UL v. Corteet

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~~folder~~ ~~index~~

post-trial brief of TS
w/ appendices

pi-1178
pg 129

CA 001149 B

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.

POST-TRIAL BRIEF OF PLAINTIFFS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

INTRODUCTION

In response to the Court's comments at the close of trial on March 23, 1976, plaintiffs submit this brief dealing with the nature and scope of relief that the Court should afford to plaintiffs and the class they represent. This brief also necessarily deals with the extent of the Court's legal authority to impose an Order on the defendant municipalities to take action necessary to provide full and effective relief to the plaintiffs and the class they represent.

In Point I, plaintiffs seek to identify the precise nature of the wrong done to plaintiffs and the class they represent by the defendant municipalities. This, in plaintiffs' view, is the threshold issue in determining the Court's authority to provide an effective remedy. Plaintiffs stress that the wrong in this case is of constitutional dimension, that the defendants' conduct has denied to plaintiffs basic constitutional rights. This constitutional violation calls for vigorous remedial action by the Court, including the issuance of orders for appropriate relief. Further, the wrong consists of defendants' exclusion from their borders of standard low and moderate income housing in which plaintiffs and the class they represent can live. The principal device by which this exclusion has been effected is maintenance of zoning laws which prevent provision of such housing. Other land use practices, however, are also involved.

Plaintiffs stress that the remedy must be addressed to the wrong -- exclusion -- not just to the principal device -- exclusionary zoning. A remedy aimed only at eliminating the principal device by which exclusion has been accomplished is unlikely to provide effective relief. For one thing, defendants may easily turn to other devices for such purposes. Finally, the exclusion is not that of a single municipality in an otherwise inclusionary metropolitan area. The impact of the exclusion is metropolitan-wide and the conduct of the various municipalities must be viewed in the aggregate. By the same token, relief, if it is to be effective, must also be metropolitan-wide in perspective.

In Point II, plaintiffs turn to the scope of the remedy. In the instant case, in which all municipalities in Middlesex County are parties and subject to an appropriate order for relief, a unique opportunity is presented to fashion relief that can have lasting salutary effects on the entire County and the larger region. The opportunity is presented for each of the municipalities in Middlesex County to develop and implement a plan to accommodate its fair share of the present and prospective regional need for low and moderate income housing in relation to similar fair share plans by the other municipalities. The instant case also affords the opportunity for the regional low and moderate income housing need to be met on a realistic basis, and in a way that will assure against undue concentrations of such housing in any single municipality or small group of municipalities.

In Point III, plaintiffs examine the mechanics of the remedy, defining the respective roles of the Court and the municipalities in assuring full and effective relief to the plaintiffs and the class they represent. In plaintiffs' view, the Court should not, at least initially, be forced to carry the burden of ordering all the specific steps the municipalities must take to assure effective relief. The Court's principal function, in the first instance, should be to provide certain ground rules and guidelines under which the municipalities themselves would provide the details of fair share allocation and implementation. Only if the defendants fail to honor their obligation to comply with the Court's Order, is it necessary for the Court, as a last resort, to intervene by way of imposition of specific fair share allocation plans and specific affirmative implementation steps.

Also in response to the Court's suggestions, plaintiffs incorporate in this brief their views on the kinds of actions necessary to provide full and effective relief. These consist of the nature and scope of changes that should be made in the zoning laws of the respective municipalities, the basic elements that should be considered in developing fair share allocation plans by the defendant municipalities, and the steps that should be considered in assuring provision of the requisite low and moderate income housing units in the various municipalities. Plaintiffs have also provided a suggested formula by which the fair share plans of the various municipalities may be calculated. These views and suggestions are pro-

in an effort to assist the Court in its determination of the most appropriate mechanisms by which full and effective relief may be provided to plaintiffs to remedy the constitutional wrong done to them.

ARGUMENT

POINT I

DEFENDANTS' VIOLATION OF PLAINTIFFS' RIGHTS IS CONSTITUTIONAL IN DIMENSION, CONSISTING OF EXCLUSION OF STANDARD HOUSING IN WHICH PLAINTIFFS CAN LIVE THROUGHOUT VIRTUALLY ALL OF MIDDLESEX COUNTY

In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16, (1971), the Supreme Court of the United States succinctly stated the general principle that governs remedial orders by courts of equity: "The nature of the violation determines the scope of remedy." Thus, the threshold issue in determining the Court's authority to provide relief -- particularly affirmative relief -- is to identify the nature of the wrong done to plaintiffs and the class they represent.

A. Constitutional Violation

First, plaintiffs stress that the wrong in this case consists not only of a statutory infraction, but a violation of the Constitution of the State of New Jersey. As the Supreme Court of New Jersey, in the landmark case of So. Burl. Cty. NAACP v. Tp. of Mt. Laurel, 67 N.J. 151, 175 (1975) (hereafter Mt. Laurel), made clear: "[T]he basic importance of housing and local regulations restricting its availability to substantial segments of the population" is of "fundamental import" and of "constitutional dimension." As in Mt. Laurel, the exclusionary conduct of the defendant municipalities in the instant case denies to plaintiffs and the class they represent basic constitutional rights.

The Supreme Court of New Jersey, as well as the Supreme Court of the United States, has made it clear that courts of equity have not only the power, but the responsibility, to order affirmative relief to provide an effective remedy for the violation of constitutional rights. This important principle has been emphasized in cases involving constitutional violations arising in a variety of factual contexts. Thus, in Robinson v. Cahill, 67 N.J. 333 (1975), in which the Supreme Court struck down the State system of school financing as unconstitutional, the Court emphasized its responsibility to afford an appropriate remedy to redress the constitutional violation and, in fact, imposed on the State legislature an Order for affirmative relief.

By the same token, in Jackman v. Bodine, 43 N.J. 453 (1964), where the Supreme Court held the state's legislative apportionment scheme to be in violation of the federal constitution, the Court, while declining in the first instance to devise a plan for legislative reapportionment, made it clear that it would do so in the event the legislature failed to act. In fact, the Supreme Court later did act to alter legislative districting in the state. See Jackman v. Bodine, 53 N.J. 585 (1969). See also Reynolds v. Sims, 377 U.S. 533 (1964).

In Swann v. Charlotte-Mecklenburg Board of Education, supra, the Supreme Court of the United States upheld an Order by the lower court imposing a specific school desegregation plan on the defendant school district. The United States Supreme Court stated:

> Once a [constitutional] right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies. 402 U.S. at 15.

Like legislative apportionment, school finance, and school segregation, housing, as the Supreme Court held in Mt. Laurel, is a matter of constitutional dimension, and, accordingly, the wrong the defendant municipalities have inflicted on the plaintiffs is of the gravest possible character, a violation of their constitutional rights. As the Supreme Court of New Jersey, as well as the Supreme Court of the United States, have stressed, courts of equity are empowered, and even obligated, to issue appropriate orders, including orders for affirmative relief, to provide a remedy for that constitutional wrong.

B. Exclusion of Low and Moderate Income Standard Housing.

Second, it is important to identify the nature of the constitutional violation. By determining the precise wrong done to plaintiffs, the Court can then fashion the appropriate remedy. The wrong which the defendant municipalities have done to plaintiffs, low and moderate income persons, white and non-white, consists of exclusion from their borders of decent, safe, and sanitary housing in which plaintiffs and the class they represent can live.

The impact of the defendants' exclusion of standard low and moderate income housing is shown in part by examination

of income statistics. The County average for low and moderate income families as of 1970 (incomes up to $10,000 a year) was 34 percent. For New Brunswick and Perth Amboy, the figure was well above 50 percent. For most of the other municipalities in the County, the figure was well below the County average. For South Plainfield, for example, low and moderate income families represented less than 25 percent of the population (P-28). For East Brunswick, they were less than 20 percent of the Township's population. Id. Thus, most of the defendant municipalities, through exclusion of standard low and moderate income housing, have effectively prevented plaintiffs and the class they represent from residing in those jurisdictions.

Even for those few of the defendant municipalities whose percentage of low and moderate income families was above the County's average, the impact of their exclusion of standard low and moderate income housing can be seen. Thus, in Jamesburg, whose low and moderate income population was approximately 45 percent in 1970, above the County average, 344 families, more than 60 percent of the number of low and moderate income families in the Borough, were in need of housing assistance, either because they were residing in substandard housing or were paying more than they could afford for housing (P-53 at 68). In South Amboy, whose low and moderate income population was 41 percent in 1970, again more than the County average, 633 families, again more than 60 percent of the low and moderate income families in the Borough, were in need of

housing assistance, either because they were residing in substandard housing or were paying more than they could afford for housing. Id. In these municipalities, where low and moderate income families do reside, they do so only at terrible cost -- living in substandard units or paying more than they can afford for housing.

This is illustrated by the situation of plaintiff Judith Champion. Mrs. Champion has managed to find an apartment in one of the defendant municipalities for herself and her young children. It is a basement apartment, subject to flooding, and she pays much more for rent than she can afford on her limited income.

The principal device by which this exclusion has been effected is maintenance of zoning laws which prevent provision of standard low and moderate income housing. As plaintiffs demonstrated at trial, however, defendants also excluded such housing through devices not related to zoning laws -- specifically, failure to take the steps necessary to provide low-rent public housing or to participate in New Jersey State Housing Agency programs. The constitutional wrong, plaintiffs contend, consists of the aggregate of defendants' conduct, through action and inaction, that has served to exclude standard low and moderate income housing.

In any event, the distinction between the nature of the wrong -- exclusion -- and the principal device through which it has been accomplished -- exclusionary zoning laws -- is of key importance. For full and effective relief, the Court must

address the wrong itself, not merely the principal device by which it has been done. Just as the wrong has consisted of exclusion of low and moderate income housing, the remedy must be aimed at inclusion of such housing. Relief addressed only to elimination of the exclusionary zoning provisions could easily leave the plaintiffs remediless. While the defendant municipalities have utilized their zoning authority to exclude standard low and moderate income housing, they could easily turn to other devices to effect a similar exclusion. The law reports are replete with examples of such other devices. These include refusals to permit lower income housing projects to hook up with existing water and sewer lines (United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, 493 F.2d 799 (5th Cir. 1974)); denials of building permits for lower income housing (Crow v. Brown, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd per curiam 457 F.2d 788 (5th Cir. 1972)); and refusals to issue a "platting" (Joseph Skilken and Co. v. City of Toledo, 380 F. Supp. 228 (N.D. Ohio 1974), reversed on other grounds, 528 F.2d 867 (6th Cir. 1975), petition for cert. pending).

The courts, through long and often unhappy experience, have learned that remedies addressed solely to the particular devices by which constitutional rights have been denied may well be illusory. Accordingly, they have fashioned the remedy to address the constitutional violation itself, not just the devices. The clearest and most painful example of this experience is in the area of school desegregation. In the ten

years following the landmark decision of the Supreme Court of the United States in Brown v. Board of Education, 347 U.S. 483 (1954), outlawing legally compelled or sanctioned school segregation, practical relief in the form of actual school desegregation was denied to hundreds of thousands of black children. During that decade, the Supreme Court, as well as lower federal courts, were forced to strike down one device after another, each perpetuating the status quo of school segregation. When the courts focused on the constitutional wrong itself -- school segregation -- rather than the particular segregative devices, and directly addressed the proper remedy for that constitutional wrong -- school desegregation -- the pace of desegregation accelerated. See, e.g., Swann v. Charlotte-Mecklenburg Board of Education, supra; Green v. County School Bd. of New Kent Co., Va., 391 U.S. 430 (1968).

As the Supreme Court of the United States stressed in Green, supra, defendant school boards are obligated not merely to eliminate the particular devices by which racially segregated dual school systems are maintained. They are also "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 437-38 (emphasis added). The Court added: "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." 391 U.S. at 439. In the instant case as we Court must focus not merely on the devices by which the

constitutional wrong of exclusion has been accomplished, but on righting the wrong, itself.

C. County-Wide Exclusion

Third, the constitutional wrong done to plaintiffs and the class they represent does not consist merely of their exclusion by a single municipality in an otherwise inclusionary metropolitan area. As plaintiffs have shown, in Middlesex County exclusion is the rule, not the exception.

Plaintiff Barbara Tippett, for example, testified that she had searched for several years for adequate housing, throughout defendant municipalities. Her search was in vain. She and her family still remain in New Brunswick. Plaintiff Cleveland Benson managed to find a house in one of the defendant municipalities, but it is hardly adequate. The house in which the Benson family, consisting of Mr. Benson, his wife, and nine children, lives has two bedrooms. Mr. Benson pays more than $350 a month for rent. Thus, the full extent of the injury to plaintiffs can be understood only by an examination of the aggregate effect of the exclusionary practices of the defendant municipalities.

Mt. Laurel involved a challenge to the exclusionary practices of one municipality. The Supreme Court was, therefore, necessarily confined, in considering the nature of the wrong and the appropriateness of the remedy, to the Township of Mt. Laur alone. The Court nonetheless expressly recognized "' *** th unreality in dealing with zoning problems on the basis of

territorial limits of a municipality.'" (quoting from Duffcon Concrete Products, Inc. v. Borough of Cresskill, 1 N.J. 509, 513 [1949]). Mt. Laurel, 67 N.J. at 189.

The instant case, by contrast, involves as defendants nearly all the municipalities that make up Middlesex County, a Standard Metropolitan Statistical Area in which all the municipalities are "economically and socially integrated." Further, Middlesex County constitutes a common housing and labor market area. Thus, all of the municipalities of Middlesex County -- the defendant municipalities and New Brunswick and Perth Amboy, alike -- are tied to each other by common social and economic concerns. By the same token, the constitutional wrong in this case, when examined realistically, cannot be compartmentalized as though each of the defendant municipalities exists in isolation from the other municipalities that make up Middlesex County. It must be viewed from a metropolitan and regional perspective. So, too, must the remedy.

In his classic dissent in Vickers v. Tp. Com. of Gloucester Tp., 37 N.J. 232, 262 (1962), Justice Hall warned that the general welfare "cannot authorize a municipality to erect completely isolationist wall on its boundaries." In Vickers, as in Mt. Laurel, Justice Hall was dealing with exclusionary practices of a single municipality. In the instant case, the "isolationist wall" is of a different dimension. For it seals off not a single municipality, but nearly all of Middlesex County as a haven from which low and moderate income people from the rest of the County and the larger region are excluded. It is a wall which the defendant municipalities all participated collectively in erecting. All must participate collectively in dismantling it.

POINT II

THE APPROPRIATE REMEDY IS DEVELOPMENT BY ALL THE MUNICIPALITIES IN MIDDLESEX COUNTY, IN CLOSE COOPERATION, OF PLANS TO ACCOMMODATE THEIR FAIR SHARE OF THE PRESENT AND PROSPECTIVE REGIONAL NEED FOR LOW AND MODERATE INCOME HOUSING IN RELATION TO SIMILAR FAIR SHARE PLANS BY OTHER MUNICIPALITIES

In Point I, plaintiffs sought to identify the precise nature of the violation in this case. It is consitutional in dimension. It consists of exclusion by defendant municipalities of standard low and moderate income housing. Its impact is metropolitan-wide. The remedy, if it is to make plaintiffs whole, must fully address the violation and eliminate its effects. This must involve an order that will result in the provision of standard low and moderate income units throughout the defendant municipalities, sufficient to satisfy the present and prospective need.

A. Fair Share of Regional Need

In Mt. Laurel, the Supreme Court emphasized that the "obligation to afford the opportunity for decent and adequate low and moderate income housing extends at least to '... that municipality's fair share of the present and prospective regional need therefor.'" 67 N.J. at 188. Thus, "fair share" represents the basic obligation of each of the defendant municipalities. Further, it is not limited to the municipality's own low and moderate income need, nor to that of the County, but extends to the "regional need therefor." Moreover, it must provide for the "prospective," as well as "present," need.

The Supreme Court also noted the distinct advantages of determining "fair share" on a regional, rather than an individual municipality, basis, id. at 189, and pointed approvingly to the fact that at least land use planning in New Jersey is carried out on a county, state, and regional, as well as individual municipality, basis. Id. n.22.

In the instant case, unlike Mt. Laurel, all of the municipalities that make up Middlesex County are parties to the suit and are subject to an appropriate order for relief.[1/] Further, the exclusion is County-wide in dimension. The remedy too, plaintiffs contend, must also be County-wide. This case presents a unique opportunity, not available in cases involving a single defendant municipality, to fashion relief that can have lasting salutary effects, redounding to the benefit of all the people living in the County, as well as people from the greater region who have been previously foreclosed from residing in the County by the defendants' unconstitutional conduct. The opportunity is presented to determine each municipality's fair share of the present and prospective regional need for low and moderate income housing in relation to that of the other municipalities in Middlesex County. The opportunity is also presented for the various municipalities to determine their "fair share" on the basis of equitable principles that will assure both that the County's fair share of

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1/ New Brunswick and Perth Amboy were not named as defendants in plaintiffs' complaint, but were added as third party defendants by motion of defendant municipalities. The Court did grant a motion to dismiss by defendant Dunellen, but no final order has yet been signed. Further, the Court expressly reserved the possibility of relief being ordered against Dunellen.

the regional need for low and moderate income housing units is met and that each municipality plays its proper role in meeting that need in relation to the other municipalities. As the Supreme Court pointed out in Mt. Laurel:

> Frequently it might be sounder to have more of such [low and moderate income] housing . . . in one municipality in a region than in another, because of greater availability of suitable land, location of employment, accessibility of public transportation or some other significant reason. 67 N.J. at 189.

