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- Post Trial Brief of Multiple Defendant Townships
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MARTIN A. SPRITZER
ATTORNEY AT LAW

414 MAIN STREET
METUCHEN, NEW JERSEY 08840

548-6455
AREA CODE 201

April 13, 1976

Honorable David D. Furman
Superior Court, Chancery Division
Court House
New Brunswick, N.J.

Re: Urban League of Greater New Brunswick, et als v. Mayor and Council of Carteret, et als
Docket No. C-4122-73

Dear Judge Furman:

Enclosed please find Brief on behalf of the following substantially developed municipalities: Borough of Carteret, Borough of Dunellen, Borough of Helmetta, Borough of Highland Park, Borough of Jamesburg, Borough of Metuchen, Borough of Middlesex, Borough of Milltown, City of South Amboy, Borough of South River, Borough of Spotswood, and Township of Woodbridge.

The Brief is directed to the question of whether an Order should issue requiring municipalities to participate in Federal and State programs to rehabilitate existing sub-standard housing.

In addition, attorneys for the municipalities will separately file documentation as permitted by the Court to show existing participations in any Federal or State programs to improve housing conditions in their specific municipalities.

On behalf of Metuchen, I am filing with this Brief, the resolution of need and resolution of tax abatement adopted by the Borough Council of the Borough of Metuchen in connection

with the proposed 100 unit senior citizen housing project, which unit is mentioned in the CDRS application, plaintiffs' Exhibit 63.

As noted on Page 4 of the Brief, I am also submitting as Appendix II, my previous Brief which may be helpful to the Court regarding the law in respect to substantially developed communities.

Very truly yours,

MARTIN A. SPRITZER

MAS/eh
encl.

cc: All counsel of record.

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION - MIDDLESEX COUNTY

DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants.	HONORABLE DAVID J. FURMAN, J.S.C.

POST-TRIAL BRIEF OF DEFENDANTS, BOROUGH OF CARTERET, BOROUGH OF DUNELLEN, BOROUGH OF HELMETTA, BOROUGH OF HIGHLAND PARK, BOROUGH OF JAMESBURG, BOROUGH OF METUCHEN, BOROUGH OF MIDDLESEX, BOROUGH OF MILLTOWN, CITY OF SOUTH AMBOY, BOROUGH OF SOUTH RIVER, BOROUGH OF SPOTSWOOD, AND TOWNSHIP OF WOODBRIDGE

MARTIN A. SPRITZER, ESQ.
attorney for defendant,
Borough of Metuchen
414 Main Street
Metuchen, N.J. 08840

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INTRODUCTION

Motions to dismiss plaintiffs' complaint against the following municipalities: Carteret, Dunellen, Helmetta, Highland Park, Jamesburg, Metuchen, Middlesex, Milltown, South Amboy, South River, Spotswood and Woodbridge, were granted by the Court conditioned in respect to all municipalities except Dunellen, on the elimination of certain prima facie exclusionary provisions from the respective zoning ordinances. Dunellen had no exclusionary provision. The Borough of Metuchen has already eliminated its exclusionary provision, while the Borough of South River has amended its ordinance to conform to its understanding of the court's ruling. Other municipalities are in the process of amending their ordinances to eliminate such provisions.

The criteria established by the court for the granting of said motions were two: That these communities had little or no developable vacant land; and had housing for low and moderate income families roughly approximating the number of low and moderate income families in the municipality. Attorneys for the defendant municipalities were advised by the Court that they need not participate in the remainder of the trial concerning fair share remedies, except that the court might make a ruling as to remedy requiring even these municipalities to take specific action

as to participation in federal and state programs, including the expenditure of public funds to rehabilitate existing sub-standard units in the respective municipalities and/or grant tax abatements for certain type of subsidized housing.

Point I of this Brief is in response to comments made by the court at the conclusion of the trial respecting the sole remaining issue as to the twelve defendant municipalities.

