations to sue on behalf of their members. Crescent Park Tenants Assoc. v. Realty Eq. Corp. of N.Y., supra. Further, even under the restrictive federal standards, such organizations clearly have standing. As the Supreme Court of the United States said in Sierra Club v. Morton, 405 U.S. 727, 739 (1972):

> It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review.

Accord: NAACP v. Button, 371 U.S. 415 (1963); United States v. SCRAP, 412 U.S. 669 (1973). Thus, on the basis of established New Jersey precedents, as well as the more stringent federal rulings, plaintiff Urban League also has standing.

POINT II. LESS POPULATED DEFENDANT MUNICIPALITIES ARE NOT EXEMPT FROM THE RULING IN MT. LAUREL

Defendant Plainsboro contends that because its population has had only "a relatively small increase" during the past 30 years, (Plainsboro Brief at 4), it is exempt from the application of the Mt. Laurel holding. This is precisely the same argument made by Cranbury during trial in its Motion To Dismiss.[1/] This Court emphatically rejected that argument.

The Supreme Court made it clear that its holding in Mt. Laurel applied not only to municipalities which, like Mt. Laurel, "have substantially shed rural character and have undergone great population increase since World War II," but also to municipalities that "are now in the process of doing so, but still are not completely developed and remain in the path of inevitable future residential, commercial and industrial growth." 67 N.J. at 160. Plainsboro is no isolated rural community, but an integral part of a fast-growing and fast-urbanizing metropolitan area. It is clearly in the path of inevitable future growth.[2/] Further, there exists a present need for low and moderate income housing in Plainsboro -- a need not being met, in part because of the exclusionary zoning laws and other land use practices of the Township. By the same token, the relatively small increase in the Township's population is a reflection, in part, of its restrictive land

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1/ Cranbury has renewed that argument in its current brief, but with less enthusiasm or conviction.

2/ One example of the imminence of this growth is the planned development of the Princeton - Forrestal campus

use policies and practices. As Douglas Powell testified concerning the preliminary projections for the year 2000 developed by his staff, the reduced projections also reflect the reality of restrictive zoning throughout the County.

Thus, Plainsboro's contention is little more than a self-fulfilling, "Catch 22" prophecy. That is, Plainsboro contends that its exclusionary zoning laws should be exempt from the ruling in Mt. Laurel because it is not growing very rapidly. But a major reason why it is not growing rapidly is because of the very exclusionary zoning laws that it seeks to immunize from judicial scrutiny. Plaintiffs urge that the Court dispose of this contention by defendant Plainsboro in the same way it disposed of the same contention by defendant Cranbury -- by rejecting it.

POINT III. PLAINTIFFS HAVE ESTABLISHED A PRIMA FACIE CASE OF A VIOLATION OF THE NEW JERSEY STATE CONSTITUTION BY THE DEFENDANT MUNICIPALITIES

Defendants East Brunswick, Edison, Sayreville, and South Brunswick contend that plaintiffs have failed to prove their prima facie case, and that, accordingly, the burden of proof has not shifted to them. For the reasons set forth below, plaintiffs strongly disagree.

In Mt. Laurel, the Supreme Court set forth the constitutional obligation of developing municipalities to provide for the housing needs of low and moderate income people. The Court said:

> As a developing municipality, Mount Laurel must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income. 67 N.J. at 187.

The Court then went on to spell out the types of housing and the kinds of land use which such municipalities are constitutionally obligated to permit:

> It must permit multi-family housing, without bedroom or similar restrictions, as well as small dwellings on very small lots, low cost housing of other types and, in general, high density zoning, without artificial and unjustifiable minimum requirements as to lot size, building size and the like, to meet the full panoply of these needs. Id.

A brief review of the zoning and other land use practices of East Brunswick, Edison, and South Brunswick, demonstrates

that each falls far short of meeting its constitutional obligation as defined by the Supreme Court in Mt. Laurel.

East Brunswick

It was established by uncontroverted evidence at trial that:

-- East Brunswick maintains excessive lot size and excessive minimum interior floor area requirements in both its most modest single family zone and all other single family zones. In addition, it has excessive frontage requirements in all other single family zones.

-- There is inadequate land available in the most modest single family zone, and no single family zone is provided consistent with modest housing standards.

-- There is inadequate land in multi-family zones, as well as restrictive provisions such as excessive parking requirements, and required air-conditioning.

-- Mobile homes are excluded.

-- There is excessive land zoned for industrial uses.

-- No PUD or similar zones are provided.

-- There is neither a public housing authority nor an adopted resolution of need to facilitate state housing programs.

In plaintiffs' view, these exclusionary provisions are in direct conflict with the Mt. Laurel holding. Further, contrary to East Brunswick's assertion, nothing at the trial or in defendant's brief "satisfactorily answered plaintiffs' charges of exclusionary zoning." East Brunswick Brief at 10.

Under Point II of East Brunswick's Brief (at 10) a variety of arguments are advanced in an effort to show that there is no exclusionary zoning within the Township.[3] First, East Brunswick claims that there are approximately 1,303 single family homes on lots with frontages of 80 feet or less. East Brunswick Brief at 10. The fact remains, however, that the East Brunswick zoning ordinance prohibits such housing now and in the future on all but an insignificant amount of the land area in the Township. In fact, there may be no such land remaining in the Township.[4] Further, there is no indication that the single-family homes on lots with frontages of 80 feet or less are within the means of families of low and moderate income. East Brunswick also asserts that more than 3,000 single-family houses in the Township have an assessment of less than $35,000. But houses at or near the $35,000 level are beyond the means of nearly all low and moderate income families. Further, assessed value is generally well below market value. Thus, the number of houses actually available at less than $35,000 is undoubtedly substantially fewer than East Brunswick claims.

3/ Those points relating specifically to East Brunswick will be answered below. Those points such as overzoning for industry and commercial use that relate to all or most of defendants are discussed in a separate section.