With all the municipalities participating in developing fair share plans, it becomes feasible for these and other practical considerations to be taken into account. In this connection, it is of critical importance that the municipalities work in close cooperation with each other, whether in the form of developing a single plan for the entire County or preparing separate plans that are coordinated with the plans of the others. Municipal fair share plans developed in isolation from those of others offer little promise of proving either equitable or workable.

Such cooperative efforts among adjoining communities acknowledges the "long recognized ... duty of municipal officials to look beyond municipal lines in the discharge of their zoning responsibilities." Quinton v. Edison Park Development Corp., 59 N.J. 571, 578 (1971).

The cooperation of the defendants in allocating units is similar to that which ultimately resulted from the tax equalization cases. In Switz v. Middletown Township, 23 N.J. 580 (1957), one taxpayer sued one municipality to equalize property valuation and tax assessment. The lower court ordered appropriate relief and the defendant municipality appealed. While affirming the decree in all major respects, the Supreme Court postponed for two years the time for compliance, partly to give the Legislature the opportunity to complete its pending study which might result in state or county-wide equalization. The Court was very aware of the inequities which would follow from a decree involving only one municipality.

> And we allude again to the element of inequality attending the fulfillment of the judicial mandate in but one municipality of the county, and the obvious need of joint action under the one standard by all such municipalities when the time arrives, requiring that they be made parties to the action, if need be to secure the requisite uniformity. Id. at 599 (emphasis added).

Shortly thereafter other plaintiffs accepted the invitation of the Supreme Court to join all municipalities in a single county, seeking the county-wide relief through "joint action" which the Court contemplated. In Ridgefield Park v. Bergen County Board of Taxation, 31 N.J. 420 (1960), Ridgefield Park taxpayers, together with the Village, sued all the other towns in Bergen County and the County's tax board for equalization of

property valuation and tax assessment. The Court sustained the right of taxpayers in one municipality to sue the appropriate officials in another town in the county for equalization. The Court ordered a county-wide uniform revaluation and assessment by all the defendant governments. That judgment clearly contemplated uniform action by all the assessors to make sure that equitable property taxation was achieved.

B. Implementation of Fair Share Plans

It is essential that the fair share plans be concerned not only with allocation of the present and prospective regional need, but also with how that allocation is to be met -- in short, implementation. Implementation may frequently be accomplished to a substantial degree through changes in zoning laws, both the elimination of existing exclusionary provisions and adoption of other provisions calculated to encourage the provision of low and moderate income housing. Affirmative action, however, by the defendant municipalities, such as availing themselves of various federal and state programs of housing and community development, also will be necessary.

As discussed infra, the obligation, at least in the first instance, to determine the most appropriate way to implement the fair share need lies with the individual municipalities. As also discussed infra, the Court should provide guidelines outlining the kinds of programs and activities which, if undertaken by the defendants would constitute an adequate implementation program. Such guidelines have traditionally been used by courts of equity to provide a framework for the

development of remedial programs by non-judicial agencies. See Jackman v. Bodine, supra, Robinson v. Cahill, supra, Swann v. Charlotte-Mecklenburg Board of Education, supra.

C. Role of Substantially Built-Up Municipalities

In the course of the trial, the Court granted conditional dismissals to eleven substantially built-up defendant municipalities. The plaintiffs expressly reserved the right to retain those defendants for purposes of a possible Order for relief over and above changes in their zoning ordinances.

Plaintiffs contend that if full and effective relief is to be secured, all defendant municipalities, including those that are substantially built up, must participate in developing and implementing fair share plans. Although the nature and extent of the contribution that built-up municipalities can make in meeting the fair share need may differ from those of relatively undeveloped municipalities, there is little question that they can play a significant role.

First, these municipalities may be substantially built up, but not entirely so. In each, there is some amount of vacant, developable land which can be utilized to meet its fair share of the need.

Second, in each of these municipalities, there is some amount of housing that is presently beyond rehabilitation and must be razed. This, in turn, will create additional vacant, developable land which can be used to meet the need for low and moderate income housing.

Third, land presently occupied will become vacant in future years through razing of existing structures or planned reuse, and thus available for low and moderate income housing.

Fourth, each municipality contains housing units which are in need of substantial rehabilitation if they are to be preserved. Again, these rehabilitated units can serve to meet the need.

Fifth, the existing inventory of standard housing in these municipalities can serve as a resource for low and moderate income families through use of subsidized housing programs such as the federally subsidized Section 8 program.

The significant role that substantially built-up municipalities can play in meeting the need for low and moderate income housing has been recognized by the Department of Housing and Urban Development in its new regulations governing Housing Assistance Plans under the Housing and Community Development Act of 1974 (P-184). In those regulations HUD does not permit a municipality to pare down its "expected to reside" figure based on a claim that the municipality has only a limited physical capacity.[2/]

2/ See Appendix D for plaintiffs' brief and affidavit of Ernest Erber concerning the role of built-up municipalities.

POINT III

THE COURT ORDER SHOULD PLACE RESPONSIBILITY, IN THE FIRST INSTANCE, FOR DEVELOPING SPECIFIC REMEDIAL STEPS IN THE DEFENDANT MUNICIPALITIES, SUBJECT TO JUDICIAL STANDARDS AND GUIDELINES, BUT SHOULD EXERCISE ITS AUTHORITY TO ORDER SPECIFIC REMEDIAL ACTION AS A LAST RESORT, IF DEFENDANTS FAIL TO COMPLY WITH THE COURT'S ORDER

As noted in Point I, the denial of plaintiffs' constitutional rights consists of exclusion from the defendant municipalities of standard low and moderate income housing in which plaintiffs and the class they represent can live. Specifically, the defendant municipalities have failed to comply with their constitutional obligation as enunciated in Mt. Laurel -- to provide their "fair share of the present and prospective regional need [for low and moderate income housing]" 67 N.J. at 188.

As noted in Point II, the remedy for that constitutional violation, if plaintiffs are to be made whole, must be provision of such standard low and moderate income housing units throughout the defendant municipalities, sufficient to satisfy present and prospective regional need. To effectuate this remedy, the Court must issue an appropriate Order. This section deals with the elements of such an Order and the mechanics by which the remedy can be effected.

A. The Role of the Court

In addressing the issue of remedy, it is important to define the role that the Court should -- and should not --

appropriately play in assuring full and effective relief to the plaintiffs and the class they represent. In plaintiffs' view, the Court's role is that of assuring that an adequate remedy is secured. The Court should not, however, at least in the first instance, impose specific plans on the defendant municipalities for that purpose. As the Supreme Court pointed out, the courts should leave "to the local [municipalities] the choice in the first instance among the various solutions ... ." Booker v. Board of Education, Plainfield, 45 N.J. 161, 178 (1965). In Jackman v. Bodine, 43 N.J. 453, 473 (1964), the Supreme Court expressed the obvious corollary of that proposition: "We think it clear that the judiciary should not itself devise a plan except as a last resort." The Court noted that if, in the first instance, a judicially-devised plan is imposed on defendants,"that plan will likely seem so attractive to some as to impede the search for common agreement." Id. See also Robinson v. Cahill, 62 N.J. 473 (1973); Reynolds v. Sims, 377 U.S. 533 (1964).

Thus, the Court should not, at least initially, carry the burden of ordering all the specific steps the municipalities must take to assure effective relief. The defendants, municipal officials, should be allowed the flexibility to choose, from among the various solutions, those that are most appropriate. This is not to say, however, that the Court, even in the first instance, should play no role other than issuance of a general order that the defendants develop appropriate fair share plans. The Court must provide sufficient guidance and guidelines to be assured that full and effective relief will, in

fact, be provided. These constitute, in effect, the basic ground rules under which the municipalities must operate.

There are four important elements that the Court should include in its Order:[3/]

First, the Court should define the relevant region which defendants must consider in developing fair share plans.

Second, the Court should determine the County-wide fair share of the present and prospective regional need for low and moderate income housing to provide a numerical basis for the distribution of such housing among the various municipalities in the County.

Third, the Court should establish certain standards to govern the municipalities' determination of each one's fair share on an equitable basis.

Fourth, the Court should provide guidelines for implementation of the fair share.

1. Defining the Relevant Region

As the Supreme Court cautioned in Mt. Laurel:

. . . . . .

3/ The Court should retain jurisdiction for the purpose of assuring defendants' compliance with the Order. This is the traditional procedure in cases in which the courts leave to defendant public bodies, in the first instance, the responsibility of developing specific plans for relief. See Jackman v. Bodine, supra; Robinson v. Cahill, supra. Plaintiffs urge that the Court establish a timetable for the effectuation of its Order. Plaintiffs suggest that 45 days be given both for devising fair share allocation plans and for submitting detailed plans of the steps to be taken to implement the allocation plan.

> The composition of the applicable "region" will necessarily vary from situation to situation and probably no hard and fast rule will serve to furnish the answer in every case. 67 N.J. at 189.

As this Court pointed out in Oakwood at Madison, Inc. v. Township of Madison, 128 N.J. Super. 438, 441 (Law Div. 1974):

> The region, the housing needs of which must be reasonably provided for ... is in the view of this court, 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 invalid exclusionary zoning.

Thus, while the "region" is larger in area than the County alone, it is not susceptible to precise geographic definition. Rather, in determining housing need, the term "region" must be defined functionally -- first, the housing need of those currently residing within the County, but requiring housing assistance either because they reside in substandard units or because of financial stringency; second, housing need radiating into the County from outside because of such factors as current or projected job opportunities. Accordingly, the "region" consists of Middlesex County plus areas outside the County from which low and moderate income housing need radiates into the County.

2. Determining the County-Wide Fair Share

It is essential that the Court, and not the defendants, determine the County-wide fair share of the regional need as

the base figure governing the distribution of low and moderate income housing units throughout the various municipalities. In the course of the trial, there were two separate estimates of County-wide housing need.

Ernest Erber, an expert witness for the plaintiffs, introduced an exhibit into evidence (P-183) showing a housing need projected to 1980 of 75,754 units. This estimate of housing need included 23,492 heads of households working in Middlesex County but living elsewhere. Douglas Powell, Executive Director of the Middlesex County Planning Board, testified that the housing need projected to 1978 is approximately 48,000 units.

The large disparity between the estimates of Mr. Erber and Mr. Powell may well be more apparent than real. Both estimates included substandard units, families in financial stringency, and heads of households expected to reside in the County because of planned employment growth. The estimates differed, however, in that Mr. Erber's included heads of households currently working in the County but living elsewhere, while Mr. Powell's did not. If Mr. Erber's figure for these households is added to Mr. Powell's estimate, the disparity between the two estimates is virtually eliminated. Plaintiffs urge that it is more realistic to include as part of the housing need heads of households presently working in the County but not residing there.[4/]

4/ Mr. Powell explained that the number of heads of households presently residing in Middlesex County but working elsewhere balanced out the number working in the County but

... footnote continued on next page

It is also important for the regional housing need to be subdivided into the needs of low income families and moderate income families. Mr. Powell testified that these figures are available, based on a median income figure for Middlesex County of some $16,000 per year. Low income is defined as 50 percent or less of the median income; moderate income is defined as 80 percent or less of the median income. The figure for housing need must further be subdivided into the need of elderly persons and families. These figures, according to Mr. Powell's testimony, are also available.

In short, the basic starting point for determining fair share plans, must be a determination of the County's fair share of the regional need for low and moderate income housing. This must include (a) substandard housing units in the County, including overcrowded units; (b) families in financial stringency, e.g., low and moderate income families paying more than 25 percent of their incomes for shelter; and (c) low and moderate

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... footnote continued from preceding page

residing elsewhere. Therefore, he and his staff eliminated from their estimate of housing need the number of heads of households working, but not residing, in the County. Plaintiffs contend that this reasoning is unrealistic in that it assumes incorrectly a reversal of the suburbanization process which Mr. Erber testified about. That is, there are many heads of households who continue to work in the great urban centers, such as New York or Newark, but who prefer to reside in the suburban setting that Middlesex County affords. It is highly unlikely that they will wish to leave their homes in Middlesex County to reside in New York or Newark.

income in-commuters to Middlesex County employment. In addition, determination of projected housing need should take into consideration on-going growth in the low and moderate income population through household formation, births, etc., and employment growth.

The Court must make this factual determination. To assign this task to the defendant municipalities runs the substantial risk of disparate estimates of the regional need according to the independent judgments of the individual municipalities or a gross underestimate of that need.

3. Setting Forth Equitable Standards for Fair Share

In developing plans to accommodate their fair share of the regional need for low and moderate income housing, there are certain overriding principles that should govern in this regard. These principles should be established by the Court.

First, the sum of the numerical need identified in the various fair share plans (or in the joint plan, if the municipalities determine to prepare a single plan) must equal the County need as determined by the Court. This is necessary to prevent individual municipalities from computing their fair share allocation in a way that diminishes their own fair share to the detriment of other municipalities.

Second, the plans developed by defendants must provide a variety of locational choices for low and moderate income families and reduce the existing concentration of such families within Middlesex County. As noted in the discussion of Point I, the County average for low and moderate income families as of

1970 was 34 percent. For most of the municipalities, however, the figure was well below the County average. For New Brunswick and Perth Amboy the figure was well above 50 percent. If full and effective relief is to be provided to plaintiffs and the class they represent, it is essential that this imbalance be redressed, at least by providing realistic opportunity for housing choice to low and moderate income families residing in the County and in the greater region.

There are other factors that obviously should be taken into account in determining the fair share allocation plans of the various municipalities.

First, the amount of vacant, developable land. Municipalities with large amounts of such vacant land are in a better position to accommodate new units.

Second, proximity to employment. Although Middlesex County is, itself, a common housing and labor market area, some municipalities are either at the center of existing or projected job opportunities or close by such opportunities. It should be anticipated that the demand for housing will be greater in those municipalities than in others located a greater distance from areas of employment concentrations.

Third, preservation of the existing housing stock. This is especially important for relatively built-up municipalities which have a substantial supply of standard housing, frequently with infrastructure already installed. These units are in place and constitute a potential resource for housing low and

moderate income families. See Mt. Laurel, 67 N.J. at 189, n.21. Further, preservation of these existing standard units or rehabilitation of substandard units that can be brought up to standard will serve to maintain and add to the total housing supply, freeing other units for use by low and moderate income families.[5/]

4. Guidelines for Implementation

An essential element of the remedy is assurance that the fair share plans will be implemented. There are a variety of steps municipalities can take to encourage, facilitate, and even assure provision of low and moderate income housing. These were identified through expert testimony in the course of the trial, particularly by Douglas Powell and Alan Mallach, plaintiffs' expert witness. These include the following:

(a) Changes in zoning ordinance to facilitate provision of low and moderate income housing.

The Court has already specified the necessary changes in the zoning laws of eleven substantially built-up municipalities. Plaintiffs have set forth, in Appendix B, the

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5/ Plaintiffs urge that recognition be given to the fact that any fair share plan is a dynamic instrument, subject to constant change based on changes in the housing stock, employment growth or decline, household formation rates, and similar factors. A municipality's fair share can never be met once and for all. The reasonable fair share plan must, therefore, be established for a fixed period; e.g., five years, and must be designed in such a way that at regular intervals the housing needs, the allocations based on need and capacity, and the actions taken to meet housing needs, can be evaluated and where necessary, changed. Plaintiffs argue that such re-evaluation be based on data from the 1980 Census.

changes they suggest in the zoning ordinances of the eleven municipalities with substantial amounts of vacant, developable land. Among the changes are those aimed not only at eliminating restrictions that make it difficult or impossible to provide low or moderate income housing, but changes that will operate as a positive spur to the provision of such housing. These include "special exceptions" for developers of low and moderate income housing and "density bonuses" for the developers of such housing.

Further, while most families within the low and moderate income category require subsidies to afford standard housing, there are some families in that category, identified by Mr. Mallach, as "moderate-income conventional," who can afford modest housing produced through the ordinary channels of the housing market. Testimony adduced at trial demonstrated that mobile homes can serve as an especially significant source of housing for such families.[6/]

6/ Vickers v. Township Committee of Gloucester Township, supra, no longer bars this Court from requiring defendant municipalities to remove their ban on mobile homes. The Supreme Court in Mt. Laurel overruled, sub silentio the holding in Vickers. In Mt. Laurel the Supreme Court directed that "judicial attitudes must be altered" from those espoused in Vickers and other cases where the Court had earlier sanctioned many restrictive municipal zoning ordinance provisions. 67 N.J. at 180, referring to cases cited at 176. Similarly, in its sub silentio overruling of Vickers, the Mt. Laurel Court spoke with disapproval of that Township's zoning ordinance prohibiting, among other housing alternatives, mobile home parks (67 N.J. at 181). Furthermore, Justice Pashman noted in his concurring opinion that for many persons mobile homes "may be the only form of new housing available." 67 N.J. at 202. In the instant

... footnote continued on next page

In short, the restructured zoning ordinances should be calculated both to facilitate provision of housing under various federal and state subsidy programs and to encourage construction of a reasonable number of modest, unsubsidized housing units through the ordinary workings of the market place.