Point II stresses the existing participation of the twenty defendant municipalities in the Urban County Community Revenue Sharing Program under the 1974 Act. This is in response to the court's ruling at the conclusion of the case that the municipalities supplementing any brief, could file documentation of participation in existing federal and state programs. It shows the general scope and significance of the Urban County Agreement, which is in evidence under P63, as well as the potentialities of the program for the rehabilitation of sub-standard units. It is not intended, however, to preclude further documentation from any of the twenty municipalities, or those not included in the Urban County Grant, from submitting any other evidence of projects, plans, and programs benefiting low and moderate income families. For purposes of clarity, the twelve defendants to whom this Brief applies, shall be referred to as "the substantially developed municipalities".

Point III is a very brief response to plaintiffs' contentions that all the defendants should participate in a fair share allocation. These defendants join in arguments made in briefs by other defendants to the effect that the plaintiffs have no standing to institute this suit or obtain any judgment therefor. On this point, these defendants will rely on briefs submitted by attorneys for other defendants.

POINT I

THE SUBSTANTIALLY DEVELOPED MUNICIPALITIES SHOULD NOT BE ORDERED BY THE COURT TO PARTICIPATE IN FEDERAL AND STATE PROGRAMS AND EXPEND PUBLIC FUNDS TO REHABILITATE EXISTING SUB-STANDARD UNITS AND/OR GRANT TAX ABATEMENTS FOR SUBSIDIZED HOUSING.

1. SINCE THESE MUNICIPALITIES ARE NOT LIABLE TO PLAINTIFFS, NO REMEDY SHOULD APPLY TO THEM.

As substantially developed municipalities, these defendants do not come within the ambit of the Mount Laurel case. See Segal Construction Company vs. Zoning Board of Adjustment of Borough of Wenonah, et als, 134 N.J. Super. 421 (App.Div. 1975); Pascack Association, Limited vs. Mayor and Council of the Township of Washington, A-3790-72, N.J. Super.Ct. App. Div. (decided June 25, 1975).[i]

While the Court did not expressly base its ruling on the motions to dismiss on the theory of Borough of Wenonah and Township of Washington; it seemed to have set forth three requirements for liability:

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[i] For full discussion of the liability of substantially developed communities, Counsel refers Court to brief on motion for summary judgment filed on behalf of the defendant, Borough of Metuchen, an extra copy of which is submitted with this brief to the Court only, and urges its applicability not only to Metuchen, but to all developed communities.

1. Exclusionary provision of zoning ordinances.

2. Vacant and developable land.

3. Failure to provide balanced housing for low and moderate income families (either in respect to regional share or conceivably in respect to its own residents.

Since the Court has already ruled that the last two factors are inapplicable to the 12 defendants, no liability should entail. The granting of a motion to dismiss indicates no liability. A remedy without liability is not known in the law.

Plaintiff asserted no separate cause of action alleging substantial sub-standard housing in each municipality unrelated to zoning and land practices which under some constitutional and legal theory, the defendants would have to remedy. The mere statistical evidence of some sub-standard housing in and of itself then gives rise to no liability. Therefore, either under the reasoning of the Wenonah and Washington cases, or based on the Court's own ruling in this case, plaintiff has failed to prove its case against these defendants.

2. ASSUMING ARGUENDO DEFENDANTS ARE LIABLE TO PLAINTIFFS SOLELY BECAUSE OF EXCLUSIONARY ZONING PROVISIONS, NO OTHER REMEDY BUT ELIMINATION OF SUCH PROVISIONS IS APPROPRIATE.

As to the 12 defendant municipalities, the court should certainly apply no remedy stricter than that imposed by the court in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975), which reversed the lower court and gave the Township ninety days in which to amend its zoning ordinance to accord with the court's decision.

As to Dunellen, Metuchen and any other municipality which has corrected any zoning deficiency prior to the court's final ruling, there is an additional reason for the court not to impose any remedy. Respecting Dunellen, there was no exclusionary provision at all, and therefore, a remedy predicated on absolutely no liability would be unique. Metuchen has already amended its ordinance to eliminate the one prima facie exclusionary provision, and South River has amended its ordinance. The legal validity of the Metuchen zoning ordinance, for example, must now be established as of today. See Oakwood at Madison, Inc. vs. Township of Madison, 128 N.J. Super 438 (Law Div. 1974) and Tidewater Oil Co. v. Mayor, etc., Carteret, 44 N.J. 338. It and any other community making the changes suggested or required by the court should stand in the same position as Dunellen: no offending provision; no liability. Therefore, the elimination of the allegedly exclusionary zoning provision should not only eliminate

liability, but also preclude any remedy.