4/ The information on land in the various zones was provided by defendant only as to total land in zone, not vacant land, as requested in the Interrogatories. This was not clarified during the testimony of defendant's experts, who arrived only at a gross vacant acreage figure, not broken down into the various zones.

Second, defendant's Brief admits that the zoning ordinance prohibits mobile homes, but contends that in fact a mobile home park exists in the Township. The existence of one such park, however, does not erase the fact that the zoning ordinance excludes this potential source of housing for the plaintiff class.[5/]

Third, East Brunswick argues that its minimum floor area requirements, which range from 1,250 sq. ft. in the most modest zone to 1,500 sq. ft. in all other single-family zones, are reasonable because the Township is "a commuter community of young families with several children." East Brunswick Brief at 12. Support for this assertion is sought through P-37, "Land Use Regulation - The Residential Land Supply," published by the Department of Community Affairs. That document, however, recommends minimum floor area standards actually relating to the occupants. East Brunswick's standards do not so relate. A family of two is required to reside in a minimum of 1,250 sq. ft. as well as a family of ten. Further, as Mr. Mallach testified, the New Jersey Housing Finance Agency, which has greatest housing expertise, maintains considerably more modest floor area standards.

Fourth, East Brunswick offers rationalizations for its restrictions on multi-family housing. Among these are that the density range of 12 units per acre, with 20 percent lot

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5/ For a discussion of mobile home exclusion in relation to the Vickers case, see , infra.

coverage is reasonable, that basements are not required everywhere, but only as topographical conditions permit, and that present parking standards and recreational space requirements are in fact low. East Brunswick Brief at 12-13. But the inevitable effect of these provisions, as Mr. Mallach pointed out in testimony, is to increase the cost to the eventual consumer, often making provision of multi-family dwellings for low and moderate income families impossible. By the same token, East Brunswick seeks to rationalize its four acre minimum requirement by reason of "economical operation and maintenance" and "in order to integrate usable open space, parking, buffers and environmental concerns." East Brunswick Brief at 13. None of these rationalizations justifies the Township's failure to honor its constitutional obligation, as established in Mt. Laurel.

Finally, defendant asserts that should land be zoned for multi-family use, with increased densities and without height limitations "you would not wind up with low and moderate income housing." Rather the cost of land would be driven up and "[L]uxury highrise apartments ... would grace Highway 18." East Brunswick Brief at 14. This point was specifically addressed by Mr. Mallach on the final day of trial. He testified that one method of preventing this result was to utilize tightly drawn special exception procedures, providing only that low and moderate income housing could be developed on a given property in order to prevent an escalation in land values. (See Plaintiffs' Brief at Appendix B.)

Edison

It was established by uncontroverted evidence at trial that:

-- Edison has excessive minimum floor area requirements in its most modest single-family zone, and excessive minimum floor area requirements in all other single-family zones, as well as excessive lot size and frontage requirements in all single-family zones except the cluster option in the R-BB zone.

-- It has inadequate land in its multi-family zone, especially its H-R, highrise apartment zone, and restrictive provisions in such zones.

-- Mobile homes are excluded.

-- There is excessive land zoned for industry.

-- No PUD or similar zone is provided for.

-- There is no resolution of need to facilitate state housing programs.

-- The existing public housing authority has not constructed units for families since 1963.

In its Brief, Edison makes a number of assertions by way of "affirmative proof". Edison Brief at 2. First, defendant asserts that the Township contains five trailer parks, accommodating 254 homes, and that there is a vacancy factor in excess of ten percent. As in the case of East Brunswick, the existence of five such parks does not erase the fact that Edison's zoning ordinance prohibits them. As to the vacancy factor, plaintiffs note that D-E-4 in evidence shows an apparent one-time survey on February 19, 1976, rather

than vacancy figures over a period of several months, which would be more meaningful. In addition, the park with the greatest vacancies (18 of 120 spaces available) carries monthly rentals of $203.00, or $33.00 higher than the next highest amount and substantially above the rental in the remaining parks.[6/]

Second, Edison asserts that the land available for multi-family is "enormous." In response to interrogatories, defendant, in November of 1974, stated that there were 200 vacant acres in the L-R (low-rise apartment) zone, and ten acres in the H-R (high-rise apartment) zone. At trial, Edison produced an exhibit showing that as of March 4, 1976, 162 acres remained in the L-R and four in the H-R. The testimony of William Lund, the Township Engineer, was that 140 acres of the land in the L-R had applications pending, and two in the H-R. This leaves available only 20 acres in L-R and two in H-R, as the "enormous" amount of land available for multi-family use.

Edison also asserts that a number of multi-family units "has been approved subject only to the developers picking up their building permits, and for economic reasons they are not being built." Edison Brief at 2. The testimony at trial indicated that only 300 units had actually been approved, with 1,100 units in the application process, but not yet approved for permit. No testimony was provided as to why units

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6/ In fact, a monthly fee of $203.00 is substantially above the average fee charged in the Middlesex area as testified to by Mrs. Annette Petrick.

were not being built. Plaintiffs note that the units pending were designed under the existing restrictive provisions.

Third, defendant claims that "minimum floor area requirements from 960 sq. ft. upwards" is not "unreasonable or exclusionary." Edison Brief at 2. These standards exist only in the R-B zone which, as Edison's witness testified, has only 33 remaining vacant acres. The other residential single family zones carry minimum floor area requirements of from 1,200 - 1,400 (see P-118, Summary of Edison Zoning Ordinance Provisions). These are hardly modest requirements.

Fourth, Edison admits to the lack of resolution of need, asserting that it is "easily corrected." Edison Brief at 3. Defendant also states that no evidence was advanced to show that state housing programs offered a "practical resolution." To the contrary, plaintiffs' expert witness, Alan Mallach, testified concerning a variety of programs, including state housing programs, that Edison could utilize in providing low and moderate income housing. Edison's failure to adopt a resolution of need makes it impossible for the state programs to operate in the Township.