(b) Provision of subsidized housing

There are a variety of federal and state programs which can be utilized for the provision of housing within the means of low and moderate income families. With respect to some of these programs, the municipalities can encourage private developers to construct the housing. Thus, by providing "special exceptions" or "density bonuses" the municipalities can encourage developers to produce new housing under the federally subsidized Section 8 program and the FHA Section 235 and 236 programs, as well as Farmers Home Administration Programs. Further, by providing tax abatement, the municipalities can facilitate operation of the New Jersey State Housing Finance Agency subsidy programs. They may also establish public housing agencies, cooperate with such authorities already established in contiguous municipalities, or combine with other municipalities to form a regional public housing agency, [7/] to

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... footnote continued from preceding page

case, that view of mobile homes was substantiated in the testimony of Mrs. Annette Petrick. See also P-176 through 181 (in evidence) which illustrate the changed nature of mobile home developments within the last 15 years.

7/ N.J.S.A. 55:14A-4

provide housing for lower income people. The municipalities also may themselves apply to the United States Department of Housing and Urban Development for Section 8 funds to house low and moderate income families in standard existing housing or to rehabilitate substandard housing.

In addition, municipalities can make use of community development block grant funds under the Housing and Community Development Act of 1974 for purposes of rehabilitating substandard housing and for installing necessary water and sewer facilities and other infrastructure to support new subsidized housing. Finally, the municipalities can expend their own municipal funds for the purpose of providing housing or necessary infrastructure to permit residence by low and moderate income families.[8/]

8/ See Appendix C for the complete list of the various federal and state housing subsidy programs.

B. The Role of the Municipalities

The above represent, in plaintiffs view, the functions that the Court should perform, at least in the first instance, in assuring an adequate remedy. Within the guidelines and standards established by the Court, the defendant municipalities should have flexibility in devising the specific fair share plans.

Thus, the Court should not, in its initial Order, impose on the municipalities specific allocations of low and moderate income units. So long as the total of such units in the various fair share plans equals the Court's determination of the County's fair share of the regional housing need, and the plans have been developed in accordance with the equitable standards set down by the Court, the precise numbers should be left to the municipalities themselves.

As Douglas Powell testified at trial, the most appropriate way for the municipalities to allocate the specific number of units among them is through a collective process involving negotiation and trade-off. This process necessarily involves, at the least, close consultation and cooperation among the various municipalities, if not development of a single fair share plan. As Mr. Powell testified, twenty of the municipalities have already participated in precisely such a process in connection with the 1975 Middlesex County application for community development block grant funds. As Mr. Powell also testified, they repeated that process in preparation for the 1976 application as well.

One value of the collective development of fair share plans is that it would provide reasonable assurance that the fair share of the regional need will indeed be distributed equitably among the various municipalities. Possible problems of mutual distrust and fear that neighboring municipalities are minimizing unfairly their fair share of the regional need, which could arise if the municipalities develop fair share plans in secretive isolation, are substantially reduced if they work cooperatively. Close cooperation among the municipalities also enhances the likelihood that the fair share plans submitted to the Court will be satisfactory, thus avoiding the necessity for the Court, as a last resort, to intervene through imposition of specific fair share allocations on the various municipalities.[9/] Still another value in a collective effort by the municipalities is that they could share in the $20 million in supplemental Section 8 funds that HUD is planning to allocate to communities participating in "Areawide Housing Opportunity Plans" (see Appendix F).

It is essential that the various municipalities utilize common standards and criteria in developing their fair share allocations, particularly in the event a joint plan is not submitted to the Court. This will enable the Court to evaluate the adequacy of the standards and criteria in relation to the Court's own guidelines. Also, if the aggregate of fair share plans falls short in meeting the County-wide fair share of the regional need, the Court will be in a position to determine which of the municipalities' plans are wanting.

9/ Plaintiffs views on actual fair share formulas are contained in Appendix A.

The municipalities also should have flexibility to choose, from among the various methods of implementation, those programs and techniques most appropriate to providing the housing necessary to meet their fair share allocation. In municipalities with large amounts of vacant, developable land, emphasis would undoubtedly be placed on new construction under various housing subsidy programs. In others, with lesser amounts of such land, rehabilitation and greater use of the existing housing inventory might well be stressed. So long as implementation offers reasonable assurance of success, the municipalities should be free to choose the combination of methods most appropriate to existing conditions and best calculated to meet their fair share allocation as rapidly as possible.

C. Power of the Court to Order Affirmative Relief.

Plaintiffs assume that the defendant municipal officials will honor their constitutional obligation to comply with the Court's initial Order. Accordingly, it is unlikely that the Court will be forced to intervene by way of imposition of Orders for specific affirmative actions by the defendant municipalities. In plaintiffs' view, however, if such judicial intervention becomes necessary as a last resort, the Court has ample authority to do so.

1. Authority to order appropriate revisions of zoning laws and other land use regulations.

In the event the defendant municipalities fail to make appropriate changes in their zoning laws and other land use regulations to facilitate provision of low and moderate income housing, there is no question of the Court's authority to order such changes. As the Supreme Court stressed in Mt. Laurel:

> . . . Mt. 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.

In Mt. Laurel as well as in the instant case, exclusionary zoning laws and other land use regulations were the principal devices by which the exclusion of standard low and moderate income housing was accomplished. Under Mt. Laurel, appropriate changes in the zoning and other land use regulations are the minimum legal obligation of the defendant municipalities.

In the event that they fail to honor that obligation, the Court has ample authority to order them to do so.

2. Authority to order other affirmative relief

As noted earlier, although appropriate revision in the defendants' zoning and other land use regulations can contribute substantially to facilitating provision of low and moderate income housing, this alone offers no guarantee that the needed dwellings will, in fact, be provided. In the event the defendants fail to undertake affirmative programs calculated to produce the needed housing, plaintiffs argue that the Court has the authority to order such affirmative relief.

It has long been the principle of equity jurisprudence in this State that the Chancery Court will exercise its power to ensure complete relief. "A wrong suffered without a remedy is a blot upon the administration of justice." Westinghouse Electric Corp. v. United Electrical, Radio and Machine Workers of America, Local No. 410, 139 N.J. Eq. 97, 108 (E&A. 1946).

Creativity, malleability, and rectification have long been the hallmarks of the Chancellor. In words that have echoed through the years, Justice Heher wrote for the Court of Errors and Appeals almost four decades ago:

> Equitable remedies 'are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all parties.' Pom. Eq. Jur. §109.

Sears, Roebuck and Co. v. Camp, 124 N.J. Eq. 403, 411-12 (1938).

In Robinson v. Cahill, 67 N.J. 333 (1975), for example, the Supreme Court ordered a redistribution of state school aid contrary to the legislative allocation formula contained in the specific statutes under which the funds were appropriated. In that case, the Court rejected the defendants' contention that it lacked the power to alter the distribution scheme mandated by the Legislature. "So clearly does our constitutional duty bespeak the present obligation of affirmative judicial action, that we have no doubt that the order we now make is constitutionally minimal, necessary and proper." Id. at 355.[10/]

In Mt. Laurel, the Supreme Court declined to deal with the matter of judicial authority to order affirmative relief. The Court explained why: "It is not appropriate at this time, particularly in view of the advanced view of zoning law as applied to housing laid down by this opinion ... ." 67 N.J. at 192.

Further, the Supreme Court did not reject affirmative relief, but stated that it was "at least premature." Id. The Court said: "Should Mount Laurel not perform as we expect, further judicial relief may be sought by supplemental pleading in this cause." Id.

10/ The separation of powers issue, present in cases such as Robinson and Jackman, need not be confronted here since the municipal defendants are not co-equal branches of government in relation to the Superior Court. See discussion of Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972) Mountain, J. and Clifford, J. dissenting in Robinson v. Cahill, supra at 381 n.2.

In addition, the Court cited approvingly Pascack Association v. Mayor and Council of Township of Washington, 131 N.J. Super. 195 (Law Div. 1974), rev'd on other grounds, Docket #A-3790-72 (App. Div. 1975) certif. pending, and the cases cited in Pascack. 67 N.J. at 192. In Pascack, the court ordered affirmative relief by itself amending the defendant township's zoning ordinance. The cases cited in Pascack stand for the proposition that courts of equity do have ample authority to order affirmative relief, at least where the defendant public body fails to act satisfactorily.

The Supreme Court in Mt. Laurel also indicated that effective relief would include not only "appropriate zoning ordinance amendments," but also "additional action encouraging the fulfillment of its [Mt. Laurel's] fair share of the regional need for low and moderate income housing." Id. Thus, the Supreme Court, while stopping short of ordering affirmative relief in Mt. Laurel, indicated that such relief would be appropriate and within the power of the Court. See also Pashman, J. (concurring) 67 N.J. 211-217.

This Court specifically requested that the plaintiffs deal with the authority of the Court to order municipalities to take specific action; namely to apply for particular programs and to spend public funds or to grant tax abatements.

(a) Authority to Order Municipalities to Apply for Particular Programs.

Federal and state programs of assistance for housing and community development are generally voluntary in nature. That is, under ordinary circumstances, eligible parties, public

or private, may apply for the benefits of these programs but are not obliged to do so. Among the programs relevant to meeting the needs of low and moderate income families is the Low Rent Public Housing Program, including Section 8, administered by the United States Department of Housing and Urban Development. Plaintiffs contend that in order to provide effective relief, the Court is authorized to require the defendant municipalities to apply for funds under this or other housing subsidy programs.

In Mt. Laurel, the Supreme Court, while stopping short of dealing with the extent of affirmative relief necessary in that case, specified 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." 67 N.J. at 192. Justice Pashman, in his concurring opinion, carried the majority's statement one step further, saying: "[T]here may be circumstances in which the municipality has an affirmative duty to provide housing for persons with low and moderate incomes through public construction, ownership, or management." 67 N.J. at 211.

Plaintiffs contend that this case provides the circumstances in which that affirmative duty is triggered. In Plaquemines Parish School Board v. United States, 415 F.2d 817, 833 (5th Cir. 1969), the appellate court held that the trial court had the right "in a specific situation as to specific funds to require that application be made [for

federal funds] when it is shown that the board has failed to apply for such funds as part of a plan or scheme to impede the end of the dual system of schools, or to discriminate against Negro children." In the instant case, the defendant municipalities, at least initially, should be given the opportunity to select the programs and techniques most appropriate for implementing their fair share plans. In the event they fail satisfactorily to provide for implementation, specifically by failing to avail themselves of federal or state subsidy programs, such as Section 8, the plaintiffs will be effectively denied a remedy for the constitutional violation. In that event, plaintiffs contend that the Court, pursuant to the admonition of the Supreme Court in Mt. Laurel, and the even stronger admonition of Justice Pashman, concurring in that case, is authorized, and even obligated, to order the defendant municipalities to do so.

(b) Authority to Order Acts Which Require the Expenditure of Public Funds or Tax Abatements.

As noted above, the Courts have not been reluctant to order affirmative relief in order to remedy a wrong. Frequently, such orders for affirmative relief necessarily require the expenditure of public funds or a re-allocation of such funds from one purpose to another. Nonetheless, the Courts have not been reluctant to order such relief, particularly when a constitutional violation is at issue. Thus, in Swann v. Charlotte-Mecklenburg Board of Education, supra, cited with approval by the Supreme Court of New Jersey in

Robinson v. Cahill, supra, the Supreme Court of the United States approved an extensive court-ordered plan of desegregation in a metropolitan school district. Although the plan called for a number of affirmative steps which would require an allocation of funds not previously contemplated by the School Board, the Court nonetheless held that such affirmative plans are constitutionally required to provide an effective remedy.

In Griffin v. Prince Edward County School Board, 377 U.S. 218 (1964), also cited with approval by the Supreme Court of New Jersey in Robinson, the minority plaintiffs sought the reopening of the public schools which had been closed to avoid desegregation. The United States Supreme Court affirmed a lower court decree which ordered the defendant to reopen the schools and to raise sufficient revenues through taxation to support their maintenance.

Lower federal courts have similarly approved orders for affirmative relief that necessarily involved the expenditure of public funds. In Bradley v. Milliken, 484 F.2d 215, 258 (6th Cir. 1973), rev'd on other grounds 418 U.S. 717 (1974), the U.S. Court of Appeals made the point succintly:

> In the exercise of its equity powers, a District Court may order that public funds be expended, particularly when such an expenditure is necessary to meet the minimum requirements mandated by the Constitution.

See also Brewer v. School Board of City of Norfolk, Va., 456 F.2d 943 (4th Cir. 1972) cert. denied 406 U.S. 933 (1972); Eaton v. New Hanover County Board of Education, 459 F.2d 684 (4th Cir. 1972).

In the instant case, affirmative relief may well involve the expenditure of public funds in several ways: first, the municipalities may have to utilize funds from their community development block grants for such purposes as rehabilitating substandard structures and providing necessary infrastructure to support low and moderate income housing. Second, they may have to provide tax abatement to facilitate provision of housing under the New Jersey State Housing Finance Agency programs. Third, they may have to expend public funds for purposes of producing low and moderate income housing and supporting infrastructure. As the above precedents, cited with approval by the Supreme Court of New Jersey, demonstrate, it is well within the authority of a court of equity to order that such affirmative actions be taken to ensure complete relief, even though they necessarily involve the expenditure of public funds.

CONCLUSION

For the foregoing reasons, the Court should issue a remedial Order requiring the defendant municipalities to develop fair share allocation plans to accommodate the regional low and moderate income housing need. If necessary as a last resort, the Court should issue an Order imposing such allocation plans on the municipalities.

Respectfully submitted,

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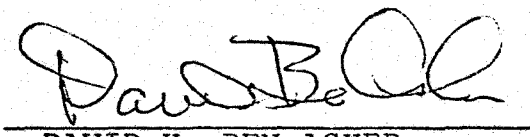
BY: 
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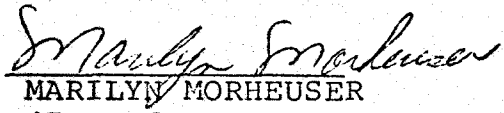
BY: 
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CERTIFICATE OF SERVICE

I, Daniel A. Searing, hereby certify that I have served the preceeding Post-Trial Brief of Plaintiffs on all counsel for defendants, either by hand delivering or by placing copies in the United States mail, postage prepaid, this 8th day of April, 1976.

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APPENDIX A

FAIR SHARE ALLOCATION FORMULAS

As noted above plaintiffs are not requesting at this time that the Court impose a specific fair share formula for allocation purposes on the defendant municipalities. This appendix addresses the reservations expressed by the Court concerning the plan testified to by Mr. Erber (p-184) and provides an alternate methodology for such an allocation plan.

ERBER MODEL:

This model is grounded on an initial allocation based on the number of existing standard housing units, the number of low and moderate income families adequately housed, and the amount of vacant land available for building. This model makes the initial distribution on the basis of standard units because it anticipates and encourages the rehabilitation of substandard units in achieving fair share goals. Merely adding new units to a partially unsound stock would perpetuate decay spreading from the oldest areas of communities. This methodology is sound for the following reasons:

1. It allocates units as a portion of the anticipated incremental growth of population in all municipalities, covering the entire range of existing densities.

The Middlesex County Master Plan (P-40) has projected a population growth of 315,809 by 1980 and 937,408 by 2000 for the County as a whole; requiring approximately 100,000 additional housing units by 1980 and 300,000 by 2000. The Plan anticipates population increases in all 25 municipalities, including those

with the highest densities. This projection is in keeping with the demographic theory that urban growth might be compared to that of a tree which expands by the thickening of the trunk and major branches, while simultaneously spreading out with new boughs and twigs. Thus growth is projected for both New Brunswick and Cranbury; Perth Amboy and Plainsboro; Carteret and Monroe; Metuchen and Edison; Milltown and South Brunswick.

The term "developed" is relative. Communities considered "highly developed" tend to continue adding population through heightened densities while more rapid growth is taking place elsewhere on vacant land. Thus New Brunswick's 5.5 square miles was considered fully developed in 1940 when it contained 33,180 persons. Yet it has increased its population to 41,885 in 1970. The Master Plan projects 50,674 by 1980. South Amboy's 1.5 square miles contained 7,802 persons in 1940 and increased to 9,338 in 1970. Highland Park's 1.8 square miles contained 9,002 persons in 1940 and increased to 14,385 in 1970. Dunellen's 1 square mile contained 5,360 in 1940 and increased to 7,072 in 1970. Milltown's 1.6 square miles contained 3,515 persons in 1940 and increased to 6,470 in 1970. Metuchen's 2.8 square miles contained 6,557 persons in 1940 and increased to 16,031 in 1970. Other small land area communities considered "fully developed" in 1940, have shown similar population growth.