3. NO STATE COURT HAS IMPOSED THE AFFIRMATIVE REMEDY REQUIRING THE MUNICIPALITY TO EXPEND ITS FUNDS AND PARTICIPATE IN FEDERAL AND STATE PROGRAMS TO REHABILITATE SUBSTANDARD UNITS.

The Mount Laurel court certainly had the opportunity to require such a drastic remedy. There was in that case specific evidence of negligence by the municipality of its resident poor. Judge Hall briefly described the situation in 1950:

> "There were several pockets of poverty, with deteriorating or dilapidated housing (apparently 300 or so units of which remain today in equally poor condition)."

Despite a clear factual basis for requiring a municipality to rehabilitate these 300 units, the court merely said it had in mind that "there is at least a moral obligation in a municipality to establish a local housing agency pursuant to state law to provide housing for its resident poor now living in dilapidated, unhealthy quarters."

It is true that Judge Gelman, in Pascack Association vs. Mayor and Council of Township of Washington, 131 N.J. Super. 195, 329 A.2d 89 (Law Div. 1974), extended the judicial power as to remedy further than the Mount Laurel court. The court retained its own planning expert who produced a report and recommendations which the court compelled the municipality to follow. This was

essentially rezoning through court appointed experts. While it substituted judicial discretion for municipal discretion, it was a far cry from substituting judicial discretion in fields not related to the specific application of zoning provisions. While the court in Mount Laurel cited the Pascack case, that was before the latter was reversed by the Appellate Division. (A-3790-72, N.J. Super. Ct. App. Div. (decided June 25, 1975).

Similarly, the Pennsylvania courts have limited their remedies in exclusionary zoning cases to voiding the offending provisions. Appeal of Kit-Mar Builders, Inc., 268 A.2d 765 (1970); Appeal of Gersch, 263 A.2d 395 (1970); National Land and Investment Co. vs. East Town Township Board of Adjustment, 215 A.2d 597 (1965), where the court stated "that it has become increasingly aware that it is neither a super Board of Adjustment nor a Planning Commission of last resort.". There is no state precedent, therefore, for this court to apply the proposed affirmative remedy on the substantially developed communities.

4. THE JUDICIARY WOULD BE INVADING THE PROVINCE OF THE LEGISLATURE AND 12 LOCAL GOVERNING BODIES IF IT REQUIRED THE DEFENDANTS TO PARTICIPATE IN AND SPEND MONIES FOR FEDERAL AND STATE PROGRAMS WHICH ARE UNDENIABLY DISCRETIONARY, NOT MANDATORY.

The federal and state programs testified to by plaintiffs' "expert" and listed in Appendix C of plaintiffs "Post-Trial Brief" are by statute intended to be purely discretionary and not mandatory in respect to municipal action.

For example, N.J.S.A. 55:14A-4 stated: "Any governing body may by...ordinance...create a body corporate and politic to be known as the Housing Authority of...". Resolutions of need and tax abatement under N.J.S.A. 55:14J-6 and 55:16-18 are similarly discretionary. More important, the latter two would depend upon the existence of actual projects or proposed projects even before being considered by a municipality. For instance, the need resolution states:

> "no application for a loan for the construction or rehabilitation of a housing project to be located in any municipality shall be processed unless there is already filed with the Secretary of the agency a certified copy of a resolution adopted by said municipality reciting that there is a need for moderate income housing projects in said municipality."