Fifth, Edison asserts that the Housing Authority is in the "final stages" of implementing a project containing 866 subsidized units. The testimony of Mr. Delesandro was that of 221 single-family units, 30 were being subsidized under the 236 program, with the remaining subsidies undecided; 240 units were for senior citizens under the 236 program; and 225 townhouses were being applied for under the 236 program. He also indicated that there was a considerable administrative

route to follow before possible groundbreaking. As plaintiffs alleged, the Authority has not built units for families since 1963.

Finally, defendant asserts that it proved that only 17 percent of the municipality remained available for development. Edison Brief at 3. The Court, in denying a motion to dismiss, ruled that 21 percent of the Township was undeveloped.

South Brunswick

It was established by uncontroverted evidence at trial that:

-- South Brunswick has excessive lot size and minimum floor area requirements in its most modest single-family zone, and there is inadequate land available in such zone.

-- It has no single-family zone consistent with modest housing standards.

-- Multi-family structures are permitted in PUD zones, but not in other zones separate from the PUD areas.

-- It has restrictive provisions in its multi-family zones.

-- Mobile homes are allowed, but restricted to the three existing mobile home parks.

-- It has an excessive amount of land zoned for industrial use.

-- Its PUD zones contain restrictive provisions.

-- There is no public housing authority and defendant has not passed a resolution of need to facilitate state programs.

Defendant South Brunswick asserts that under the standards enunciated in Mt. Laurel, "the burden has not shifted to the Township." South Brunswick Brief at 1. It then quotes from Mt. Laurel:

> [W]hen it is shown that a developing municipality in its land use regulations has not made realistically possible a variety in choice of housing, including adequate provision to afford the opportunity for low and moderate income housing or has expressly prescribed requirements or restrictions which preclude or substantially hinder it, a facial showing of violation of substantive due process or equal protection under the state constitution has been made and the burden, and it is a heavy one, shifts to the municipality to establish a valid basis for its action or inaction. 67 N.J. at 180-181.

The Brief then states at 2, "No such showing was made herein. Consequently, the normal presumption attendant to zoning ordinances apply herein."

Plaintiffs urge that exactly the type of showing required by the Supreme Court was made in the presentation of proofs against South Brunswick. First, South Brunswick has "not made realistically possible a variety in choice of housing." 67 N.J. at 181. A review of P-158, the South Brunswick Summary of Zoning Ordinance Provision, shows that a zone for modest single-family homes does not exist. The only zone that provides somewhat less exclusionary features is R-4 with sewer and water, which requires a 10,000 sq. ft. minimum lot size, and a 1,000 sq. ft. minimum floor area. Multi-family zones are absent outside the PUD zones, and the cross examination of Mr. Hintz revealed that no multi-family dwellings yet exist. Mobile homes outside the existing three parks are not

permitted. Testimony by Mr. Gabler also established that when his group wanted to construct 76 units of senior citizen multi-family garden apartments, a variance had to be obtained. See D-SB-10 in evidence.

Second, South Brunswick has not included "adequate provision to afford the opportunity for low and moderate income housing." Id. That defendant has failed to afford the required opportunity is amply demonstrated by the zoning provisions discussed above and the municipality's failure to facilitate state housing programs or provide a public housing authority or other body to act as a sponsor or conduit for federal subsidies. The inclusion of a ten percent low and moderate income housing provision in the PUD zones is but a token and inadequate response to the urgen need for such housing.

Finally, South Brunswick has "expressly prescribed requirements or restrictions which preclude or substantially hinder (low and moderate income housing)". Id. Again, a review of P-158 demonstrates this. Under the provisions therein noted it is impossible to provide for low and moderate income housing within the reach of the plaintiff class. This may also be so in the PUD zones, only one of which is under development, because of the other restrictions incorporated in the PUD requirements.

Sayreville

It was established by uncontroverted evidence at trial that:

-- Sayreville has excessive minimum interior floor area requirements in its most modest single-family zone, and excessive minimum lot width and minimum floor area requirements in its other single-family zones.

-- There is no single-family zone consistent with modest housing standards.

-- There is inadequate land zoned for multi-family use other than in PUD zones.

-- Excessive parking area is required in the multi-family zones.

-- Mobile homes are excluded.

-- The housing provisions in the PUD zone are restrictive.

-- Other restrictive provisions are contained in the PUD requirements.

-- There are excessive non-residential provisions in the PUD.

Defendant Sayreville asserts that it understood, when the Court dismissed plaintiffs' allegation concerning over-zoning for industry as to Sayreville, "that inferentially the other specific allegations set forth in the plaintiffs' moving papers likewise be dismissed." Sayreville Brief at Introduction. This understanding is incorrect. None of the other allegations of plaintiffs as to Sayreville were dismissed. Plaintiffs contend that all have been proven. Sayreville further asserts that other specific allegations set forth by plaintiffs are moot. No reason is given for such

an assertion. The proofs against the zoning ordinance provisions outside the PUD provisions stand as valid evidence of exclusionary practices and features.

Sayreville then determines that proofs as to the PUD provisions are "the sole remaining allegations." Sayreville Brief at Introduction. The first point it chooses to discuss is that there was no proof that a provision prohibiting adjacent look-alike buildings is restrictive. This is wrong. Mr. Mallach testified that no-look-alike provisions or "zig-zag" requirements add to the cost of both the design and construction of housing. No testimony was offered to refute plaintiffs' expert, and there is no refutation, factual or otherwise, contained in defendant's brief.

Defendant then discusses the off-street parking provisions, asserting that the requirement of 1.75 spaces is necessary. The brief attempts to offer figures not contained in the record regarding the exact amount of cost increase such additional parking would require. Plaintiffs again point to the uncontradicted testimony of their expert that such requirements are unnecessary and restrictive of efforts to provide low and moderate income housing.