Though Perth Amboy's 8,527 persons per square mile (along with Highland Park's 7,992; New Brunswick's 7,615; Dunellen's

6,800; South Amboy's 6,440 and Metuchen's 5,829) appears highly dense compared to Plainsboro's 140 persons per square mile (or Monroe's 219, or Madison's 1,272 or East Brunswick's 1,539), Perth Amboy's density is considerably less than that of Elizabeth, Trenton, Newark, Jersey City or Hoboken.

2. It allocates units in relation to the capacity of infrastructures to absorb additional units.

Infrastructure includes all the essential physical facilities, institutions and service systems required by an urban population. These range from streets, sewers, and drainage at the local level of the project, block or neighborhood to collector roads and highways, trunk sewers and disposal plants, railroads and bus lines, elementary and high schools libraries, hospitals, clinics, shopping centers, professional service offices, houses of worship, public safety installations, and cultural, entertainment and recreational establishments at the level of the community as a whole.

When housing units are allocated relative to the existing stock of sound housing, the infrastructure which serves the latter is available to serve the additional units, with such expansion as might be required. Such infrastructural expansion is less costly per unit served than installations for entirely new settlements. Such expansion of infrastructure is also less likely to impinge upon ecologically sensitive land or that highly desirable for agriculture.

3. Its allocations distribute housing with approximate relationship to employment opportunities.

The definition of Middlesex County as a common housing market area is based on the interchangability of residences throughout the County without interrupting access to the same job location. Likewise, the definition of Middlesex County as a common labor market area is based on the interchangability of jobs throughout the County without residential relocation.

Inclusion in common housing and labor market areas, however, does not eliminate the factor of consumers' choice as to residential location with reference to employment. Consumers still avoid unnecessary travel between home and work to the extent that they exercise choice in trade-offs between advantages to be sought and disadvantages to be avoided. Since low and moderate income employees tend to opt for more economical journeys-to-work, more of them tend to locate closer to job opportunities than do higher income persons.

Jobs in Middlesex County are still located overwhelmingly in the northern and central portion of the County. Though the most rapid growth of employment opportunities in Middlesex County since 1960 has taken place within municipalities with large amounts of vacant land, the Master Plan projects that by 1980 some 138,582 jobs will still be located in the so-called developed municipalities (New Brunswick, Perth Amboy, Dunellen, and the conditionally dismissed defendant municipalities) as compared to 156,510 jobs in the eleven defendant municipalities which contain larger amounts of vacant land. (As of 1975, it

is estimated that jobs are about evenly divided between more developed and less developed municipalities.)

In view of the present and projected location of employment opportunities within Middlesex County, the allocation model, by using both present housing stock and available vacant land as variables, optimizes location of housing for low and moderate income families with reference to employment opportunities. It maximizes choice with reference to economies in journey-to-work balanced against environmental, educational and other possible advantages of residence at more distant locations.

4. Its allocations facilitate implementation.

An initial allocation based on number of existing sound units facilitates implementation in three ways:

A. Since each municipality has substandard units, though in varying proportions of their total stock, rehabilitation to create additional sound units permits each municipality to achieve some portion of its allocation in this manner. However, the older, more developed municipalities which have higher proportions of substandard housing are enabled to achieve, or nearly achieve, their allocations through rehabilitation, while less developed municipalities must look to new construction on vacant land to achieve their goals. Thus New Brunswick can achieve 98% of its 1975 allocation of 4,485 additional units for low and moderate income families by rehabilitation or replacement of 2,363 substandard units and through rent supplements for 2,073 households now paying more than 25% of their income for shelter.

2. revision of zoning regulations to permit higher structures and greater densities for multi-family construction on scattered sties under strict architectural design controls to protect adjoining uses and the character of the neighborhood.

3. inclusion in zoning ordinances of density bonuses provision to encourage builders to allocate a portion of their units in new or extensively rehabilitated structures to occupants of low and moderate income, facilitated by the federal rental subsidy program (Section 8, Housing and Community Development Act of 1974).

C. Implementation is also facilitated by the availability of "grafting on" of new housing development to existing community infrastructure in such proportions as to utilize it without overwhelming it. Allocating too few units to highly developed communities can result in a waste of existing infrastructure capacity. Allocating too many units to municipalities with feeble infrastructures can impose insoluable financial burdens or result in housing inadequately served by community facilities.

5. Its allocations can be balanced with imposition of units upon vacant land.

The allocation based upon number of sound housing units is only an initial allocation. An additional allocation is made on the basis of amount of vacant land available to each municipality. The proportion of units assigned on basis of existing stock and the proportion assigned on basis of vacant land need not be considered as fixed and inflexible. The ratio

between burdening on basis of existing stock can be reduced by simply allocating only 3/4, or 2/3, or 1/2 of the needed units in this way and allocating the balance on the basis of vacant land.

APPENDIX B

Part I

This appendix provides extended discussion of the various restrictive elements found in the zoning ordinances of Cranbury, East Brunswick, Edison, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro, Sayreville, South Brunswick and South Plainfield; the standards for the cleansing of the exclusionary zoning ordinances (with suggested incentives for low and moderate income housing) and in Part II provides detailed suggestions, by municipality, for the revision of the zoning ordinances. /

The ordinances of the above eleven municipalities exhibit the following restrictive elements:

(1) excessive minimum lot size, minimum frontage, or minimum interior floor area provisions in the most modest zone provided for single family dwellings in the municipality. Plaintiffs do not object to the presence of higher standards in some zones, as long as a zone with ample acreage alloted to it, exists in which minimum standards are not exceeded.

(2) inadequate acreage allotted to the most modest single family housing on small lots, or to any relatively modest single family-small lot residential zones.

(3) the total absence of any single family residential zone in which minimum requirements for lot size, frontage, and interior floor area are all within the reasonable and modest standards presented in expert testimony.

(4) the existence of restrictive provisions other than the three discussed above applicable to all or some single family residential zones. These restrictive provisions can include but are not limited to, any of the following:

a. requirements that houses contain full basements under all or part of the habitable area of the house.

/ The suggested revision for Old Bridge is not included because a copy of that ordinance was unavailable. The revision for Plainsboro is not included because that ordinance is undergoing revision. The suggested revisions outlined for other municipalities are applicable to Old Bridge and Plainsboro.

b. requirements that houses contain a fully enclosed garage.

c. so-called 'no-look-alike' provisions requiring often extensive facade and elevation variation between houses in the same area or development.

d. prohibition of, or restrictive provisions governing, conversion of single family into two or three family dwellings.

(5) the absence of any provision, either by right or special exception, for multifamily housing development. In some communities multifamily housing is permitted only in a Planned Unit Development or similarly constituted zone which is subject to additional restrictive provisions (discussed below).

(6) the provision of multifamily housing opportunity only through special exception procedures which are either broadly discretionary, affording excessive opportunity to local boards to act in an arbitrary manner, or governed by procedures which are onerous, expensive, and time-consuming.

(7) inadequate or minimal acreage allotted to such zones or locations in which multifamily housing is permitted, by right or by special exception.

(8) excessive parking requirements for multifamily development, including both requirements for excessive numbers of parking spaces per dwelling unit, as well as requirements that a percentage of the parking spaces be enclosed.

(9) other restrictive provisions affecting the development of multifamily housing, including but not limited to:

a. unreasonably low overall density standards, reducing the potential number of units and the economy of development.

b. so-called "zigzag" provisions requiring extensive facade and setback variation, increasing the cost of construction.

c. excessive provisions for open space or recreational area.

d. excessive provisions for enclosed storage space for each dwelling unit.

e. bedroom restrictions (limitations on the number of dwelling units containing more than one bedroom), or density provisions in which the number of units/acre varies according to the number of bedrooms/unit.

f. limitation on number of habitable floors to two in garden apartments.

g. excessive acreage requirements for construction of multifamily housing.

(10) exclusion of mobile homes, or designation of mobile homes only as non-conforming land use.

(11) provisions severly limiting or restricting use of mobile homes or development of mobile home parks.

(12) In those communities where Planned Unit Development (or similar techniques under different names) zones have been established, there are a number of additional exclusionary features specifically applicable to those zones; including but not limited to the following:

a. restrictive standards on housing development, similar to any of those described above.

b. restrictive standards governing future occupancy of developments constructed under the ordinance; e.g., restriction to senior citizens, limitations on number of children.

c. excessive requirements for dedication of open space, or provision of lavish recreational facilities such as golf courses.

d. excessive minimum acreage requirements, often over 100 acres, for developers seeking to qualify to build under PUD provisions.

e. excessive requirements for development of non-residential uses in PUD over and above requirements of present and future residents of proposed PUD.

Each of the eleven municipalities under review exhibits more than one of these exclusionary features in their zoning ordinance provisions. Each of these provisions either (a) precludes the development of a type of housing unit which can provide significant housing opportunity, such as multifamily housing or mobile homes; (b) raises the cost of the housing units that can be constructed in the community, thereby reducing the number of households that can benefit by such construction; or (c) discourages construction without explicitly excluding housing, by putting obstacles or hurdles in the way

of the developer or sponsor of housing which are unrelated to reasonable housing and planning concerns. (See attached chart.)

STANDARDS FOR THE CLEANSING OF EXCLUSIONARY ZONING ORDINANCES

The elimination of the above provisions plus the inclusion of affirmative zoning provisions is the minimum action required here. The effective utilization of Federal and State housing subsidy programs requires that affirmative elements be incorporated in the revised ordinances. Testimony was adduced at trial which showed that the act of zoning land for higher density single family uses, or for multifamily development, taken in itself and without affirmative measures can increase the cost of land. Consequently many benefits of rezoning would be lost to prospective low and moderate income home buyers or renters. Testimony from defendants' experts (e.g., Mr. Carr for Piscataway) established that the cost of land per lot in high density (typically, 10,000 - 15,000 sq. ft.) single family zones was not significantly lower than the equivalent cost in lower density (typically 1/2 to 1 acre) single family zones.

Plaintiffs therefore maintain that each municipal zoning ordinance must contain a series of features, the cumulative effect of which is to maximize housing opportunity. These features include the following:

(1) ample provision[/] for modest single family detached and

[/] "Ample provision" means an allocation of land in the appropriate zone substantially greater than the likely immediate demand for construction of housing under the standards for that zone.

attached dwellings. Such dwellings are defined as those constructed on lots of 6,000 sq. ft. or less, with a frontage of 800-900 sq. ft. or less. Lot densities should be at least 10 dwelling units per acre and frontage requirements if any, should be no more than 25 ft. per dwelling.

It is a truism that not all land is available for construction at any point in time, even if developable, and that not all proposed developments successfully move to completion, even where the appropriate site has been acquired. If the goal, for example, is to make possible the construction of X dwelling units on Y acres, then the allocation of land under the zoning ordinance should be at least 3 times Y, to provide for flexibility.

In this zone, plaintiffs would also encourage the use of maximum standards in the ordinance; (e.g., a substantial proportion of houses may not contain more than 1000 sq. ft. of finished interior floor area). This would reduce the danger that demand for more expensive housing in a community (possibly coupled with subtle pressure from local officials), would result in development of housing in the "modest housing" zone that was, substantially more than modest housing in size and in cost. Exceptions could be made for later "add-on" by owners.

(2) Ample provision for multifamily housing under reasonable and modest standards: Such standards would include densities for low-rise apartments of no less than 15 dwelling units per acre; parking requirements of no more than 1.5 parking spaces/unit; modest interior minimum floor space require-

ments,[/] or adoption by reference of floor space (room by room) standards of the New Jersey Housing Finance Agency. In addition, standards in such zones should be free of exclusionary elements. Amenities should not be used as exclusionary devices.

Again, the amount of land designated in the ordinance for development of multifamily housing must be well in excess of the strictly defined land consumption projected on the basis of need. Both the amount of land zoned for multifamily housing, and the location of that land, as well as the provision of sewer and water facilities to the designated sites, must be such that construction of multifamily housing is effectively and affirmatively encouraged by the zoning ordinance.

With regard to conventional market multifamily housing, plaintiffs would find acceptable a municipal ordinance which specifies that all or nearly all such development is to take place in Planned Unit Developments or similar planned communities, as long as the PUD provisions are themselves non-exclusionary.

As noted below, though PUDs can play a part in meeting the need for subsidized housing for low and moderate income families they should not be the exclusive method of providing that need.

(3) Removal of exclusionary aspects of Planned Unit Development provisions: Although the PUD approach regardless

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[/] e.g., 400 sq. ft. for efficiency apartments, no more than 600 sq. ft. for one bedroom apartments, and no more than 800 sq. ft. for two bedroom apartments. (The HFA standards, however, which are based on room sizes and provide for greater flexibility in design, are clearly preferable.)

of terminology is a potentially valuable means of providing housing efficiently and with a variety responsive to housing market needs and demands, PUDs are often used as a means of restricting housing development, for purposes of either social exclusion or fiscal advantage. Plaintiffs have no objection, therefore, to the use of the PUD approach by the municipalities under discussion, and do not object to their attempting to meet a substantial part of their multifamily housing obligations (with the above noted exception) through the PUD approach. In order to do so, however, onerous and burdensome restrictions affecting PUD activity must be removed. Specifically, the following considerations must be applied to the redesign of PUD and similar ordinances:

a. PUD ordinances must provide for development of both single and multifamily housing of a modest nature, similar in standards to those discussed above and applicable to smaller scale development.

b. PUD ordinances must not require that an unreasonably large percentage of PUD tracts be set aside for open space; they may, however, provide for density bonuses increasing permissible density on the remaining land. When such a density increase is effected a municipality can provide for open space above the limit set in the ordinance.

c. PUD ordinances must not require any minimum amount of industrial or commercial development in any PUD, with the exception of commercial retail facilities for the use of the residents of the PUD; they may, however, permit non-residential development in PUDs, as long as it does not

become a de facto requirement through the administrative discretion of the municipality.

d. PUD ordinances must not impose restrictive and onerous burdens with regard to any of the following: (1) expensive and elaborate recreational and communal facilities; (2) excessive requirements as to the minimum size of a tract in order to qualify for PUD provisions; (3) provisions regarding timing of development not clearly related to provision of infrastructure and services, and to habitable conditions for PUD residents.

Plaintiffs maintain that no standard or provision that can be held to be exclusionary if found in the conventional portions of a zoning ordinance, can become acceptable by including it in the context of PUD specifications.

The PUD section of the zoning ordinance should, furthermore, provide for incentives for development of low and moderate income housing at least comparable to those discussed in point 6 below. Specifically, density bonus provisions for low and moderate income housing development are desirable. Requirements that minimum percentages of all development be low and moderate income housing are also desirable, but only in a context which makes explicit: (a) the reciprocal responsibilities of the developer and the municipality, e.g., provision of tax abatement, waiver of standards, etc.; (b) the manner in which application will be made for Federal and State subsidy funds; and (c) the manner in which the ordinance provision will or will not be enforced in the event that the developer is unable to secure such funding.

(4) Removal of barriers which prevent conversion of single family dwellings: It is likely that conversion of large single family dwellings to two or three family houses may be a major resource for additional housing units in the coming years. Ordinances should not restrict conversion, except insofar as it is necessary to ensure that the resulting units will meet reasonable and modest standards for habitable area and facilities. Arbitrary requirements, such as allowing conversions only to two family houses, and limiting conversion provisions to houses above a minimum square feet of interior floor area, should not be allowed.

(5) Removal of barriers which prevent use of mobile homes: Ordinance definitions which distinguish between mobile homes and single family dwellings are inherently arbitrary and should not be allowed. Testimony has clearly established that the standards used in mobile home construction are comparable to those used in the on-site construction of single family dwellings. For similar reasons, and in view of the additional housing opportunities provided thereby, reasonable provision should be made in zoning ordinances for the establishment of mobile home parks meeting appropriate and reasonable standards.

(6) Incentives for the provision of low and moderate income housing: In order to meet the affirmative test of the Mt. Laurel decision, a zoning ordinance in a developing municipality must provide for low and moderate income housing development in a manner different from that applicable to development generally. We believe that such an ordinance should contain one or both of the following types of provisions, in order to affirmatively encourage low and moderate income

housing development:

a. differential standards for single and multi-family housing built under State and Federal housing programs for low and moderate income persons _/ within zones that are designated for modest development of single family or multifamily development, differential standards should be imposed by the ordinance, which would provide for potential savings or cost efficiencies to developers willing to construct low or moderate income housing rather than conventional market housing.

An example of such a provision would be the establishment of a density ceiling of 12 dwelling units/acre for conventional housing and 16 dwelling units/acre for housing meeting the low and moderate income housing definition. A further provision would be the waiver of local zoning standards in favor of HFA requirements or Federal Housing Administration Minimum Property Standards.

b. special exception provisions for low and moderate income housing development: Within the parts of a municipality where multifamily development is, in any reasonable sense, an appropriate land use (but which is not zoned for multifamily development) a special exception for low and moderate income multifamily housing should be provided. The special exception provisions should enumerate the standards to be followed, the definition of low and moderate income housing for such purposes, and should state the intention of the municipality to approve any development meeting the standards and definitions set forth.

_/ This could provide as well for application of such differential standards to non-subsidized housing that was to rent or sell below levels designated as moderate income ceilings.