The State Demonstration Programs under N.J.S.A. 52:27D-59 et seq. and the Neighborhood Experimental Rehabilitation Program under N.J.S.A. 52:27D-152 et seq., by their very titles denote their limited and discretionary nature. The mortgage loans permitted under N.J.S.A 55:14J-6 from the New Jersey Housing Finance Agency does not require the agency to accept all appli-

cations, as well as not requiring municipalities to participate. Similarly, all the federal programs under the 1974 Community Development Revenue Sharing Act make it permissible for municipalities to apply and discretionary with HUD as to whether to accept projects and award funds.

In Mahaley v. Cuyahoga Metropolitan Housing Authority, 500 F.2d 1087 (1974), the court discussed denial of inadequate housing as a denial of minority rights under the equal protection clause of the 14th Amendment, and Section 1983 of the Civil Rights Act. It quoted from James v. Valtierra, 402 U.S. 137, 91 S.Ct. 1331, 28 L.Ed. 2d 678 (1971):

> "By the Housing Act of 1937 the Federal Government has offered aid to state and local governments for the creation of low-rent public housing. However, the federal legislation does not purport to require that local governments accept this or to outlaw local referendums on whether the aid should be accepted."

The court later said that the Supreme Court construed the plain language of the act to mean exactly what it says: Namely, it is for the municipalities to decide whether they need low rent housing, and whether they desire to sign cooperation agreements. There is no basis to infer discrimination upon the part of a municipality for doing what it has a lawful right to do under the express provision of the housing act.

Even in L. Rubinowitz, Low-Income Housing: Suburban Strategies, Chs. 8, 12, 14 (1974), the author most sympathetic to low cost housing advocates, admits on Page 43 "that Congress has clearly made the low income housing programs a matter of local option. A similar result is achieved in the moderate income subsidy program through the cost ceilings written into the law."

Based on plaintiffs' statistics, most of which apply to other areas, and the existence of standard zoning provisions throughout New Jersey, one can hardly imagine more than a few communities having absolutely no "prima facie" exclusionary zoning provisions. If the courts were to require each municipality to participate in every possible federal and state program based simply on some sub-standard housing in the community, the results would be obvious. First, there would hardly be enough funds to go around. Secondly, the court would be achieving by judicial fiat, what Congress and the State Legislature did not intend; i.e. the compelling of the municipality to improve housing in its community. While counsel for plaintiffs have constantly argued about the alleged violations of their clients' constitutional rights, little heed has been paid to Article III, Section 1 of the New Jersey Constitution, which reads:

> "The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

It is submitted that on the flimsy evidence produced by these plaintiffs respecting substantially developed municipalities, any judicial compulsion would violate the New Jersey Constitution.

Plaintiffs have cited cases where the courts have used their equity powers to grant affirmative relief in righting wrongs. These have included Robinson v. Cahill, 62 N.J. 473 (1973), N.J. 333 (1975); Plaquemines Parish School Board v. United States, 415 F.2d 817 (5th Cir. 1969); Griffin v. Prince Edward County School Board, 377 U.S. 218 (1964), and others cited on Page 41 of plaintiffs' brief.

These cases merely dealing with school desegration and expenditure of monies for schools are clearly distinguishable from the case at bar. In those cases, the defendants by constitutional and/or statutory authority, had specific obligations to operate and spend monies for schools. They were in "the school business", and justifiably could be ordered to change or reallocate priorities and funds accordingly. On the other hand, the municipalities are not in "the housing business", as Justice Hall

indicated in the Mount Laurel case. It would be a very broad, equitable and constitional leap from judicial directives in the school desegration and funding cases to the zoning case before this court. Such a leap is not justified on the facts contained herein.

5. ONLY THE FEDERAL COURTS UNDER DIFFERENT LAW AND CIRCUMSTANCES HAVE EVEN APPROACHED THE DRASTIC REMEDY SOUGHT TO BE IMPOSED ON THE 12 MUNICIPALITIES.

Authors Rosalind M. Mytelka and Arnold K. Mytelka, in their article in Vol. 7 of Seton Hall Law Review, Fall 1975, "Exclusionary Zoning-A Consideration of Remedies, state: "if other remedies do not succeed, courts could order governmental agencies to do so"(build housing), and quoted as source for that conclusion L. Rubinowitz, Low-Income Housing, page 222, where the author states ,based more on desire than authorities:

> "To insure that relief is comprehensive and effective, the Court might include additional provisions in the decree. First, the Court could order municipalities to grant any approvals necessary for the utilization of federal subsidy programs. Second, the court could order any local housing authority with jurisdiction in the suburban areas to develop public housing as rapidly as possible in accordance with allocation plan."