Sayreville next asserts that the PUD zoned areas are in single ownership, facilitating rather than obstructing development. Sayreville Brief at Argument III. Plaintiffs' objection here is not to the single ownership provision, but to the excessive minimum lot sizes contained in the PUD

requirements. There are very few land areas coming under development pressures that do not "necessitate comprehensive treatment of drainage, traffic, safety problems." In other areas of the County slated for development as PUDs or under similar concepts, such comprehensive treatment is at least in part the responsibility of the municipality. Not so in Sayreville, where the burden is placed entirely on the developer. The cost is passed on to the consumer. Because of excessive minimum lot requirements the cost is unnecessarily high, further lessening the opportunity to provide for low and moderate income housing. Plaintiffs also note that the challenged PUD ordinance provides for no incentive for low and moderate income housing for families, only for senior citizen housing.

Finally, Sayreville asserts that it is not a developing community. Sayreville Brief at Argument IV. While the Court, early in the trial, disabused defendant's counsel of the notion that the principles enunciated in Mt. Laurel would apply only to the precise fact situation in that case, Sayreville's efforts to move as far as possible away from Mt. Laurel instead come full circle. Sayreville insists that it is not emerging from an "agricultural orientation", because of a lengthy development "tradition", and "is not presently undergoing a transition in land use patterns." Sayreville Brief at Argument IV, unnumbered pages. That same section indicates that "substantial areas in the heart of the Borough began to be strip-mined to support a burgeoning ceramics industry", but

that now "there has been a demise of the ceramics industry", resulting in "the ravaged remnants of strip and open-pit mining, the vast majority of which carries a PUD zoning option." It is this very land which Sayreville uses to compute "the construction of 11,000 new residential units." Sayreville Brief at Argument V. A developing community can proceed from outmoded industrial land as well as emerging from an agrarian setting.

POINT IV. DEFENDANT MUNICIPALITIES ARE NO LONGER PERMITTED, WITH IMPUNITY, TO PROHIBIT TOTALLY THE PROVISION OF MOBILE HOMES AS A HOUSING RESOURCE FOR LOW AND MODERATE INCOME PEOPLE

Defendants East Brunswick and Sayreville contend that under the 1962 Supreme Court decision in Vickers v. Township Committee of Gloucester Township, 37 N.J. 232 (1962) they may with impunity prohibit mobile homes within their borders. East Brunswick Brief at 14; Sayreville Brief - pages unnumbered Plaintiffs disagree. Plaintiffs contend, as noted in our earlier Brief at 29-30, n.6, that the Supreme Court in Mt. Laurel effectively overruled the holding in Vickers.

The Mt. Laurel Court said:

> In sum, we are satisfied beyond any doubt that, by reason of the basic importance of appropriate housing and the longstanding pressing need for it, especially in the low and moderate cost category, and of the exclusionary zoning practices of so many municipalities, conditions have changed, and consistent with the warning in Pierro, supra, judicial attitudes must be altered from that espoused in that and other cases cited earlier [at page 176, including Vickers]... (emphasis supplied). 67 N.J. 180.

Later in its Opinion in Mt. Laurel, the Supreme Court was more explicit on this point. The Court expressed its disapproval of Mt. Laurel's prohibition against various housing alternatives to single-family detached dwellings, including, specifically, the prohibition against mobile home parks. Id. at 181.

Among the "conditions" that have changed since the Vickers decision 14 years ago is the nature and quality of mobile homes. In 1962, the Vickers Court accurately characterized mobile home parks as "trailer camps" and spoke with concern of the "host of problems" attendant to their location in a municipality. 37 N.J. at 246. The term "trailer camps" no longer accurately describes mobile home parks, nor do they carry with them the "host of problems" that caused concern in 1962.

According to uncontroverted testimony of Mrs. Annette Petrick, new mobile home communities are quite different from the trailer camps of the 1950s and early 1960s. For example, the size of mobile homes has expanded significantly, and the character of mobile home communities has changed radically for the better. See P-176-181. Mobile homes are now primary residences for many people, providing attractive and feasible housing alternatives, particularly for low and moderate income people. To some extent, mobile homes now afford the only realistic opportunity for standard housing, absent governmental subsidy, for low and moderate income people. In view of the Supreme Court's admonition in Mt. Laurel, together with the changed conditions that have taken place in the 14 years since the Court considered the validity of prohibiting "trailer camps," plaintiffs urge that municipalities such as East Brunswick and Sayreville no longer may, with impunity, prohibit mobile homes.

Plaintiffs also stress that the prohibition against mobile homes in defendant municipalities such as East Brunswick

and Sayreville, is far from the only exclusionary land use regulation maintained by these municipalities. Rather, this prohibition is part of a pattern of exclusionary land use that serves to exclude standard housing in which low and moderate income people can live. Thus, the prohibition against mobile homes should not be viewed in isolation, but as an inherent part of the exclusionary character of the defendants' land use regulations. Thus, the total exclusion of mobile homes serves, at the least, to reinforce the exclusion resulting from other land use regulations maintained by these municipalities.

In addition, plaintiffs point out that because mobile homes represent a realistic means of providing housing for low and moderate income people, they are especially important for purposes of providing practical relief for the plaintiffs. If these municipalities may continue to prohibit totally provision of mobile homes, however, the effect also will necessarily be to eliminate this valuable housing resource for purposes of relief and make it that much more difficult to provide an effective remedy for plaintiffs and the class they represent.

POINT V. DEFENDANTS ARE OVERZONED FOR INDUSTRIAL USE

Defendants Edison, South Brunswick, and South Plainfield dispute plaintiffs' claims that they have zoned too much of their land for industrial and commercial use. The record discloses that, as a whole, Middlesex County is grossly overzoned for these uses.[7/] The evidence shows that of the vacant available land in the County approximately 45 percent is zoned for industrial and commercial purposes. This is the highest County-wide percentage in the state. The next highest percentage is 28 percent (in both Camden and Essex Counties).