Plaintiffs believe that this is potentially one of the most effective tools for the encouragement of housing development under State and Federal housing programs. It removes two significant weaknesses in other rezoning approaches; (1) the cost-increasing effect of rezoning for multifamily housing generally, which tends to discourage use of such land for low and moderate income housing, if not render it impossible; and (2) the inherently suspect nature of rezoning land specifically for low and moderate income housing.[/] We would like to call the attention of the Court to the recent Consent Order issued in Hightstown-East Windsor Human Relations Council, Inc. et al. v. Township of East Windsor, (Docket No. L-24265-71PW, Superior Court, Mercer County, March 1, 1976.) in which such a special exception provision was included in the order specifying changes in the municipal zoning ordinance. (See Appendix E)

[/] In order to remove the potential objection that such provisions would inundate the municipality with low and moderate income housing, the ordinance should specify that such special exception provisions would be applicable only to the number of units (during any given period) specified by the fair share allocation plan as required in the municipality.

SUMMARY OF EXCLUSIONARY ELEMENTS

	IN MOST MODEST SF ZONES: EXCESSIVE LOT SIZE	IN MOST MODEST SF ZONES: EXCESSIVE FRONTAGE	IN MOST MODEST SF ZONES: EXCESSIVE MINIMUM INTERIOR FLOOR AREA	INADEQUATE LAND AVAILABLE IN MOST MODEST SF ZONE	NO SF ZONE CONSISTENT WITH MODEST HOUSING STANDARDS	NO PROVISION FOR MF	MULTIFAMILY BY SPEC. EXCEPTION ONLY	INADEQUATE LAND IN MF ZONE(S)	RESTRICTIVE PROVISIONS IN SF ZONES	EXCESSIVE PARKING REQUIRED IN MF	OTHER RESTRICTIVE PROVISIONS IN MF	MOBILE HOMES EXCLUDED	MOBILE HOMES ALLOWED BUT RESTRICTED	EXCESSIVE LAND ZONED FOR INDUSTRIAL USES	PUD OR SIMILAR ZONE PROVIDED (YES/NO)	HOUSING PROVISIONS IN PUD RESTRICTIVE	EXCESSIVE NON-RESIDENTIAL PROVISIONS IN PUD	OTHER RESTRICTIVE PROVISION IN PUD
CRANBURY	X	X	X	X	X	X						X		X	NO			
EAST BRUNSWICK	X		X	X	X			X	X	X	X	X		X	NO			
EDISON			X		X			X	X			X		X	NO			
MONROE	X	X	X	X	X	A[1]						X		X	YES	X		X[2]
NORTH BRUNSWICK			X	NA[3]	X			NA	X	X	X	X		NA	YES	X		X
OLD BRIDGE			X	X	X			NA				NA			YES	X		
CATAWAY				X				X	X	X	X	X			NO			
PLAINSBORO	X			X	X			A			X	X		X	YES	X[4]	X	X
SAYREVILLE			X		X			A		X	X	X			YES	X	X	X
SOUTH BRUNSWICK	X		X	X	X	A			X				X	X	YES	X		
SOUTH PLAINFIELD			X	X	X	X			X			X		X	NO			

1. (A) = no conventional MF zones, but MF permitted in PUD zones.
2. Senior citizens only
3. NA = information not available
4. In PCD zone, not in PMUD zone

Sources: Zoning Ordinances and land use data in evidence

APPENDIX B PART II

SUGGESTIONS FOR REVISION OF INDIVIDUAL ORDINANCES

TOWNSHIP OF CRANBURY

1. The township shall provide for a single family residential zone consistent with reasonable and modest standards, not to exceed the following:

a. minimum lot size no more than 6,000 ft^2

b. minimum frontage no more than 60 feet

c. minimum interior floor area no more than 800 ft^2 or meeting the FHA Minimum Property Standards and the New Jersey Uniform Construction Code.

d. one and two family houses to be permitted; in the case of the latter lot size may be increased to 7,500 ft^2 and frontage to 75 ft.

The provisions for this zone shall not include any requirements for basements, enclosed automobile parking, variation in facade or appearance of dwelling units, or any other restrictive provision of similar nature.

2. The Township shall provide for a multifamily residential zone consistent with reasonable and modest standards, not to exceed the following:

a. maximum density no less than 15 dwelling units/acre

b. minimum lot size no more than 2 acres.

c. no restrictions on bedrooms, directly or indirectly; e.g., through maximum average floor area per dwelling unit provisions.

d. open space dedication requirements to be modest, and no recreational facilities to be required other than (a) community room; (b) playground facilities consistent with anticipated number of children. Additional facilities to be at discretion of developer.

e. parking requirements not to exceed 1.5 spaces/ dwelling unit, all of which may be open spaces.

f. maximum height shall provide for no fewer than three habitable floors.

The provisions governing development in this zone shall not include any requirements for amenities other than those specified above, any requirements for variation in facade or setback ("zigzag" provisions) or other so-called aesthetic requirements, or any restrictive provisions of similar nature.

2a. Alternatively, the Township may provide for multifamily development consistent with the above standards in the context of a Planned Unit Development or planned community of a similar nature.

2b. In the event that the Township adopts ordinance provisions for Planned Unit Development or similar planned communities, the provisions must be fully consistent with the planned development considerations set forth previously by plaintiff.

3. The Township shall provide for a special exception use for low and moderate income housing, such special exception to apply extensively and throughout all parts of the Township. Housing to be constructed under the special exception provisions shall be governed by provisions no more restrictive than those embodied in Section (2) above, and shall provide as well for waiver of ordinance provisions in favor of applicable State and Federal standards. The provisions should further specify the definition of low and moderate income housing for purposes of the special exception, and shall state the clear intent of the municipality's fair share allocation.

4. The township shall repeal its provision prohibiting mobile homes, and shall make no distinction between mobile homes and other single family dwellings within the ordinance. The Township shall further provide for mobile home parks within those parts of the township appropriate for such uses, in particular in appropriate locations along Highway 130.

5. The Township shall repeal its existing provisions dealing with conversion of single family to two family dwellings, and shall add a provision clearly permitting conversion of single family dwellings to two or more family dwellings, permission for conversion and for specifying the number of units to be created to be based solely on health and safety standards of a modest and reasonable nature.

6. The township shall amend its zoning map to provide for ample land for development under the provisions of Sections(1) (2), and (3) above. "Ample" shall be defined as the amount of land necessary to make possible effective provision of housing in the amounts called for by the fair share allocation. For

purposes of Sections (1) and (2) this shall be interepreted to mean that the net allocation in each zone, exclusive of land environmentally unsuitable for development, land not realistically available on the marketplace, and land otherwise unsuitable or unfeasible for development, shall be at least three times the amount of land required for the sum total of construction under the fair share allocation plan. In the case of Section (3) the net allocation shall be at least ten times the amount of land required for the sum total of construction under the fair share allocation plan.

6a As a result of the rezoning, the total residentially zoned vacant land supply shall be increased by at least half the total acreage in the zones created pursuant to Sections (1) and (2).

7. The Township shall adopt a sewer and water plan, specifying in detail how sewer and water service will be made available to the modest single family and the multifamily housing, conventional and subsidized, to be provided under these provisions. This plan shall (a) provide for extension of public sewers where feasible, and specify feasible alternatives for disposal of wastes and provision of drinking water elsewhere; (b) provide for such facilities without imposing onerous burdens on developers, housing sponsors, and by extension, to future residents of anticipated developments.

1. The Township shall provide for a single family residential zone consistent with the provisions of Section (1) of the Cranbury exhibit; alternatively, it shall amend the provisions of the R-4 single family zone to meet those standards.

2. The township shall repeal the following provisions governing single family dwellings under the ordinance:

a. the ordinance provision specifying that all or a large part of each dwelling be constructed over a full basement.

b. The 'no-look-alike' ordinance provision.

3. The Township shall add a provision to its ordinance clearly permitting conversion of single family dwellings to two or more dwellings, permission for conversion and for specifying the number of units to be created to be based solely on health and safety standards of a reasonable and modest nature.

4. The Township shall provide for a multifamily residential zone consistent with the standards and provisions of Section (2) of the Cranbury exhibit; alternatively, it shall amend the provisions of the O-1 zone:

(a) to incorporate all standards set forth in Section (2) of the Cranbury exhibit and eliminate all provisions inconsistent with that section.

(b) to repeal those provisions dealing with basements, air conditioning, and similar excessive provisions.

(c) to provide, in the event that the Township continues to allow non-residential uses by right in this zone, that the amount of land to be developed for non-residential uses shall not restrict the number of multifamily units constructed, or hinder the Township's meeting its fair share.

4A alternatively, the Township may provide for multifamily development consistent with the above standards in the context of a Planned Unit Development or planned community of similar nature.

4B. In the event that the Township adopts an ordinance incorporating PUD or similar provisions, that ordinance must be fully consistent with the planned development considerations set forth.

5. The Township shall repeal the prohibition on mobile homes, and shall make no distinction in the ordinance between mobile homes and other single family dwellings. The Township shall further provide for mobile home parks in those parts of the Township appropriate for such uses, such as along Highway 18.

6. The township shall provide for a special exception use provision for low and moderate income housing, such special exception to apply extensively and throughout the Township. Housing to be constructed under the special exception provisions shall be governed by provisions no more restrictive than those embodied in Section (2) of the Cranbury exhibit, and shall provide as well for waiver of ordinance provisions in favor of applicable State and Federal standards. The provision should further specify the definition of low and moderate income housing for purposes of the special exception, and shall state the clear intent of the municipality to approve any development meeting the standards and definitions set forth, within the numerical limits of the municipality's fair share allocation.

7. The Township shall amend its zoning map to provide for ample land for develoment of housing of a modest nature, subsidized and unsubsidized, under the provisions of Sections (1), (4), and (6) above. The use of the term 'ample' shall be the same as in the Cranbury exhibit.

8. The Township shall adopt a sewer and water plan, containing elements similar to those required under Section(7) of the Cranbury exhibit.

TOWNSHIP OF EDISON

1. The Township shall amend its single family residential provisions as follows:

a. minimum floor area requirements in the R-B and R-BB zones shall be reduced to 800 ft^2 or to conformity with FHA Minimum Property Standards and NJ Uniform Construction Code.

b. The provision requiring that each dwelling unit have a garage shall be repealed.

c. the provision specifying that mobile homes are non-conforming shall be repealed. No distinction shall be made in the ordinance between mobile homes and other single family dwellings.

2. A provision shall be adopted similar to (3) of the East Brunswick exhibit dealing with conversions.

3. In view of the ordinance provisions distinguishing between zoning standards for R-B and R-BB zones with and without sewer provision, the Township shall adopt a plan for extension of sewer and water facilities to all vacant land zoned R-B and R-BB, such plan to be consistent with the volume of development required under a fair share plan.

4. The Township shall significantly expand the land available for multifamily development within the township, either through making available additional land under existing provision of the L-R zone, or through adoption of PUD or similar zoning provisions. The Township shall further adopt a special exception use provision for low and moderate income housing similar to that provided as Section (3) of the Cranbury exhibit.

5. The township shall provide in the ordinance that no distinction applies between mobile homes and other single family dwellings in any single family residential zone. The Township shall further provide for mobile home parks in those parts of the Township appropriate for such use.

TOWNSHIP OF MONROE

1. The Township shall provide for a single family residential zone consistent with the standards enunciated under Section (1) of the Cranbury exhibit.

2. The township shall provide for a multifamily residential zone consistent with the provisions of Section (2) of the Cranbury exhibit.

2a. Alternatively to (2) above, the Township may provide for multifamily development meeting the above standards in the context of a Planned Residential Development or planned community of similar nature.

3. In the event that the Township chooses to provide multi-family housing through provision of PUD or similar planned community approaches, all such provisions must be consistent with the considerations given on P.___. Furthermore, in so doing the Township must amend its present PRC zone as provided below, or repeal those provisions and replace them with a new body of planned development provisions.

3a. The Township must repeal all provisions of the PRC zone not consistent with the planned development considerations set forth, including but not limited to the following:

a. Any restrictions on residence in planned communities, by age or otherwise.

b. maximum of 28 residents/acre. This standard may be replaced by an appropriate series of density standards.

c. requirements that golf course, lake, pool, and similar facilities be provided. This may be replaced by appropriate standards for open space dedication and for provision of basic and necessary recreational facilities, others to be at the discretion of the developer.

d. requirement that minimum area of 400 acres be provided to qualify for planned community provisions. This can be replaced with a standard of not more than 50 acres.

4. Independently of the planned community provisions, the Township shall provide special exception use provisions for low and moderate income housing similar to that provided as Section (3) of the Cranbury exhibit.

5. A provision shall be adopted similar to Section (3) of the East Brunswick exhibit dealing with conversions.

6. The Township shall repeal the prohibition on mobile homes, and shall not make any distinction in the ordinance between mobile homes and other single family dwellings. The Township shall further provide for mobile home parks in those parts of the Township appropriate for such uses.

7. The Township shall amend its zoning map to provide for ample land for development under the provisions of Sections (1), (2), or (2a), and (4) of this exhibit. The use of the term "ample" shall be the same as in the Cranbury exhibit.

8. The Township shall adopt a sewer and water plan incorporating all elements specified under Section (7) of the Cranbury exhibit.

TOWNSHIP OF NORTH BRUNSWICK

1. The Township shall provide for a single family residential zone consistent with the standards enunciated under Section (1) of the Cranbury exhibit; alternatively, it shall amend the provisions of the R-4 zone to meet these standards. The Township shall further repeal those provisions dealing with single family dwellings requiring garages for each dwelling unit, and requiring 2 parking spaces per dwelling.

2. The Township shall repeal those provisions of the R-5 garden apartment zone not consistent with Section(2) of the Cranbury exhibit, including but not limited to the following:

(a) five acre minimum lot size and 300 ft. frontage. May not exceed 2 acres and 100 feet.

(b) density of 10 dwelling units/acre. May not be less than 15/acre

(c) bedroom restrictions shall be removed entirely.

(d) parking provisions shall be reduced to 1.5 spaces/ dwelling, and all provisions for carports shall be removed.

(e) air conditioning, storage space, and 'zigzag' provisions shall be removed.

(f) playground provisions shall be substantially reduced and shall not exceed conventional standards based on anticipated number of children

(g) minimum floor area requirements

3. The Township shall repeal those provisions of the ERD zone inconsistent with reasonable and modest standards, including but not limited to:

(a) single family development shall not exceed the standards of the R-4 zone

(b) gross density provisions shall be removed. Gross density permissable shall be a function of the relationship of net density under R-4 and R-5 provisions, SF/MF ratio, and open space dedication.

4. The Township shall repeal those provisions of the PUD zone inconsistent with the considerations for planned development set forth, including but not limited to the following:

(a) the requirement that non-residential uses be provided will be removed. The ordinance may specify that commercial facilities reasonably required by residents of the PUD shall be provided, but not in excess of this requirement.

(b) all bedroom restrictions shall be removed.

(c) net density standard shall be raised to no less than 15 dwellings/acre.

5. The Township shall provide special exception use provisions for low and moderate income housing similar to those provided as Section (3) of the Cranbury exhibit.

6. A provision shall be adopted similar to Section (3) of the East Brunswick exhibit dealing with conversions.

7. The Township shall repeal its prohibition on mobile homes, and shall not make any distinction between mobile homes and other single family dwellings in the ordinance. The Township shall further provide for mobile home parks in those parts of the Township appropriate for such uses, such as in appropriate locations along US Route 1 and State Highway 130.

8. The Township shall amend its zoning map to provide for ample land for development under the provisions of Sections (1), (2) and (5) of this exhibit. The use of the term 'ample' shall be the same as in the Cranbury exhibit. The Township may make a showing that ample land under that definition already exists in the R-4, R-5, and PUD zones (as amended as specified above) in order to meet the requirements of Sections (1) and (2) of this exhibit.

TOWNSHIP OF PISCATAWAY

1. The Township shall provide for a single family residential zone consistent with the standards enunciated under Section (1) of the Cranbury exhibit; alternatively, it shall amend the provisions of the R-7.5 zone to meet those standards.

2. The Township shall repeal those provisions of the zoning ordinance dealing with single family residential zones requiring the provision of an enclosed garage for each dwelling, and specifying variation in appearance (no-look-alike).

3. The Township shall provide for a multifamily residential zone consistent with reasonable and modest standards through repeal of those provisions of the R-M multifamily zone not consistent with Section(2) of the Cranbury exhibit, including but not limited to the following:

a. 5 acre minimum lot size and 200 ft minimum lot frontage. May not exceed 2 acres and 100 feet.

b. density of 15 bedrooms/acre. May not be less than 15 dwellings/acre. density standards based on number of bedrooms per acre may not be adopted unless a reasonable minimum requirement for multi-bedroom apartments is adopted as well.

c. parking provision shall be reduced to 1.5 spaces/ dwelling

d. air conditioning, storage space, and 'zigzag' provisions shall be removed.

e. minimum floor area requirements shall be reduced or replaced with N.J. Housing Finance Agency standards by reference.

f. requirement that minimum number of units be no less than 32 should be removed

4. The Township shall provide special exception use provisions for low and moderate income housing similar to those provided as Section (3) of the Cranbury exhibit.