Some federal cases from the cited Exclusionary Zoning: A Consideration of Remedies, do justify broader remedy provisions.

These include Kennedy Park Homes Ass'n v. City of Lackawanna, 318 F. Supp. 669 (1970); Crow v. Brown, 332 F. Supp. 382 (1971); Southern Alameda Spanish Sp. Org. v. City of Union City, 357 F. Supp. 1188 (1970).

In Kennedy Park Homes Ass'n v. City of Lackawanna, the defendant municipality's denial and interference with the Kennedy Park subdivision were considered willful contrivance to deprive plaintiffs of their civil rights. They ignored community needs, and by design and neglect, hurt the plaintiffs. It is understandable that for this particular subidivision, defendants were required to take affirmative steps to see that the subdivision was completed. The following broad remedy is not debatable:

> "Because defendants' conduct has denied plaintiffs equal protection of the laws and the Constitution of the United States, and also the rights guaranteed by Title VIII of the Civil Rights Act of 1968, plaintiffs are entitled to relief. "We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discrimination effects of the past as well as bar like discrimination in the future." United States v. Louisiana, supra, 380 U.S. 154, 85 S.Ct. 822.

The court then included in its order provisions requiring the municipality to provide adequate sewerage service for the subdivision; enjoined it from condemning land in the subdivision for a park; and required it to take whatever steps necessary to allow

construction and report to the court the appropriate measures taken and a timetable for completion.

As distinguished from the case at bar, plaintiffs were citizens of the community and were suffering by the municipality's continued action and inaction. Liability against the municipality was crystal clear, and the remedy appropriate.

In Crow v. Brown, supra, the defendant county denied building permits for apartments projects in areas legitimately zoned for the construction of apartments because it only wanted nice luxury apartments. In addition, black residents of Fulton County sued because they were being denied access to low rent public housing outside the racially concentrated areas of Fulton County. In other words, the County did not build in the suburbs. The County did not disperse its housing. The issue raised was whether the 14th Amendment to the United States Constitution prohibits the county defendants from exercising discretion allowed by municipal law for the avowed purpose of excluding low income blacks from apartments proposed for construction on land zoned for apartments. No relief was granted against the Housing Authority, HUD, or the City of Atlanta because it was the county which was actually denying the projects and refusing to disperse public housing.

The remedy, of course, enjoined the defendants from interfering with the two specific projects. It also required that the County officials,who admittedly were planning and working against dispersal of low rental housing units in the county, to work with Housing Authority officials to promote areas in which said housing could be built. Again, these officials had actively committed wrongs against the plaintiffs, and the drastic remedy of continued court supervision was deemed necessary. No expenditure of funds or participation in programs for rehabilitation of existing substandard units was involved in the case.

The most far reaching remedy was imposed by United States District Court in Southern Alameda Spanish Speaking Organization v. City of Union City, et al, supra, where the court held:

> "That referendum rejection by electorate of city council's multifamily use rezoning ordinance, even considered in light of city's best performance, was not such as to amount in effect to failure of city to accommodate the housing needs of its low income residents within the meaning of the law, but housing situation in city was such that, if city failed to take within a reasonable time all steps necessary and reasonably feasible under the law to accommodate the needs of its low income residents, right of such residents to equal protection would be denied."