The projections derived by the County Planning Board (P-40) of land which will actually be in industrial and related uses show that even by the year 2000 substantial acreage zoned for industrial use will lie unused. In Edison, 3,469 acres zoned for industrial and related uses remain vacant (P-105), while only 2,642 more acres are projected to be used by the year 2000. In South Brunswick, 8,332 acres so zoned are vacant (P-105), while the projection shows only 1,154 more acres to be used by 2000. In South Plainfield, 1,146

7/ See testimony of Douglas Powell; Pl. Ex. P-37.

acres are so zoned and vacant (P-105), while the projection shows only 678 more acres to be used by 2000. These figures are based on County Planning Board and State data in evidence, and defendants' answers to Plaintiffs' Interrogatories, the best objective data available to plaintiffs. The only evidence to the contrary consists of defendants' self-serving assertions as to present industrial growth and their unsupported conjecture as to future patterns of such growth.

Clearly, these municipalities have far more acreage set aside for industrial use than is warranted by expected use. Furthermore, just as plaintiffs have shown that these defendants have engaged in exclusionary practices as to their residential zones, with resulting exclusion of low and moderate income families, overzoning for industrial use reinforces this exclusion by taking substantial amounts of land out of residential development leaving minimal flexibility for remedial provision of low and moderate income units.

Plaintiffs point out that defendants are maintaining two mutually exclusive positions in defending against the claims that they have overzoned for industrial purposes and are not meeting present and prospective low and moderate income housing needs. They are contending both that they need every acre of land zoned industrial for industrial growth and development <u>and</u> that they do not need to provide for much housing in the future because they do not expect significant growth of industry. Plaintiffs submit that defendants cannot have it both ways.

If the municipalities are indeed faced with minimal growth in their industrial zones, as they claim then they are clearly overzoned for industrial purposes and cannot claim, in good faith, all land so zoned is needed for that purpose. By the same token, if industry is subject to substantial growth in these municipalities additional housing units will certainly be needed in the County to house at least some of the workers who will be employed by the new companies.

This underscores the necessity for the fair share allocation to be determined on the basis of a collective effort involving all the defendant municipalities. The defendant municipalities making these inconsistent claims obviously know how much industrial land is realistically needed within their borders. Further, each municipality is in a strong position to assess its sister municipalities' claims as to their need for industrially zoned land and their capacity to provide housing for employees of new industries locating in the County.

If these municipalities develop fair share allocations in secretive isolation, each is likely to overestimate its need for industrially zoned land and underestimate its capacity to meet housing needs. The inevitable result will be inequitable and unbalanced allocation of low and moderate income housing units.

By contrast, through a collective effort, the proper balance can be struck between accommodating industrial expansion and the housing needs that accompany it.

POINT VI. DEFENDANTS HAVE FAILED TO MEET THEIR BURDEN OF DEMONSTRATING PECULIAR CIRCUMSTANCES TO JUSTIFY THEIR EXCLUSIONARY CONDUCT

In their briefs, Cranbury, East Brunswick, Edison, Monroe, Plainsboro, South Brunswick, and South Plainfield assert various affirmative defenses to the plaintiffs' claim of exclusionary zoning. It is not clear from their briefs whether the defendants contend that the defenses, if proved, would operate as a complete bar to any relief requested by the plaintiffs or merely operate to mitigate their remedial obligations. The plaintiffs argue that such defenses, if proved, would only affect the numbers of units for low and moderate income persons which ultimately are provided in each of the defendant municipalities as part of their fair share.

In evaluating asserted defenses, this Court should be mindful of the standard for review set out in Mt. Laurel. The Supreme Court held that the municipal obligation to provide opportunities for low and moderate income housing "must be met unless the particular municipality can sustain the heavy burden of demonstrating peculiar circumstances which dictate that it should not be required so to do." Id. at 174. That "heavy burden" is not met by conclusionary assertions that aquifers must be protected, that woodlands must be preserved, or that rivers must not be polluted.

The defenses asserted by these seven municipalities fall generally into two categories: environmental and agricultural. First, with respect to the environmental claim, the defendants

contend that significant portions of their acreage cannot be developed because of various reasons relating to the environment. These reasons include flooding,[8/] protecting ground water sources (aquifers),[9/] inadequate waste disposal and drainage systems,[10/] and preserving woodlands and other natural areas.[11/] None of these defendants, with the possible exception of East Brunswick, offered testimony to show precisely the number of areas actually affected by these considerations.[12/] In Mt. Laurel, the Supreme Court observed that generally "only a relatively small portion" of a community will be affected by such ecological factors. Id. at 186. And in order for such factors to have any validity, "the danger and impact must be substantial and very real." Id. at 187.

More important, the particular environmental factor involved must be related to specific acreage intended for development. Experts for both the plaintiffs and the defendants testified that even parcels in so-called "ecologically sensitive areas" may be amenable to development under certain circumstances and conditions. For example, Margaret Bennett,

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8/ East Brunswick, Monroe, Plainsboro, South Brunswick, South Plainfield.

9/ Cranbury, East Brunswick, South Brunswick.

10/ Cranbury, East Brunswick, Monroe, Plainsboro, South Brunswick, South Plainfield.

11/ South Brunswick

12/ On page 6 of its Brief, East Brunswick lists a series of environmental factors mentioned by witness Margaret Bennett, but nowhere indicates that each is a bar to residential development.

author of the Natural Resources Inventory for East Brunswick, testified that any general statements about restricting development for environmental reasons are always subject to on-site inspections of particular parcels. Such inspections would disclose whether a specific acreage is in fact available for development, even in areas generally considered "ecologically sensitive."

Furthermore, Mrs. Bennett, among others, testified that environmentally restricted land may be utilized for housing if certain engineering steps are taken. For example, installing sanitary sewers rather than septic tanks for waste disposal greatly increases the amenability of an area for housing construction, while simultaneously reducing the dangers of pollution and other environmental concerns. In addition, with regard to some "sensitive" acreage (such as that over an aquifer), it might be better to build higher density housing in a smaller area than lower density over a larger area, Mrs. Bennett stated.