5. A provision shall be adopted similar to Section (3) of the East Brunswick exhibit providing for conversion of single family dwellings.

6. The Township shall repeal its prohibition on mobile homes, and shall not make any distinction between mobile homes and other single family dwellings in its ordinance. The Township

shall further provide for mobile home parks in those parts of the Township appropriate for such uses.

7. In the event that the Township chooses to provide for multifamily development in the form of a PUD or similar provision in the zoning ordinance, such provisions must be consistent in all regards with the planned development considerations set forth.

8. The Township shall amend its zoning map to provide for ample land for development under the provisions of sections (1), (3), and (4) of this exhibit. Such amendment shall be subject to the following provisions:

a. In the event that the Township creates a new single family residential zone to meet the objectives of section (1) of this exhibit, land allocated to that zone shall not be taken from vacant land at present in either the R-10, R-7.5, or R-M zones.

b. In the event that the Township amends the provisions of the R-7.5 zone, such additional land that will be required to make ample provision as defined herein shall not be taken from vacant land in either the R-10 or the R-M zone.

c. The Township may meet its obligations to provide for multifamily housing either through adding ample land to the R-M (as amended) zone, or through assigning vacant land to a PUD or similar zone created for that purposes. In either case, land shall not be transferred from the R-10, or R-7.5 zones to meet multi-family housing obligations.

d. Land designated for special exception use provisions under Section (4) of this exhibit shall be over and above land zoned multifamily or PUD.

1. The Borough shall provide for a single family residential zone consistent with the standards enunciated under Section (1) of the Cranbury exhibit; alternatively, it shall amend the provisions of the R-7 single family zone to meet those standards.

2. The Borough shall provide for multifamily residential development consistent with regard to reasonable and modest standards through repeal of those provisions of (a) the townhouse option of R-7 zone, and (b) the G-1 garden apartment zone, not consistent with Section(2) of the Cranbury exhibit, including but not limited to the following:

a. With regard to the townhouse option in the R-7 zone:

(1) 20 Acre minimum lot size. May not exceed 2 acres.
(2) 5 unit/acre maximum density. May not be less than 10 units/acre

b. With regard to the G-1 garden apartment zone:

(1) 5 acre minimum lot size. May not exceed 2 acres.
(2) 12 unit/acre maximum density. May not be less than 15 units/acre
(3) parking provisions of 2 spaces/unit and 25% garage parking shall be removed. Shall not exceed 1.5 spaces/unit
(4) 'zigzag' provisions shall be removed.

3. The Borough shall repeal all provisions of its PUD ordinance not consistent with the planned development considerations previously set forth, including but not limited to the following:

a. The requirement that industrial uses and commercial uses over and above the immediate commercial facility needs of the residents be provided shall be removed. The ordinance may specify that commercial facilities reasonably required by residents of the PUD but not in excess of that, be provided.

b. The net residential densities shall be raised from 8 units/acre for townhouses to 10 units/acre, and from 12 units/acre to 15 units/acre for garden apartments.

c. Gross residential densities shall be removed. Gross density shall be a function of net density and land use distribution.

d. Minimum acreage requirements shall be reduced to 50 acres to qualify for PUD provisions.

e. floor area provisions shall be reduced or replaced with New Jersey Housing Finance Agency standards by reference.

f. the no-look-alike provision shall be removed.

g. The parking requirement shall be reduced from 1.75 to 1.5 spaces/unit

h. The single family development standards in all PUD areas shall not exceed those of the R-7 zone.

i. The entire section dealing with timing of development, and proportionate staging for residential and non-residential development shall be removed.

4. The Borough shall provide special exception use provisions for low and moderate income housing similar to those provided in Section (3) of the Cranbury exhibit.

5. The Borough shall adopt a provision similar to Section (3) of the East Brunswick exhibit providing for conversion of single family dwellings.

6. The Borough shall repeal its prohibition on mobile homes, and shall not make any distinction between mobile homes and other single family dwellings in the ordinance. The Borough shall further provide for mobile home parks in those parts of the Borough appropriate for such uses.

7. The Borough shall amend its zoning map to provide for ample land for development under the provisions of Sections (1), (2) and (4) of this exhibit. The use of the term 'ample' shall be the same as in the Cranbury exhibit. The Borough may meet its obligations to provide for multifamily housing either through adding ample land to the G-1 (as amended) and R-7 zones, or through amendment and cleansing of the PUD ordinance. Land designated for special exception use provisions under Section (4) of this exhibit shall be over and above land zoned for multifamily development or for PUD.

TOWNSHIP OF SOUTH BRUNSWICK

1. The Township shall provide for a single family residential zone consistent with the provisions of Section (1) of the Cranbury exhibit; alternatively, it shall amend the provisions of the R-3 and/or the R-4 zones to meet those standards.

2. The township shall repeal the provisions governing single family dwellings and requiring (a) a garage for each dwelling unit; and (b) 100 ft^2 storage in each dwelling unit over and above minimum floor space requirements.

3. The township shall provide for a multifamily residential zone consistent with the provisions of Section (2) of the Cranbury exhibit.

3a. Alternatively, the Township may provide for multifamily housing meeting the above standards in the context of a planned unit development or planned community of similar nature. In the event that the Township chooses to provide for multi-family housing through the existing PRD provisions of the ordinance, it shall repeal all provisions not consistent with the planned development considerations set forth, including but not limited to the following:

a. net density for single family development of 4/acre shall be increased to at least 6/acre. Other SF provisions consistent with (1)

b. net density for townhouse development of 8/acre shall be increased to at least 10/acre

c. gross density figures shall be repealed. Gross density shall be a function of net densities, housing distribution by type, and open space provisions.

d. 100 ft^2 storage provision shall be repealed.

e. 2 parking space/dwelling provision shall be reduced to no more than 1.5 parking /dwelling

f. 'zigzag' provisions shall be repealed.

4. Independently of the planned community provisions, the Township shall provide special exception use provisions for low and moderate income housing similar to those provided as Section (3) of the Cranbury exhibit.

5. A provision shall be added to the ordinance similar to Section (3) of the East Brunswick exhibit dealing with the conversion of single family houses to two or more family houses.

6. The Township shall repeal the arbitrary limitations on mobile home park development, and shall provide reasonable opportunity for development of mobile home parks in those parts of the township appropriate for such use, in particular along US highway 1 and Route 130.

7. The Township shall amend its zoning map to provide for ample land for development under the provisions of Sections (1), (3), or (3a), and (4) of this exhibit. The use of the term 'ample' shall be the same as in the Cranbury exhibit. The allocation of vacant land by zone shall be clearly linked to the continuing availability of infrastructure for the density of development required under these provisions.

8. In view of the planning principles of the Township embodied in the ordinance, and in view of the goal of (a) staging development to provide for orderly growth; and (b) linking the location and timing of development with the provision of infrastructure, the township shall adopt a sewer and water plan to ensure that the extension of infrastructure is adequate to provide for development of the Township's fair share, with regard to all types of housing called for under the fair share plan, in a fashion timely enough not to hinder the development of necessary low and moderate income housing. The plan shall further provide (a) that public water and sewer shall be available for all development required under the fair share allocation, or failing that, reasonable and environmentally sound alternative methods for water supply and waste disposal; (b) that such facilities will be provided without imposing onerous burdens on developers, housing sponsors, and by extension, the future residents of low and moderate income housing development.

9. The Township shall undertake its rezoning in such a manner that at least half of the net amount of land contained in the zones created pursuant to Section (7) above shall represent a net increase to the available residential land supply. For these purposes, land in the A-5 and A-3 zones is not at present considered part of that supply.

1. The Borough shall provide for a single family residential zone consistent with the standards enunciated under Section (1) of the Cranbury exhibit; alternatively, it shall amend the provisions of the R-7.5 single family zone to meet those standards.

2. The Borough shall repeal the following provisions affecting development in the single family zones under the ordinance:

a. the requirement that there be 2 parking spaces per dwelling.

b. the ordinance provision specifying that all or part of the dwelling be constructed above a full basement.

c. The 'no-look-alike' provision

3. The Borough shall repeal the ordinance provision restrictive of conversion of single family dwellings into two or more family dwellings, and shall adopt provisions clearly permitting all such conversions, subject only to health and safety standards of a reasonable nature.

4. The Borough shall provide for a multifamily development zone consistent with the provisions of Section (2) of the Cranbury exhibit.

4a. Alternatively, the Borough may provide for a comparable or greater amount of multifamily development, meeting the above standards, in the context of a Planned Unit Development or planned community ordinance of similar nature.

4b. In the event that the Borough chooses to provide multi-family housing through adoption of a PUD or similar planned community approach, all such provisions shall be consistent with the planned development considerations set forth above.

5. Independently of the provisions of Sections (4), (4A-B), the Borough shall provide special exception use provisions for low and moderate income housing similar to those provided in Section (3) of the Cranbury exhibit.

6. The Borough shall provide in the ordinance that no distinction applies between mobile homes and other single family dwellings in any single family residential zone. The Borough shall further provide for mobile home parks in those parts of the Borough appropriate for such uses.

7. The Borough shall amend its zoning map to provide for ample land for development under the provisions of Sections (1), (4), and (5) of this exhibit. The term 'ample' shall be used in the same sense that it is defined in the Cranbury exhibit. Such amendment shall be subject to the following provisions:

a. With the exception of minor adjustments that may be necessary, all land provided to meet the requirements of Sections (1) and (4) shall represent net additions to the total vacant residentially zoned land in the Borough.

b. All land made available under the provisions of Section (5) for low and moderate income housing shall be land that is otherwise zoned for residential or compatible land uses.

APPENDIX C

This appendix provides a list of positive steps other than specific zoning ordinance changes that can be taken by the defendant municipalities to affirmatively provide for low and moderate income housing units. It also provides a complete listing of available federal and state programs which can be used to facilitate implementation of a municipality's fair share.

In the event that defendants fail to produce adequate provision on their own this list might be used in fashioning a specific remedy to provide this fair share.

Municipalities can:

1. Create a housing authority (pursuant to N.J.S.A. 55:14A-1 et seq.) and provide such financial support necessary to enable the housing authority to fulfill the municipality's fair share allocation (e.g., make application for Federal funds, etc.)

2. Work with existing housing authorities in contiguous municipalities, pursuant to Title 55, N.J.S.A.

3. If the county creates a county housing authority, pass the necessary resolutions providing that the county housing authority may construct, lease, or rehabilitate units for families and senior citizens within the municipality.

4. Pass a resolution of need under the NJ HFA law (55:14J-1 et seq.)

5. Adopt a resolution specifying that tax abatement will be provided to non-profit or limited dividened housing

constructed in the municipality under NJ HFA provisions, Section 8, or similar programs.

6. Pass a resolution specifying that the municipality shall facilitate wherever possible the construction or rehabilitation of housing under Federal & State housing programs, and shall use its good offices to support the activities of non-profit sponsors, assist in obtaining suitable housing sites, direct infrastructure and facility improvements toward such sites, entertain reasonable variations from existing land use, including subdivision, regulations, etc.

7. Make application through the housing authority or other body designated by the municipality's governing body for Section 8 funds to be applied to existing housing units; further, ensure that such funds be used without hindrance through wide publicity of the program to both tenants and landlords, active encouragement of the program, and use of municipal good offices to facilitate participation in the program by interested landlords.

8. Utilize a reasonable share of available community development revenue sharing (CDRS) funds for rehabilitation/ home improvement activities as provided under the 1974 housing act.

9. Utilize a reasonable share of CDRS funds for provision of infrastructure extensions and improvements to existing infrastructure in a manner directly benefiting,

and improving the housing conditions of, low and moderate income families living in existing housing units in the municipality.

10. Apply for State funds for home improvement/housing rehabilitation as well as any Federal funds (e.g., Sec. 312) not tied to CDRS. Furthermore, a municipality can use its good offices with accesible private lenders to increase the flow of funds for home improvement and rehabilitation at reasonable terms.

11. Affirmatively encourage black and Hispanic families to obtain residence in the community, both in existing and new low and moderate income housing through such efforts as the creation and funding of special outreach programs, advertising in the minority media, development of cooperative relationships with existing resource groups such as the Urban League.

12. The following list of state and federal programs is provided as a resource list:

Section 8, 42 U.S.C. 1437f

Section 8 is a leased housing assistance payments program which provides subsidies to owners or developers on behalf of tenants__/ who live in market rate units. The Department of Housing and Urban Development (HUD) sets rents based on prevailing market levels for moderately priced housing.

__/ The statute provides assistance be made available to families of "low income" (earning no more than 80 percent of the median income) and "very low income" (earning no more than 50 percent of the area median income.

Owners who may be either private or public, are paid the difference between this rent and between 15 to 25 percent of the assisted family's income.

The subsidy applies to newly constructed, substantially rehabilitated, or existing housing and all types of units and structures, including mobile homes.

Section 235

Section 235 (as revised) provides home ownership assistance to lower income families by authorizing the Secretary to make monthly payments to lenders who make home mortgage loans to qualified families. Owners of condominium units are considered home owners for this purpose.

This assistance reduces the mortgage interest cost to as low as 5 percent. The homeowner must contribute at least 20 percent of his adjusted gross income towards monthly mortgage, insurance and tax payments on the house.

To be eligible for such assistance, the family must have an adjusted family income not exceeding 80 percent of the median income for the area, with appropriate adjustments for smaller and larger families.

Farmer's Home Administration (FmHA) - Title V

There are several rehabilitation programs administered by the Farmers' Home Administration. Under a special section of section 502 home ownership program, rural homeowners can secure a loan to improve or enlarge existing buildings or complete one on which substantial construction work already has been done.

Under Section 504 of the Housing Act of 1949 (42 U.S.C. 1441) the Farmers Home Administration may make loans and/or grants to very low income rural homeowners to make minor repairs and improvements to their homes.

Under Section 515 of the Housing Act of 1949, 42 U.S.C. §1485, the Farmers Home Administration is authorized to make low-interest direct loans to individuals, corporations, associations, and other eligible entities to provide rental or cooperatively-owned housing for moderate-income rural persons. Such loans may cover the entire development costs or the value of the mortgaged property, whichever amount is smaller.

Section 236

Subsidies under the "Section 236" program, 12 U.S.C. §1715z-1, as amended, are available to owners of multifamily rental projects whose tenants are lower income families. The Secretary of HUD is authorized to subsidize the owner's mortgage interest payments down to one percent, provided that the resulting savings be passed along to the residents of the project in the form of lower monthly rental payments. The Secretary is also authorized to make additional assistance payments to subsidize certain operating expenses. In projects containing an unusually high percentage of very low income persons, HUD may grant additional subsidies for up to 20 percent of the dwelling units.

Section 202

Under the "Section 202" program, 12 U.S.C. §1701q, as amended, federal loans are available to finance the construction of housing for the elderly and the handicapped, so long as such housing is being sponsored by a non-profit organization. In addition, Section 8 Leased Housing payments may be used to subsidize rents which such housing would bear under HUD fair market rent guidelines. The interest rate on "202" housing would be equal to the U.S. Treasury borrowing rate, plus an allowance to cover overhead costs.

Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5305 et seq.

A community development program under Title I of the above act can be used to provide for the "acquisition, construction, reconstruction, or installation"of a community's infrastructure (§5305(a)(2))

Such a program can also be used for rehabilitation of buildings and improvements (§5305(a)(4)).

New Jersey Housing Finance Agency Program

The state Housing Finance Agency program relevant here, (under N.J.S.A. 55: 14J-1 et seq) provides assistance for limited dividened and non-profit sponsors of moderate income multi-family dwellings (both rentals and cooperatives). This program enables these sponsors to obtain a lower mortgage interest rate than that available generally.

State Demonstration Fund Program

Under N.J.S.A. 52:27D-59 et seq. a municipality may submit a plan for a "demonstration" to be funded by the state.

Demonstrations presently in existence involve rehabilitation of low and moderate income housing, management of public housing and programs where tenants assume certain responsibilities in public housing projects.

Under the Neighborhood Reservation Housing Rehabilitation Loan and Grant Act of 1975, N.J.S.A. 52: 27D-152 through 161, grants are provided for neighborhood housing rehabilitation programs on an experimental basis.

Obviously the relief ordered by this Court to correct the proven violations of the New Jersey Constitution will redound to the benefit of the minority group plaintiffs and the class they represent. For too long these plaintiffs have borne the burden of racial prejudice, in addition to economic discrimination. The remedy for these plaintiffs includes the provision of units and must necessarily include a variety of affirmative action or "outreach" programs designed to attract the minority family to the new and rehabilitated units that will become available. Without special outreach programs, advertising in the minority media, the development of cooperative and consultative relationships with brokers serving the minority community, establishing of fair housing groups, cooperation with existing organizations such as the

Urban League and similar programs (as testified by Mr. Mallach on the last day of trial) minority families will not perceive that they are welcome. Indeed, without the ordering of such relief, minority plaintiffs will perceive the opposite -- that not coming under the special protection offered by the court is indicative that they are not as welcome as white low and moderate income families.

APPENDIX D

Part I

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.