Even though the court found that the City zone had not deprived the plaintiffs, poor Mexicans, of housing and that the city could not be responsible for other causes which had hurt

housing for such groups, it still believed that the City should take steps to accommodate the needs of its low income residents, and made the following order:

> "(a) that plaintiffs should be denied relief insofar as they pray that the City be now ordered to rezone the particular Baker Road site to multi-family use notwithstanding the referendum rejection by the electorate of such rezoning.
>
> (b) That plaintiffs should be granted, however, relief insofar as they pray that the City take steps necessary and reasonably feasible under the law to accommodate within a reasonable time the needs of low income residents of Union City.
>
> Such steps shall include so far as necessary and reasonably feasible under the law, not only encouragement and, if possible, implementation of programs dependent on the initiative of private residential developers, and upon the cooperation of private landowners or occupants, e.g. Section 236 and 235 programs, the so-called Section 23 Alameda County low cost leasing program and housing rehabilitation grant and loan program (including, if possible implementation of the SASSO housing Section 236 program either as now proposed or as modified) but also public housing programs requiring the exercise of the fiscal and eminent domain powers of the City if such be necessary and reasonably feasible under the law to accomplish the object to this order in the event that private initiate and land owner cooperation (over which admittedly the City has no control) are insufficient to reasonably accommodate the housing needs of low income residents (e.g. public housing, public urban renewal programs and other similar public programs designed for that purpose.)
>
> (c) A reasonable time for accommodating to the housing needs of low income residents is hereby tentatively fixed at not later than May 1, 1971, provided, however, that the City be ordered to report in writing to this court

within three months from the date of this order, and regularly at each three month period thereafter, upon what steps, which are necessarily and reasonably feasible under the law, have been taken to accomplish the object of this order.

(d) The court reserves power to change the reasonable time period hereinabove fixed and to grant plaintiffs relief in respect to rezoning the Baker Road, or other particular site if and when the Court finds, upon such further hearing as it may order, that the housing situation has become such that failure to rezone has become in effect, denial of decent housing to low income residents and denial of equal protection of law."

Apparently this is the type of order of "last resort" which Urban League plaintiffs would like the court to impose on the defendants. As to the 12 substantially developed municipal-defendants, it is strongly urged that there is no evidence of such inadequate housing in the 12 municipalities, nor an intent by inaction or contrivance to maintain alleged inadequate housing or deny specific projects, nor refusal of building permits, or maintaining of segregated housing as would justify any of the remedies in the three federal cases.

Plaintiffs' proof of alleged sub-standard housing rested solely on two documents: 1970 statistics on Page 21 of P-50; and the list of sub-standard housing contained in P-63, the CDRS application of the 20 urban county municipalities.

The reliability of the 1970 listing was brought into

question by two of plaintiffs' witnesses, Dr. Lapp of Tri-State, and Douglas Powell, of the Middlesex County Planning Board. From them the following was established:

1. The 1970 listing was derived from the Tri-State Regional Planning Commission, was based on a computerized formula that estimated sub-standard housing on the basis of concentration of low income households, unemployment and overcrowding of units. Some of the factors had no relationship to the actual physical conditions of the houses.

2. The division of the Tri-State alleged sub-standard housing into deteriorated and dilapidated is no longer used in 1976.

3. The U.S. Census in 1970 actually made no findings as to sub-standard housing, but only made specific findings as to lack of plumbing. The term "dilapidated" later used by other organizations such as Tri-State, included the following five criteria:

A. Whether the unit lacked central or built-in heat.

B. Whether the number of persons per room was 1.01 or more.

C. Whether the head of the household had completed less than five years of school.

D. Whether the unit was in a multiunit structure, and

E. Whether the rent or value was below a specified cutoff.

4. The criteria used by the Middlesex County Planning Board in connection with the CDRS grant used the following criteria:

A. Lack of plumbing.

B. Whether the number of persons per room was 1.01 or more and whether the rent or value was below a specified minimum.

C. Whether the unit lacked private kitchen facilities.

5. The locations of sub-standard housing from the U.S. Census would be impossible to find from the census alone, because of the confidentially of census data.

Plaintiffs supplied only statistics and did not supply any specifics as to locations, inadequacies, or physical conditions relating to slum and other unhealthy situations. The mere showing from Census figures of some sub-standard housing which undoubtedly obtains in every single community in the United States, should not justify the affirmative order compelling the use of municipal discretion and funds to rehabilitate "sub-standard housing".