The plaintiffs also note that, even if such environmental factors absolutely preclude any construction on certain parcels, other vacant, developable land remains for housing. At the trial, witnesses for East Brunswick, for example, testified that approximately 1,913 acres are available even after all the "ecologically sensitive areas" are excluded from the residential land supply. In its brief, East Brunswick now concedes that the figure may be as high as 3,395 acres (no explanation is provided by East Brunswick for the 1,482 acre difference). Thus, this Court should not credit any generalized testimony regarding the impact of ecological factors on housing development without a showing of their application to specific

acreage. No such showing has been made by these defendants, except perhaps by East Brunswick and even its figures have already been revised upwards.

Finally, it is suggested that accommodating environmental factors and housing development costs money, an expenditure which at least some of the defendants appear unwilling to make (see, e.g., Brief of South Plainfield). The Supreme Court in Mt. Laurel held that such monetary factors provide no legal excuse for arresting development of housing for low and moderate income persons. With respect to sewer disposal and water supply, the Court stated that a municipality "could require them as improvements by developers or install them under the special assessment or other appropriate statutory procedure." Id. at 186. Such financing could also be obtained through certain federal programs, discussed in the plaintiffs' main brief.

Second, defendants Cranbury, Monroe, Plainsboro, and South Brunswick also claim that much of their vacant, developable land is presently used for agricultural purposes and thus should be excluded from the residential land supply. Indeed, Cranbury contends that "virtually the entire municipality consists of prime agricultural land," suggesting that it should be excused altogether from participation in any fair share plan or other remedial obligation. As in the case of the environmental defense, the record similarly is devoid of testimony specifically identifying particular parcels which

are presently used for agriculture, intended for such use in the foreseeable future, and cannot physically accommodate housing. None of the defendants asserting this defense has sustained that "heavy burden" mandated by the Mt. Laurel Court.

The record also does not contain any data indicating that any of these defendants has placed such agricultural acreage ("the prime of the prime," to use Cranbury's words) in an agricultural zone. Rather, such acreage is presently zoned residential or large-lot residential. Such zoning, as the record discloses, is consistent with the historical patterns of land use in Middlesex County. Mr. Erber testified (see Exhibit P- 55) that the total amount of land used for agriculture has steadily declined over the years as the suburbanization process in the County has advanced. Undoubtedly, a number of land owners who presently use their acreage for farming will ultimately sell some of it for residential development.

The conversion of land from agricultural to residential use over time would also be consistent with the concept of staged growth which is inherent in any fair share plan. To be sure, the defendants cannot meet their fair share of any adequate plan overnight. If plaintiffs prevail in their request for relief, it may be that a final order will require implementation of the fair share plan over time. Serving the period of such "staged growth," potentially developable land, not now available for housing, may become available. In Middlesex County the residential land supply has been

drawn from agricultural acreage. That process, as the record shows, will undoubtedly continue. Thus, the defendants should not be allowed to maintain all agricultural land in that status in perpetuity. If particular farm acreage is suitable for housing construction and if the owner wishes to sell it for such purposes, then the municipality should not interfere with that conversion process, especially when it would prevent the building of low and moderate income housing.

Furthermore, the record reveals that not all agricultural land is of uniformly high quality. Thus, some might well be converted to residential use while other lands remain for farming. This selective conversion might well be combined with a program of increased density housing which would be adequate to meet a defendant's fair share of the regional need. Zoning for higher density in one part of a community allows for the maintenance of low density, including agricultural use, in other segments of the municipality. In this connection, it should be understood that, to meet its fair share, a defendant would not have to utilize all its vacant land for low and moderate income housing.[13/]

13/ See Point VII, showing that East Brunswick's fair share can be accommodated on only 253 acres.

POINT VII. THE PRESENT EFFORTS OF THE DEFENDANT MUNICIPALITIES DO NOT IN FACT MEET THEIR FAIR SHARE OF THE REGIONAL NEED FOR LOW AND MODERATE INCOME HOUSING

Defendants East Brunswick, Edison, Sayreville, South Brunswick and South Plainfield all claim to be meeting or exceeding their fair share of the regional need for low and moderate income housing. Thus, East Brunswick argues that it "is presently meeting its affirmative obligation to provide low and moderate income housing." East Brunswick Brief at 21. In support of this, it cites its own computation of housing need through 1980 as 1,168 units, and discusses its involvement in Community Development Revenue Sharing Programs, a state program to provide assistance for the handicapped (this will add 14 units) and its cooperation with a private group to winterize existing housing (this will add two units). East Brunswick Brief at 21-23.

South Brunswick argues that "the Township is meeting [housing needs for low and moderate income families] and stands ready to accept and provide for its fair share of low and moderate income housing." It computes that share at approximately 900 units. South Brunswick Brief at 6.

Edison claims that it "has met and is meeting its responsibility to accommodate low and moderate income residences." Edison Brief at 6. Edison offers no facts, however, to substantiate that assertion, other than the mention of the proposed 866 units, not yet built.

Sayreville concludes "that the Borough not only is presently attending to its obligation to provide its fair

share of housing for the low and moderate income sector of the population, but through its PUD Ordinance, is taking more than its fair share. Sayreville Brief at Argument V. This same section earlier concludes, "[I]t would seem obvious that at least 25 percent of the potential units will be available to low and moderate income families", and computes this potential at "in excess of 3,000 units." No supportive proof for this conclusion is offered.

South Plainfield urges that "the testimony of the Borough's Building Inspector revealed that the vast majority of building lots within the Borough are less than 60 feet in width." Thus, defendants claim to be meeting their obligation to provide low and moderate income housing units. Plaintiffs disagree.