MEMORANDUM IN OPPOSITION

TO DEFENDANTS' MOTION

FOR PARTIAL SUMMARY JUDGMENT

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I. INTRODUCTION

This action was filed on July 23, 1974, against 23 of the 25 municipalities in Middlesex County, alleging that the defendants have, through various land use practices, effectively excluded low-and moderate-income people, both white and nonwhite. Plaintiffs seek to enjoin the municipalities from continuing to engage in the alleged unlawful conduct, and to require them to design and implement plans which would correct the effects of such unlawful conduct. Plaintiffs' allege that defendants' conduct violates N.J.S.A. 40:55-32; Article one, paragraphs 1, and 5, of the New Jersey Constitution; 42 U.S.C. 1981, 1982, and 3601 et seq.; and the Thirteenth and Fourteenth Amendments to the United States Constitution.

On August 8, 1974, defendant Cranbury (joined in the intervening period by other defendants)[1/] filed a Motion for Partial Summary Judgment, contending that the United States Supreme Court's recent decision in Warth v. Seldin, 95 S.Ct. 2197 (1974) (hereinafter Warth) precludes the plaintiffs, for lack of standing, from asserting their federal claims. Defendants urge that these plaintiffs, as in Warth, are unable to show that they have been sufficiently injured

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1/ Carteret, Helmetta, Middlesex, Milltown, Metuchen, North Brunswick, Sayreville, and Spotswood

by defendants allegedly exclusionary acts. They argue that failure to demonstrate the requisite injury is thus fatal to plaintiffs' attempt to challenge defendants' zoning and other land use policies as violative of federal statutes and the United States Constitution.

Plaintiffs oppose the defendants' motions and urge that it be denied on the following grounds:

First, the Warth decision sets the parameters for the exercise of jurisdiction by federal courts. In denying standing the Court in Warth held that the plaintiffs had presented no "case or controversy" within the meaning of article III of the Constitution. The jurisdictional limitation announced by Warth is not applicable to actions in state courts, even if they are based on federal claims. The standing of plaintiffs in state courts is to be determined by state standards of justiciability.

Second, even if the federal standards set out in Warth are adopted by this court and applied to this case, plaintiffs still have the requisite standing. Unlike the plaintiffs in Warth, the plaintiffs here are:

(a) asserting that the defendants' land use practices are racially discriminatory;

(b) alleging a violation of the Federal Fair Housing Act;

(c) challenging specific provisions of the zoning ordinances rather than a generalized attack upon the entire zoning scheme;

(d) contending they are members of the class injured by the defendants' unlawful conduct.

Third, with respect to the standing of the Urban League, the plaintiffs contend that it has standing in its own right.
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II. ARGUMENT

A. Introduction

At the outset it should be noted that the defendants' motion for partial summary judgment is directed at whether plaintiffs have standing to challenge defendants' conduct as racially discriminatory. The defendants have not contested the facts alleged in the complaint. Thus as with a motion to dismiss, this motion tests the sufficiency of the allegations. It is appropriate to recall the applicable rules in this situation. It is well settled that the material matters of fact in the complaint are generally to be regarded as admitted, Manulli v. Gunagan, 32 N.J. Super. 212 (App. Div., 1934), and the inquiry is confined to a consideration of the legal sufficiency of the alleged facts. P and J Auto Body v. Miller, 73 N.J. Super. 207 (Law Div., 1962). The New Jersey Supreme Court in Jackson v. Muhlenberg Hospital, 53 N.J. 138 (1969)

warned against disposing of claims without benefit of a substantial record where the ruling requested would have a broad reaching social and legal effect. Federal courts in their consideration of civil rights cases have underlined the intent of the New Jersey holdings. In a fair housing suit challenging exclusionary zoning in Parma, Ohio, the court quoted with approval the opinion of Judge Marovitz in Sisters of Prov. of St. Mary of Woods v. City of Evanston, 335 F. Supp. 396, 399-400 (N.D. Ill. 1971):

> It is especially in civil rights disputes that we ought to be chary of disposing of the case on pre-trial motions and courts do in fact have a predilection for allowing civil rights cases to proceed until a comprehensive record is available to either support or negate the facts alleged.

United States v. City of Parma, P.H.E.O.H. Reptr. Para. 13,616, p. 14,016 (N.D. Ohio 1973). Thus plaintiffs' federal civil rights claims in this case should be allowed their day in court.

B. Plaintiffs' Standing in State Courts is to be Determined by State Standards of Justiciability

Defendant Cranbury has urged upon this Court that the United States Supreme Court's decision in Warth, supra, is dispositive of the issue of whether plaintiffs here have standing to press Federal Constitutional and statutory claims in a state court proceeding. Defendant has cited no support for this view. There is none. The Supreme Court's decision in Warth concerned a "case or controversy" problem under federal court jurisdiction derived from article III of the

United States Constitution. Plaintiffs here in state court are entitled to a hearing on their federal claims whether or not there is sufficient standing to invoke the jurisdiction of a federal court. This is because the federal jurisdictional requirements are not controlling on this court; rather we must look to the state standards on this issue. We now turn to an analysis of this point.

It cannot be debated that plaintiffs may properly bring federal claims in state courts. Gray v. Serruto Builders, 110 N.J. Super. 297 (Ch. Div. 1970), a racial discrimination case in which a black applicant for an apartment was turned away only hours before a white couple was offered the dwelling, is illustrative. The plaintiffs in Gray relied upon 42 U.S.C. 1982 for their claim for relief. The court specifically noted that it had jurisdiction to decide plaintiffs' federal claim. Accord, Doe v. Bridgeton Hospital Assn. Inc., 130 N.J. Super. 416 (Law Div. 1974). Indeed, in Testa v. Katt, 330 U.S. 386 (1947) the Supreme Court held that state courts were mandated to enforce claims based on valid federal legislation at least to the extent the state courts hear similar claims on state law. 2/

2/ In addition to this decisional support, it is clear that by statute plaintiffs can bring an action under the Federal Fair Housing Law in the court of their choice. That federal statute specifically provides that "the rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in an appropriate United States District Court without regard to the amount in controversy and in an appropriate state or local court of general jurisdiction." 42 U.S.C. 3612(a) (emphasis added).

The United States Supreme Court represents the final juridical authority on substantive federal questions such as the constitutionality of an Act of Congress. Stockton v. Dundee Mfg. Co., 22 N.J. Eq. 56 (1871). On matters of procedure, state courts are free to apply their own standards.. Thus in Mazza v. Cavicchia, 15 N.J. 498 (1954) the New Jersey Supreme Court was asked to rule on the validity of an order suspending a license to sell alcoholic beverages. The order was issued on the basis of a hearing report that was kept secret from the licensee. The Commission issuing the suspension claimed that the U.S. Supreme Court had decided cases approving the secret report procedure. The New Jersey Court, in addition to denying the applicability of the cited cases said:

> Unless a Federal question is involved, a decision of the United States Supreme Court, while always entitled to great respect, is not necessarily conclusive authority in any state. Id at 516

There are numerous instances in which state courts have properly decided federal statutory and Constitutional issues only to have the Supreme Court refuse an appeal on grounds of lack of federal jurisdiction, i.e., a failure to present a case or controversy or to show sufficient harm to the plaintiffs.

In Doremus v. The Board of Education, 342 U.S. 429 (1952) plaintiffs were challenging a New Jersey State Statute providing for the reading of Biblical verse in school each day as violating the First Amendment of the Federal Constitution. The trial court denied relief based on the pleadings and a pretrial conference. The New Jersey Supreme Court expressed

some doubts about its jurisdiction, but decided the statute did not violate the First Amendment. The Supreme Court dismissed the appeal without reaching the federal question because none of the plaintiffs had asserted sufficient interest to present a case or controversy under federal jurisdictional standards. Accord: Tylver v. Judges of the Court of Registration, 179 U.S. 405 (1900); (Supreme Judicial Court of Massachusetts) Tileston v. Ullman, 318 U.S. 44 (1943); Poe v. Ullman, 367 U.S. 497 Supreme Court of Errors of Connecticut). See Adler v. Board of Education of City of New York, 342 U.S. 485 (1952) (dissenting opinion of Mr. Justice Frankfurter).

Therefore, regardless of the Supreme Court's holding in Warth, the New Jersey courts can pass on plaintiffs' federal claims. As demonstrated by the cases above, the applicable standards of justiciability to hear those claims are those of the state in which the action is brought. We turn to a brief examination of the standing concept as applied in New Jersey courts. As shown in the cases above, state standards of justiciability are frequently less restrictive than federal standards. As Doremus shows, New Jersey courts are no exception, having traditionally taken a more liberal view of standing requirements than the federal judiciary. To be sure, the plaintiffs' interest with the litigation must show "a sufficient stake and real adverseness." Individual justice, the public interest and "just and expeditious determinations on the ultimate merits" have been the uppermost concerns.

Crescent Park Ten. Assn. v. Realty Equities Corp of N.Y., 58 N.J. 98 (1971) (granting standing to tenants association suing landlord on matters of interest common to all tenants).

More recently in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) (hereinafter cited as Mt. Laurel) the Supreme Court noted specifically that plaintiffs such as the ones in the instant case have standing to challenge zoning ordinances. In a footnote directly meeting the standing issue the court, in addition to approving the standing of present residents, confirmed that former residents and nonresidents living in unsuitable housing in the region also had standing. Mt. Laurel, Id. at 159, n. 3

In view of this ruling and the above demonstration that state standards of justiciability are applied when state courts are entertaining federal claims, plaintiffs urge that defendants' argument that Warth is determinative of standing is in error. Defendants' motion for partial summary judgment should be denied on this point alone.

C. Plaintiffs have Standing Even If the Federal Standards Set Forth in Warth are Adopted by This Court

A comparison of the legal and factual situations in Warth and the litigation here reveals four areas of substantial difference - and any one of the four would be sufficient for a finding that plaintiffs here do not come within the holding of Warth. Each of the four will be briefly discussed.

First, plaintiffs here are asserting that defendants' land use practices are racially discriminatory. This is one of the key distinctions between plaintiffs here and in Warth. In Warth the issue of racial discrimination was only incidential to the alleged economic discrimination; here racial discrimination is an integral yet independent allegation. Plaintiffs allege, and will prove, that the zoning policies and other land use practices of defendants are racially discriminatory. Race here is a major element, not an incidential factor as in Warth (see Warth, supra at 2212, n 21.)

The factual allegations in the complaint are replete with statements that reflect the exclusion of minorities from defendant municipalities. Thus, paragraph 16 notes that while 85 percent of the total county population lives in the defendant municipalities, less than 50 percent of the minority population so resides. Paragraph 18 and 19 states that population increases have been nearly all white families, and that those minorities that have moved into the county have been confined to New Brunswick and Perth Amboy. Paragraph 20 alleges that those minorities moving into defendant municipalities have been confined to areas where minorities already live - often characterized by poorer housing and less restrictive zoning.

In addition, paragraph 22 outlines the disparity between median income for Blacks living in the two central

city areas and the residents of the 23 defendants. Paragraph 26 details the employment situation of minorities in the county. Paragraph 31 notes the racial disparity between central city schools and those in defendant municipalities. Paragraph 33 states:

> the defendants' zoning and other land use policies and practices have denied or otherwise made unavailable to low-and moderate-income persons, both white and nonwhite equal access to housing and employment opportunities and denied educational opportunities to their children.

Paragraph 34, in outlining the results of defendants' conduct alleges, inter alia, that they have maintained "white isolated elite communities of high-income households" and deprived "middle and upper-income white residents of the benefits of racial and economic integration."

Accepting these allegations as true, as the court must, plaintiffs have outlined a systematice practice of excluding minorities from residing within defendant communities. It is upon this foundation that plaintiffs have based their federal statutory and Constitutional protections here challenged by defendants.

Second, plaintiffs here are alleging a violation of the Federal Fair Housing Act. This is the second key distinction between Warth and here. Plaintiffs allege that defendants' conduct violates federal statutory prohibitions against housing discrimination. The complaint in Warth never

mentioned this statue, and indeed at one point the Court specifically noted the absence of a contention that the Fair Housing Act was involved. Warth, supra at 2212, n. 21. There is no such question here, as plaintiffs have repeatedly invoked the provisions of Title VIII.

As noted earlier, Congress permitted actions brough under Title VIII to be heard in state courts. It defined those entitled to invoke Title VIII in broad terms in section 810(a) "(a)ny person who claims to have been injured by a discriminatory housing practice." When Congress has provided an express statute to remedy discrimination in housing, the courts are prone to accord standing to plaintiffs seeking its protection. In Trafficante v. Metropolitan Life Insurance Company, 409 U.S. 205 (1972) the Court granted standing to a white and a black tenant of an apartment complex charged with discrimination. The injury - loss of important benefits from interracial associations - was held to have been alleged with particularity.[3/] The Court pointed out that the victim of discriminatory housing practices was "the whole community", and the law was intended "to replace the ghettos by truly integrated living patterns."Id. at 211. Because it is precisely in this context and with this aim that plaintiffs here claim under Title VIII that they should be granted standing. See

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3/ The injury suffered by the white plaintiff in Trafficante is the same as that alleged by plaintiff Tuskey here.

Park View Heights Corp. v. City of Black Jack, 467 F.2d 1208 (8th Cir. 1972).

Third, plaintiffs are challenging specific sections of defendants' zoning ordinances. This is the third difference between Warth and the instant case. Plaintiffs' complaint when read together with the Appendix details the specific discriminatory items plaintiffs challenge. Paragraph 33 of the complaint summarizes the complained of exclusionary devices and techniques in stating that defendants have:

(a) Forbidden or severely restricted provision of mobile homes, the development of multiple dwellings, especially those with more than one bedroom, and single-family attached housing that plaintiffs can afford;

(b) imposed zoning and building requirements for single-family detached houses, such as large lot sizes, minimum floor areas, and excessive frontage requirements, which have increased housing costs;

(c) refused or otherwise failed to provide federally or State subsidized housing for low-income families; and

(d) zoned vacant land for industrial purposes in excess of need to the exclusion of residential usage.

In Warth a more generalized challenge to the entire zoning ordinance was attempted. Painting with such a broad brush made it difficult to focus upon exactly those provisions of the ordinance that were central to plaintiffs' case. In the case at bar it is clear what plaintiffs are challenging.

Fourth, plaintiffs are in fact injured. The final difference between Warth and plaintiffs here discussed arises out of the third. The broad challenge in Warth made it hard for the Court to perceive precisely how the plaintiffs were injured. Plaintiffs here can point to specific zoning provisions and land use practices that preclude them from obtaining housing adequate to meet their needs. This has caused direct and specific injury in a number of ways. Plaintiffs have been unable to find housing with sufficient room (Benson and Cruz) at prices they could afford; housing that is available is often crowded or located in an area of poor environment (Cruz, Champion, Benson); the lack of suitable housing has meant hardships in the employment area and denial of equal educational opportunities (Tippett). All plaintiffs have been harmed by the racial discrimination inherent in defendants' conduct.

Thus plaintiffs here are unlike Warth in a number of important ways. They are alleging racial discrimination, they are invoking the Federal Fair Housing Act, their attack on defendants' zoning ordinance is specific rather than general and they allege and are prepared to prove injury in fact as a direct result of defendants' conduct. Thus, whether viewed separately or together, the above four points remove questions of standing under article III. There remains one final issue.

D. Plaintiff Urban League Has Standing

Defendants have challenged the standing of plaintiff Urban League, stating that Urban Leagues' status "must rise or fall on whether or not the individual plaintiffs have the prerequisites to be granted standing." Defendant Cranbury's brief at 4. Plaintiffs disagree with this assertion. Organizations are granted standing in their own right. Such independent standing is based on showing of injury or harm to members of the organization. As the Supreme Court stated 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).

The New Jersey Supreme Court has given the same latitude to organizations availing themselves of state courts. Crescent Park Tenants Assn. v. Realty Equities Corp. of New York, supra. In that case the Court found that a tenants' association had standing to represent members in an action against a common landlord. The court noted the importance of problems common to all tenants. Plaintiff here represents members with common housing problems identical to those faced by the individual plaintiffs. It thus acquires standing in its own right.

CONCLUSION

Plaintiffs therefore respectively request that the Court deny defendants' motion for partial summary judgment.

Respectfully submitted,

BAUMGART & BEN-ASHER
Attorneys for Plaintiffs

BY: _____
DAVID H. BEN-ASHER

NATIONAL COMMITTEE AGAINST
DISCRIMINATION IN HOUSING
Attorneys for Plaintiffs

BY: _____
DANIEL A. SEARING
MARTIN E. SLOANE
ARTHUR WOLF

DATED: September 8, 1975

134 Evergreen Place
East Orange, New Jersey 07018
201-667-1400

MARTIN E. SLOANE
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National Committee Against
Discrimination in Housing, Inc.
1425 H Street, N.W.
Washington, D.C. 20005
202-783-8150
Attorneys for Plaintiffs

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.

CITY OF WASHINGTON))
)) ss.
DISTRICT OF COLUMBIA))

AFFIDAVIT OF ERNEST ERBER

Ernest Erber, of full age, being duly sworn according to law, deposes and says:

1) I am the Director of Research and Program Planning for the National Committee Against Discrimination in Housing.

2) I am a regional and urban planner and a full member of the American Institute of Planners, the professional organization in this field.