6. PLAINTIFFS FAILED TO PROVIDE THE COURT WITH SUFFICIENT INFORMATION CONCERNING FEDERAL AND STATE PROGRAMS, THE AVAILABILITY OF FUNDING, AND THE BURDENS WHICH THE MUNICIPALITIES WOULD HAVE

TO UNDERTAKE TO PARTICIPATE IN SAID PROGRAMS IN ORDER FOR THE COURT TO ENTER AN ENFORCEABLE ORDER.

Plaintiffs through its "expert", merely listed the following federal and state programs, some of which would apply to rehabilitated housing, and some to new units. There was no concrete testimony as to the following:

1. What bureauacy the municipalities would have to establish to participate in any particular program.

2. What cost the individual municipalities would have to incur in respect to consultants, clerical employees, and surveys, etc. to participate in any program.

3. Which programs would be most suitable for particular municipalities.

4. The actual funds available in this fiscal or the next fiscal year for each program, the chances of each municipality obtaining a specific amount under any program, the maximum necessary to eliminate so-called sub-standard housing from any municipality.

5. Whether the municipalities could obtain the same or more funds under the urban county grant.

6. If rehabilitation is supplied under the urban county grant, whether the court could order the applicant, Middlesex

County, to require the municipalities to spend some of the grant monies for rehabilitation, when Middlesex County is not a party to the law suit.

7. If the court chooses to make a municipality participate in every single federal and state housing program, how will the court monitor the municipality's progress, and determine whether any lack of funds results from a municipality's lack of expertise, lack of effort, negligence, incompetence, lack of funds, or the federal or state agencies' actions in such fields.

8. Will the judiciary, therefore, be operating a housing program in each municipality, and will the failure of any progress result in contempt orders against any municipal officials, and if so, whom; the governing body, the appointed officials, past or present?

In its brief, plaintiffs eluded the consequences of the court issuing specific affirmative orders to municipalities by stating that the municipality should have the right to act first and then apparently come under more stringent court control as a "last resort". Through Appendix C and Appendix F, plaintiffs fleshed in slightly the skeleton of the Federal and State programs outlined by Mr. Mallach. However, the difficulties of enforcing orders of last resort, and particularly those involving rehab-

ilitation of sub-standard units, should be faced now. How have these State programs, for example, been affected by New Jersey's current financial crisis? Do even the limited demonstration programs and experimental programs and other grants and loans under the Department of Community Affairs exist on paper only? What is the status of funding for low interest rate mortgages involving moderate income projects sponsored by the New Jersey Housing Finance program under N.J.S.A. 55:14J-1 et seq?

For example, Metuchen adopted its resolution of need in 1972, its tax abatement resolution in July 1975, the application for the 100 unit senior citizen housing project has been diligently pursued; and yet, there is no project.

To summarize, it is submitted that the definition of sub-standard housing is imprecise; the concrete existence of same in the respective municipalities is incomplete; the available of funding is vague; the exact municipal obligations of each municipality in respect to personnel, budget, and governmental apparatus are uncertain. While these circumstances would not morally excuse a municipality from attempting to improve its housing stock, they are such, it is submitted, to exclude a judicial plunge into the housing market and political thicket.

POINT II

DEFENDANT MUNICIPALITIES ARE ALREADY PARTICIPATING IN FEDERAL AND STATE PROGRAMS EITHER ON THEIR OWN OR THROUGH THE 20 MUNICIPALITIES URBAN COUNTY GRANT UNDER THE CDRS APPLICATION IN OBTAINING ASSISTANCE TO IMPROVE HOUSING IN THE INDIVIDUAL COMMUNITIES. NO COURT ORDERED REMEDY IS THEREFORE JUSTIFIED.

The court has granted motions to dismiss plaintiffs' complaint against 12 substantially developed municipalities with the limitation as set forth in Point I of this brief. 11 of those municipalities, together with 9 others have applied for federal funds under the Urban County Grant, the application for which is in evidence as plaintiffs Exhibit 63. 5 other municipalities, including the conditionally dismissed defendant, Woodbridge Township, are able to apply for funds separate from the Urban County Grant, which facts may be detailed by those respective municipalities. Appendix I of this brief provides the documentation of the municipalities present participation in the federal CDRS Program, as permited by the court. A reading of P63, together with Appendix I leads to the following conclusions:

1. Every municipality involved in the CDRS application is helping low and moderate income families. Under the law, every project, whether it be for water and sewer, community improvements, community facilities, rehabilitation, code enforce-

ment, or recreation, must be related to the need of low and moderate income families.