First, even if these units are actually provided, they in no way satisfy the fair share obligation of these municipalities. The five municipalities making the assertion are among the largest in Middlesex County, and have substantial amounts of vacant land. If the County-wide fair share of the regional need for low and moderate income housing is to be met, it must be met in substantial part in these very municipalities. Yet, whether one accepts Mr. Erber's estimate or Mr. Powell's, it is clear that neither can be satisfied under the fair share allocations asserted by the defendant municipalities. The numbers offered are plainly insufficient.

Second, there is no assurance that even the inadequate number of low and moderate income housing units will actually

be provided. For example, in South Brunswick, only 76 units are being processed, and even these are not in place. In Edison, only 866 units are identified as in process, and here too, they are not yet in place. Thus, the defendant municipalities have failed even to show how the relatively small number of units, which they claim represents their fair share of the regional need, will actually be provided.

A specific comment is needed to respond to defendant East Brunswick's argument that "plaintiffs' fair share allocation plan is unfair because it perpetuates densities without regard to employment opportunities." East Brunswick Brief at 20. First, as pointed out in plaintiffs' brief, the overwhelming majority of jobs are located in the northern and central portions of Middlesex County, and plaintiffs' allocation plan, by using the number of existing standard housing units in each municipality as the basis for its initial allocation, distributes proposed low and moderate income units in a manner that results in a general approximation of housing opportunities to employment opportunities.

Second, the defendant's brief alleges that Mr. Erber's allocation was based on his stated need of 52,999 new housing units for Middlesex County in 1970. This is false. Both Erber's exhibit and his testimony are explicit in saying that the 52,999 goal can be achieved in several ways; rehabilitation, replacement, rental subsidy and new construction. Erber's exhibit (P-183) states: "The first step toward implementing the housing allocation shares is for each

municipality to make such revision in its zoning ordinance ... as will remove all exclusionary impediments .... To determine the nature and extent of zoning changes required, each municipal share should have subtracted from it the number of substandard units suitable for rehabilitation ...." (P-182 at 5).

If it is assumed that households presently living in substandard housing and/or paying in excess of 25% of income for shelter will be supplied with standard units within 25% of income through rehabilitation, replacement and rental subsidies, Erber's need figure of 52,999 units for 1970 requires that only 23,492 new units be constructed. (This is expanded in projections for 1975 and 1980 that assign to low and moderate income families one-third of all additions to the County's housing stock constructed subsequent to 1970.)

Third, defendant's brief argues that Erber's allocation "has considered developable land only for the purpose of redistributing a 'balance'", East Brunswick Brief at 25 and complains "that East Brunswick's share in 1970 was 3,167 while Cranbury has 602, Plainsboro has 432, Monroe has 1,925 and South Brunswick has 2,147." Id at 27. Defendant also argues that Erber's allocation "has attempted to perpetuate existing densities without regard to present and future job opportunities in the municipalities in question." Id at 25. After alleging that the plan failed to give sufficient weight to vacant land and employment, it charges that "it is apparent that Erber has perpetuated densities by unjustly burdening those municipalities which have both a population base and vacant land." While East Brunswick's population is

6 percent of the County's and its vacant land is 7 percent of the County's, it had in 1972 13 percent of the County's jobs in retailing and 7 percent of the County's jobs in service trades -- the two employment categories with the highest proportion of low paying jobs. East Brunswick in 1970 also had 8.4 percent of all vacant, developable land in the County that was zoned for commerce and 4.5 percent of the County's land that was zoned for industry. (P-104).

Fourth, defendant disputes the plaintiffs' figure of 7 percent as East Brunswick's proportion of all vacant, developable land in the County, and alleges that rather than 7,570 acres, as given in the 1970 study of the Department of Community Affairs (P-104), the base figure should be 3,395 acres. East Brunswick Brief at 32. For the defendant to argue this reduction largely on the basis of alleged ecological conditions is totally unwarranted in view of the testimony of Ms. Margaret Bennett, defendant's environmental expert, that her study of East Brunswick's ecology, Natural Resource Inventory, D-EB-7, could not be used to determine where and to what extent the construction of housing would have an impermissible impact upon the environment. Her report states, and her testimony repeatedly emphasized, that such determinations could only be made on the basis of field studies in particular areas, which she had not made.

However, even accepting defendant's reduced figure of 3,395 acres of vacant, buildable land, this might conceivably still be 7 percent of total amount of such land if all other defendants allege that their vacant land acreage should be reduced similarly.

Whether East Brunswick has 7,570 acres or 3,395 acres of vacant land is unrelated, in the last analysis, to whether there is sufficient vacant land in that municipality to construct the number of new dwelling units that would be required to achieve its allocation in Erber's proposed fair share plan. Under that plan, East Brunswick's fair share allocation for 1980 would be 4,529 units. Of these, 745 units can be supplied by rehabilitation, replacement and rental subsidy, leaving 3,784 units to be supplied by new construction. At a density of 15 units to the acre, it would require only 253 acres to provide sites for this housing. The required acres would be only 8% of the reduced vacant land figure of 3,395 acres alleged by defendant to be available for building in East Brunswick.

Finally, based on a methodology devised by East Brunswick, the Township sets forth a calculation of fair share that allocates 1,875 housing units for low and moderate income occupancy to East Brunswick as its obligation by 1980. The defendant's methodology is faulty in that it is not sufficient to use fair share determinants limited to existing housing need as identified in the "Urban County" application to HUD and future employment in East Brunswick:

a. East Brunswick's existing housing need, as identified in the "Urban County" application, is plainly too low. For example, the application lists only 217 units "suitable for rehabilitation" in East Brunswick, compared to the State's report

(P-38), which lists 630 units in East Brunswick as substandard. Further, East Brunswick's "Urban County" application sets 14 units as its first year goal for housing assistance, all to be occupied by the elderly. Of East Brunswick's first year total of approximately $98,000 in community development block grants, only $7,000 was allotted to housing rehabilitation in the form of "a housing compliance assistance revolving fund for low income homeowners." The balance was earmarked for open space and rehabilitating a former church for community use.

b. East Brunswick's use of future employment overweights this factor, compared to others, as a determinant of fair share. Middlesex County is, after all, a common housing and labor market area within which houses and jobs are both interchangeable without unduly burdening the journey to work in either time or cost. In addition to overweighting this factor, East Brunswick uses employment only _within its boundaries_ as the criterion of access to jobs for its present or future residents of low and moderate income. As noted in plaintiffs' brief, employment is only one of several factors that condition choice of residential location and, within Middlesex County's fragmentation into municipalities of relatively small areas, reasonable proximity to jobs must be the standard, not the number within the subject municipality's boundaries.