2. Every municipality participating in the CDRS grant must have formulated a housing assistance plan with the aid of Middlesex County officials, as a sine qua non for obtaining money for any project.

3. The 20 CDRS municipalities are actively pursuing federal funds for rehabilitation of houses; this is the most effective way for these communities to obtain federal funds.

4. There is no evidence that the 20 municipalities started to participate in the CDRS grant as a result of being made defendants in the Urban League litigation, or because of any threats of litigation. No question has been raised considering the good faith of the municipalities in participating in the CDRS program.

5. While the municipalities must take separate action so that Section 8 funds will eventually go to the applicable residents in each community, the sharing of the expertise of Middlesex County officials under the Urban County Grant will undoubtedly aid the process.

Individual defendants may be submitting additional documentation as to participation in other federal and state

programs, as well as any local projects.

Because these municipal defendants are already participating in programs to rehabilitate sub-standard units, there is no reason for the court to frame an order requiring the municipalities to do what they are already doing. Not only would the order not be justified or appropriate for the reasons set forth both in Point I and under Point II herein, but its enforceability would be very difficult for the court. Middlesex County officials are an integral part of the program, and as a matter of fact, some of the funds go to Middlesex County to provide for necessary administrative services. The County is not a party to this litigation, and the serious question would arise as to how any such order would be enforced. While plaintiffs commend the cooperative efforts of the 20 CDRS municipalities to participate under the 1974 Community Development Revenue Sharing Act, the defendants would go one step further. They would recommend that such a voluntary and cooperative effort be allowed to continue, based on the existing good faith effort of the communities, and consistent with the separationof powers under the New Jersey Constitution.

POINT III

THE COURT SHOULD NOT REVERSE ITS RULING THAT THE SUBSTANTIALLY DEVELOPED MUNICIPALITIES DO NOT HAVE TO PROVIDE FOR THEIR FAIR SHARE OF ANY REGIONAL NEED FOR LOW AND MODERATE INCOME HOUSING.

Plaintiffs have once again in their brief made mention of the desirability for all defendants to participate in a fair share allocation. While their contentions are inserted in a "Post-Trial Brief", they are really a rehash of their original arguments made even before trial. It may be convenient for plaintiffs case to wrap all 23 municipalities in a neat package for a fair share remedy. However, the court has already ruled that the combination of lack of vacant land, plus the existence of housing for low and moderate income families preclude liability and any fair share remedy against the substantially developed communities. That is what the motions for dismissal were all about. For the court to require these defendants to participate in a fair share remedy at this time would be grossly unfair for the following reasons:

a. The court would be reversing prior rulings.

b. The defendants had relied on those prior rulings and voluntarily amended or proceeded to amend their ordinances without putting in any further defenses, including defenses to show a balanced housing community.

c. Some or all of the attorneys for the 12 municipalities specifically absented themselves from those portions of the case involving fair share remedies, under the belief that they could not apply to the 12 municipalities.

These defendants contend that based on the law and the facts as only proved by the plaintiffs, no remedy is applicable to them, and certainly not an allocation of houses where no developable land exists.

CONCLUSION

For the reasons set forth above, the 12 substantially developed municipalities request that the court sign the orders of dismissal upon which the court has already ruled, free from any conditions, and without costs or attorney's fees to any party.

Respectfully submitted,

MARTIN A. SPRITZER, Attorney
for Borough of Metuchen, and
on behalf of the following
defendant municipalities:

Borough of Carteret, Borough of Dunellen, Borough of Helmetta, Borough of Highland Park, Borough of Jamesburg, Borough of Middlesex, Borough of Milltown, City of South Amboy, Borough of South River, Borough of Spotswood, and Township of Woodbridge.