The defendant's "adjustment of" plaintiffs' fair share plan as it applies to East Brunswick is, consequently, faulty.

POINT VIII. THE DEFENDANT MUNICIPALITIES ALL ARE PART OF MIDDLESEX COUNTY, WHICH IS THE RELEVANT GEOGRAPHICAL UNIT INTO WHICH RADIATES THE LOW AND MODERATE INCOME HOUSING NEED OF THE LARGER REGION

Defendants Edison, Plainsboro, and South Plainfield assume that Middlesex County constitutes the region whose fair share of the present and prospective low and moderate income housing need they are obliged to accommodate. They then argue that they are not part of that region. Plaintiffs contend that the defendants are wrong both on their assumption and their factual assertion.

As the Supreme Court made clear in Mt. Laurel, the applicable "region" is not confined to County lines. 67 N.J. at 190. As this Court also made clear earlier, in Oakwood at Madison, Inc. v. Township of Madison, 128 N.J. Super. 438, 441 (Law Div. 1974): the region is "not coextensive with Middlesex County. Rather, it is the area from which, in view of available employment and transportation, the population of the township would be drawn, absent invalidly exclusionary zoning."

Thus, as plaintiffs pointed out in their Brief, the relevant region in this case is not the County. Rather, the region is defined functionally, in terms of the housing need, both within the County and radiating into the County from outside. Plaintiffs' Brief at 23. The importance of the County itself lies in the fact that it is the relevant geographical unit into which the regional low and moderate income housing need radiates. As plaintiffs argued in their Brief, a determination of that need provides the base figure

governing the distribution of low and moderate income housing units among the various defendant municipalities.

It is important to stress, contrary to defendants' assertion, that Middlesex County is not an arbitrary geographical unit. As the testimony of several witnesses, including Douglas Powell and Ernest Erber, demonstrated, Middlesex County is a Standard Metropolitan Statistical Area (SMSA), and the municipalities that constitute it have strong social and economic ties. See P-182. Defendant Edison correctly pointed out that "'*** The federal government defines a standard metropolitan statistical area as an integrated economic and social unit with a large population nucleus.'" Edison Brief at 7.

Defendant Edison then goes on, however, to contend that Middlesex County does not qualify as a Standard Metropolitan Statistical Area. Edison Brief at 8. On this point Edison is plainly wrong in that, as the uncontroverted evidence proved, the federal Office of Management and Budget, which has responsibility for designating Standard Metropolitan Statistical Areas, has so designated Middlesex County. A further demonstration of the social and economic integration of the municipalities within Middlesex County is the banding together of 20 of the defendant municipalities, including Edison, Plainsboro, and South Plainfield, for purposes of developing a single application to the federal government for community development block grant funds under the Housing and Community Development Act of 1974. In addition, as uncontroverted

testimony showed, Middlesex County is a common housing and labor market.

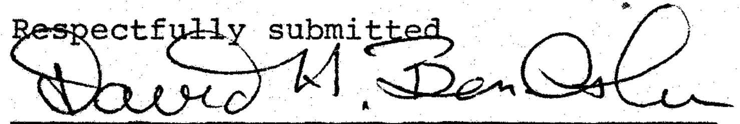
Thus, as shown through designation of the County as an SMSA by the federal Office of Management and Budget, the fact that the County constitutes a common housing and labor market, and the municipalities' own conduct in banding together to secure federal funds, the municipalities that make up Middlesex County are a single economic and social unit.

To be sure, some of the defendant municipalities also have relationships with other municipalities outside Middlesex County. But this in no way nullifies their social and economic ties with the other municipalities within the County. For purposes of determining each municipality's fair share of the regional low and moderate income housing need, Middlesex County is the geographical unit on which the base figure should be determined.

CONCLUSION

For the foregoing reasons, plaintiffs urge that the arguments raised by the defendants in their initial briefs are without merit. Thus, the Court should issue a remedial Order as requested by plaintiffs in their initial brief.

Respectfully submitted



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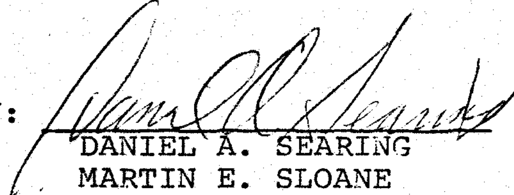

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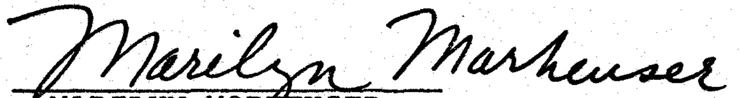

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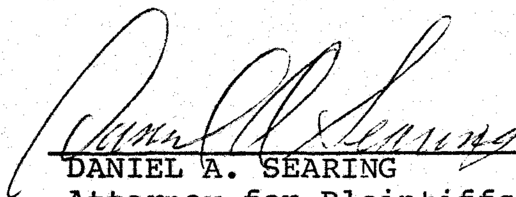
CERTIFICATE OF SERVICE

I, Daniel A. Searing, hereby certify that I have served the preceeding Plaintiffs' Post-Trial Reply Brief on all counsel for defendants by placing copies in the United States mail, postage prepaid, this 16th day of April, 1976.



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