3) I have served professionally in the following areas:

Executive Director of the Passaic Valley Citizens Planning Association from

of the Regional Plan Association from 1960-1968 with offices in Newark, New Jersey; a consultant to New Jersey's Department of Community Affairs; a consultant of the Commission to Study County and Municipal Government in New Jersey; Associate Director and Technical Advisor to the New Jersey Federation of Planning Officials, and Technical Advisor to Mayor Kenneth Gibson of Newark.

4) I have also served on the faculty of Farleigh Dickinson University as lecturer in urban sociology, as consultant to the Urban Studies Center at Rutgers -- the State University, and on the graduate faculty of Pratt Institute, where I lectured in the Department of City and Regional Planning.

5) My paper on "The Inner City in the Post-Industrial Era -- A Study of Its Changing Social Fabric and Economic Function" was published last year in the volume on The Inner City (Declan Kennedy and Margrit I. Kennedy, editors; Elek Books, Ltd., London, 1974). My volume of professional papers, Urban Planning in Transition, published in 1970, is widely used as a textbook in planning courses.

6) There are many alternatives available to municipalities with a minimum of vacant land that wish to accommodate low- and moderate-income families. Such alternatives include:

a) Zoning changes for increased density based on studies to determine how current practices can be changed without having a negative effect on existing neighborhoods. Such a study could produce regulations for mixing commercial and residential uses in single structures: conversion of existing large residential structures now underutilized to contain several smaller units; conversion of unused non-residential structures to residential use; recapture of scarce land through clearance of blighted structures under state enabling legislation for blight clearance and urban renewal, fundable with federal community development grants already applied for by defendants; recapture of land in unneeded local streets and abandoned railway right-of-ways; etc.

b) Revision of zoning regulations to permit higher structures and greater densities for multi-family construction on scattered sites under strict architectural design controls to protect adjoining uses and the character of the neighborhood.

c) Inclusion in zoning ordinances of density bonuses provision to encourage builders to allocate a portion of their units in new or extensively rehabilitated structures to occupants of low- and moderate-income, facilitated by the federal rental subsidy program (Section 8, Housing and Community Development Act of 1974.)

7) According to figures contained in the Middlesex County "Urban County" application for Community Development Revenue Sharing funds, filed with the Department of Housing and Urban Development on March 1, 1975, the four municipalities had the following units of substandard housing:

Dunellen	130
Jamesburg	106
Metuchen	159
South River	348

8) The amount of vacant land in each of the four defendant municipalities - Metuchen, Jamesburg, South River, and Dunellen -- is sufficient to provide a substantial number of low- and moderate-income housing units.

9) Jamesburg has 122 acres of vacant land, of which 42 acres are zoned for garden apartment use by special permit upon application to the Board of Adjustment. Assuming that one half of these acres were utilized for garden apartments at an average density of 15 units to the acre, a total of 315 dwelling units could be constructed.

10) South River has 92.45 acres of vacant land in the R-1 Residential District, within which multi-family uses can be built by special permit. Assuming that one half of those acres were utilized for garden apartments at an average density of 15 units to the acre, a total of 690 dwelling units could be constructed.

11) Dunellen has 9 acres of vacant, buildable land. Assuming that one half of this acreage is in lots buildable at its most restrictive density of 18 families per acre, 81 dwelling units could be constructed.

12) Metuchen has approximately 40 acres of vacant land, of which 8.5 acres are in zones allowing apartments, subject to present height, density and minimum yard requirements. Approximately 127 units could be provided under present restrictions. If all 8.5 acres were subject to the modifications applicable to senior citizen housing 459 units could be available. If the rescinded high rise zone applied, 297 units could be provided.

Ernest Erber
ERNEST ERBER

Subscribed and sworn to
before me this 15 day
of September, 1975

Notary Public, D.C.
My commission expires 4-30-76
SEAL

APPENDIX E

WITTMAN, ANZALONE, BERNSTEIN & DUNN
25 EAST SALEM STREET
HACKENSACK, N. J. 07601
(201) 343-2500
ATTORNEYS FOR Defendant, Township of East Windsor and Planning Board of East Windsor

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY - LAW DIVISION

Plaintiff
THE HIGHTSTOWN-EAST WINDSOR HUMAN RELATIONS COUNCIL, INC., et al

vs.

Defendant
TOWNSHIP OF EAST WINDSOR, New Jersey, its officials, employees and agents, et al

Docket No. L-24265-71PW

CIVIL ACTION

CONSENT ORDER

THIS MATTER having been brought before this Court by Alice Ashley Costello, Esq., attorney for the named Plaintiffs and the respective classes they represent, in the presence of the Defendants, Township of East Windsor and Planning Board of East Windsor, by their attorneys, Wittman, Anzalone, Bernstein and Dunn, Thomas W. Dunn, Esq. appearing; Defendant, Board of Adjustment of the Township of East Windsor by William von Oehsen, Jr., Esq.; Defendant,Kendall Development Company, by its attorneys Ridolfi & Friedman, Anthony Apicelli, Esq. appearing; and in the presence of Third Party Defendants, by the Attorney General

of the State of New Jersey, Paul G. Levy, Assistant Attorney General appearing; and Defendant, the Township of East Windsor having proposed a plan to encourage and provide opportunity for a fair share of the regional need for a variety of housing types and prices including low and moderate income housing in East Windsor Township; and the Court having considered and approved such plan;

IT IS HEREBY ORDERED on this 1st day of March, 1976, with the consent of all counsel, that the within matter be dismissed against all Defendants other than the Township of East Windsor, with prejudice and without costs;

IT IS FURTHER ORDERED that the Third Party Complaint be dismissed without prejudice and without costs;

IT IS FURTHER ORDERED, with the consent of counsel for Plaintiffs and Defendant Township of East Windsor, that the within matter be dismissed against Defendant, Township of East Windsor, with prejudice and without costs based upon the implementation by Defendant, Township of East Windsor, of the following plan:

1. Within 180 days of the date hereof the Township shall adopt a zoning ordinance and zoning map substantially in accordance with Exhibits J-1 and J-2 marked in evidence before the Court together with the following additional provisions:

A. Small Lot District:

1. The areas outlined on Schedule "A" annexed hereto shall be designated as a Small Lot District.

2. In such District the following standards shall apply:

a. Use:

In such Small Lot District no structure shall be used, built, extended or altered and no land shall be used for any purpose other than:

(1) A single or two-family dwelling, meeting the New Jersey State Construction Code and FHA minimum standards, and its customarily accessory structures;

(2) A neighborhood park or playground.

b. Minimum Lot Area:

(1) 5,000 square feet for a single-family dwelling, provided that existing lots of record on the date of adoption of such ordinance having a minimum area of 4,000 square feet and a minimum frontage of 40 feet may be used for a single-family dwelling provided such dwelling meets all other requirements of this District. Notwithstanding the foregoing,any dwelling located on the south side of Daniel Street at the date of adoption of this Ordinance may be continued and rebuilt, if necessary, provided that the lot area, frontage and yard areas are not reduced beyond that existing on the date of this Ordinance.

(2) 6,000 square feet for a two-family dwelling.

c. Minimum Lot Frontage:

50 feet except that existing lots of record on the date of adoption of such ordinance having a minimum area of 4,000 square feet and a minimum frontage of 40 feet may be used for a single family dwelling provided such dwelling meets all other requirements of this District.

d. Minimum Yards:

(1) No dwelling shall be located closer than 10 feet to any structure on an adjacent lot.

(2) No dwelling shall be located closer than 20 feet to a street line except that a dwelling existing on the date hereof may be continued and rebuilt, if necessary, provided that no further encroachment on the front yard is created.

e. Maximum Building Height:

2-1/2 stories or 35 feet.

B. R-3 Medium Density Residential District:

The following provision shall be added to Section 20-11.000; Medium Density Residential District:

"20-11.0300 Special Exception Uses. In the R-3, Medium Density Residential District, the following uses shall be permitted as special exceptions:

20-11.0301 A multi-family housing development designed for persons of low and moderate income and subsidized by a government agency of the State of New Jersey or of the United States, provided the following minimum standards are met:

a. Sponsor. The owner or sponsor of such development shall be a bona fide non-profit owner or sponsor of low and moderate income housing.

b. Minimum Development Area. 4 acres in contiguous parcels.

c. Maximum Development Area. 10 acres for a single development.

d. Maximum Development in District. No more than 20 total acres in the R-3 District may be developed as Special Exceptions.

e. Maximum Permissible Gross Density. Sixteen (16) dwelling units per acre.

f. Common Open Space. Not less than 40% of the lot area of the development shall be designed as and devoted to common open space primarily for residents of the development and shall meet the requirements of Sections 20-11.0203 b, c, and e.

g. Maximum Improvement Coverage. 60% of the lot area of the development.

h. Other Requirements. The development shall meet the requirements of Sections 20-11.0205 and 20-11.0206.

i. Parking. Parking spaces shall be provided at a ratio of 1.5 spaces per dwelling unit.

C. Planned Residential Development:

1. Add the following to Section 20-15.0806(b):

"In the event an applicant satisfies the Planning Board that such units cannot feasibly be built without Federal or State programs of assistance, the applicant shall, with the cooperation, consent and assistance of the Township apply for and diligently prosecute applications for any and all such available programs or otherwise make provision to satisfy such low and moderate income housing requirements."

2. Nothing in this Order shall prohibit the Township from permitting or requiring industrial or commercial uses in the areas presently designated as PRD Districts provided the regulations for such districts require the same percentages of low and moderate income housing and substantially the same number of housing units in each planned development as are required by Exhibit J-1.

D. Planned Unit Development:

Add the following to Section 20-14.0602:

"provided that such extension does not encompass land in any PRD or Agricultural District and provided further that such extension does not encompass any land south of Etra Road. Any such extension must take into account low and moderate income housing needs in the community at the time of such extension."

2. The Township shall aid, encourage and assist low and moderate income persons in the rehabilitation and improvement of the areas described in Schedule "A" in the following manner:

A. Within 90 days, a qualified Township employee shall be designated by the Township, with the assistance of the Township's professional consultants, to aid and assist low and moderate income persons in their applications to Farmers Home and other State and Federal agencies for loans or grants for rehabilitation and new construction.

B. The Township will, pursuant to P.L. 1975 Chapter 283, postpone increased assessments on improvements to dwellings in the said District for a period of five years in accordance with the following Schedule:

100% postponement in the first year
80% postponement in the second year
60% postponement in the third year
40% postponement in the fourth year
20% postponement in the fifth year

C. Within such areas the Township shall dispose of lots owned by it only upon such conditions as will assure that the purchasers thereof will use such lots within a reasonable period of time for low or moderate income housing.

D. Within 90 days from the date of this Order the Township will initiate such surveys and tests as may be necessary to determine the amount of money required to install street paving, curbs, water mains and sewer utilities in Columbia, Evan, Eli and Daniels Streets existing on the date of this Order.

E. Within 180 days from the date of this Order, the Township will apply for and diligently process applications for Federal or State assistance for the purpose of installing such improvements.

F. The Township will utilize all such Federal or State assistance so received for the purpose of making such improvements. The Township will use all of its best efforts to work with the EWMUA or the Borough of Hightstown to provide water and sewer utilities.

G. In the event such Federal or State assistance is not sufficient to pay the entire cost of such improvements, the Township will appropriate, as budgetary requirements permit, funds in its annual capital budget or budgets, in the same manner as funds are appropriated to other purposes, for the purpose of improving or maintaining such streets.

H. In acquiring rights-of-way for any such streets the Township will acquire rights-of-way 25 feet wide for road purposes with an additional 10 feet, if necessary, for water, sewer and sidewalks.

3. In connection with the existing stock of multi-family rental dwellings the Township will:

A. Within 60 days from the date of this Order, request all owners of such dwellings to attend a meeting at which the provisions of Section 8 of the Housing and Community Development Act of 1974 will be discussed.

B. Encourage such owners to enter into agreements with the Township agreeing for a period of two years to seek rent subsidies under Section 8 for up to but no more than 5% of such units.

C. Designate a qualified Township employee to aid and assist owners in making applications for such subsidies.

D. Aid and assist owners in their applications under Section 8 and offer continuing assistance in implementation of the program.

E. Evaluate the program at two year intervals to determine whether owners should be encouraged to expand or reduce their commitments.

F. Cooperate with a Mercer County Housing Authority in any effort to provide up to a total of 100 units of moderate income housing in existing multi-family dwellings in the Township.

G. Take such actions as may be necessary to increase the income eligibility and fair market rental requirements to the maximum permitted by HUD.

4. In connection with any and all applications made by developers or owners for housing for low and moderate income persons which conforms to the land use regulations described in this Order or duly granted variations thereof, the Township agrees that it will enact all necessary resolutions to assist such developers or owners seeking Federal or State aid and

assistance including, without limiting the generality of the foregoing, resolutions approving payment by such developers or owners of sums in lieu of taxes.

GEORGE Y. SCHOCH, A.J.S.C.

We hereby consent to the form and entry of the within Consent Order.

Alice Ashley Costello, Attorney
for Plaintiffs

Wittman, Anzalone, Bernstein & Dunn
Attorneys for Defendants Township
of East Windsor and East Windsor
Planning Board

By
Thomas W. Dunn

William von Oehsen, Jr., Attorney
for Defendant Board of Adjustment

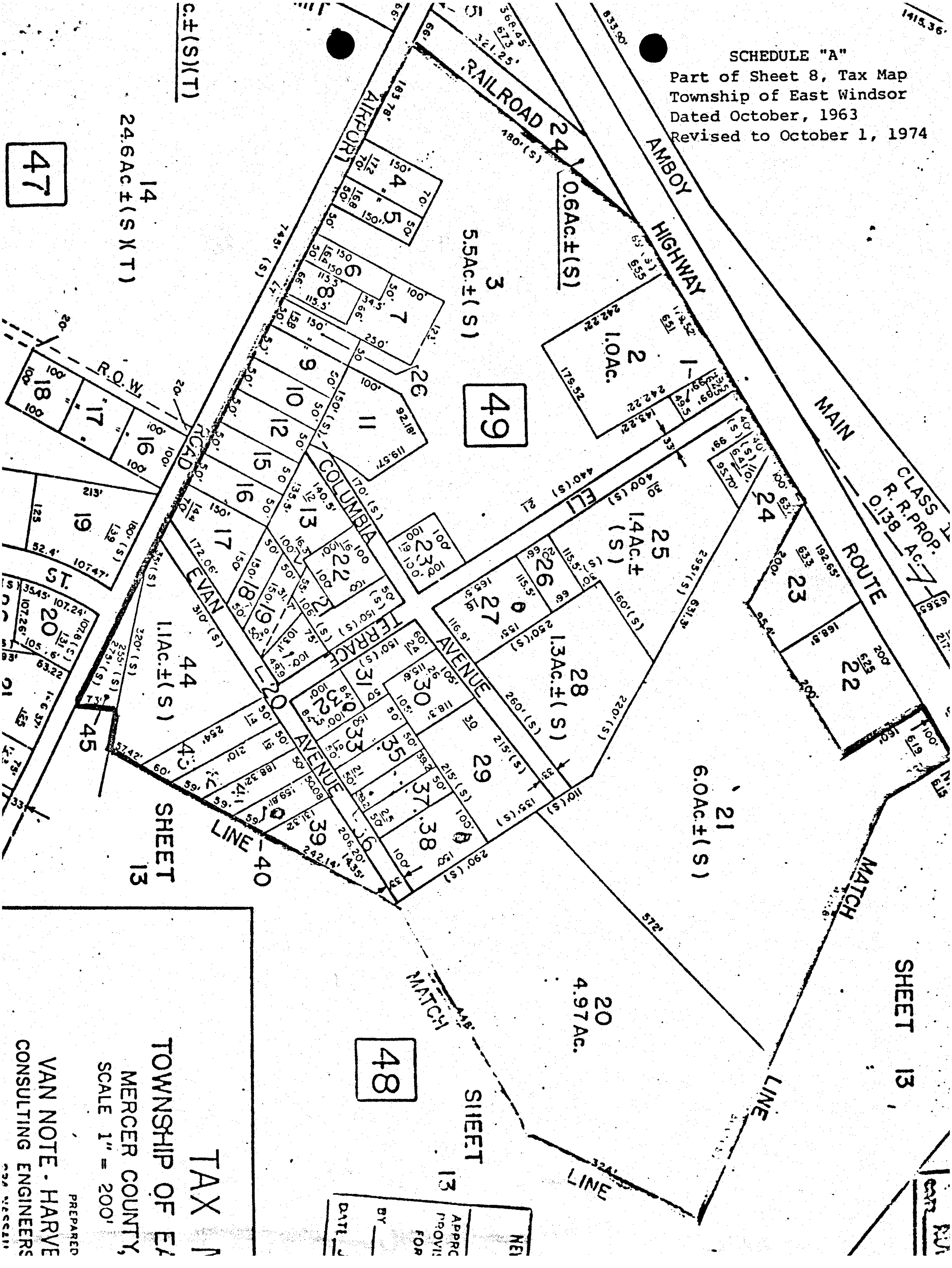
Ridolfi & Friedman, Attorneys for
Kendall Development Company

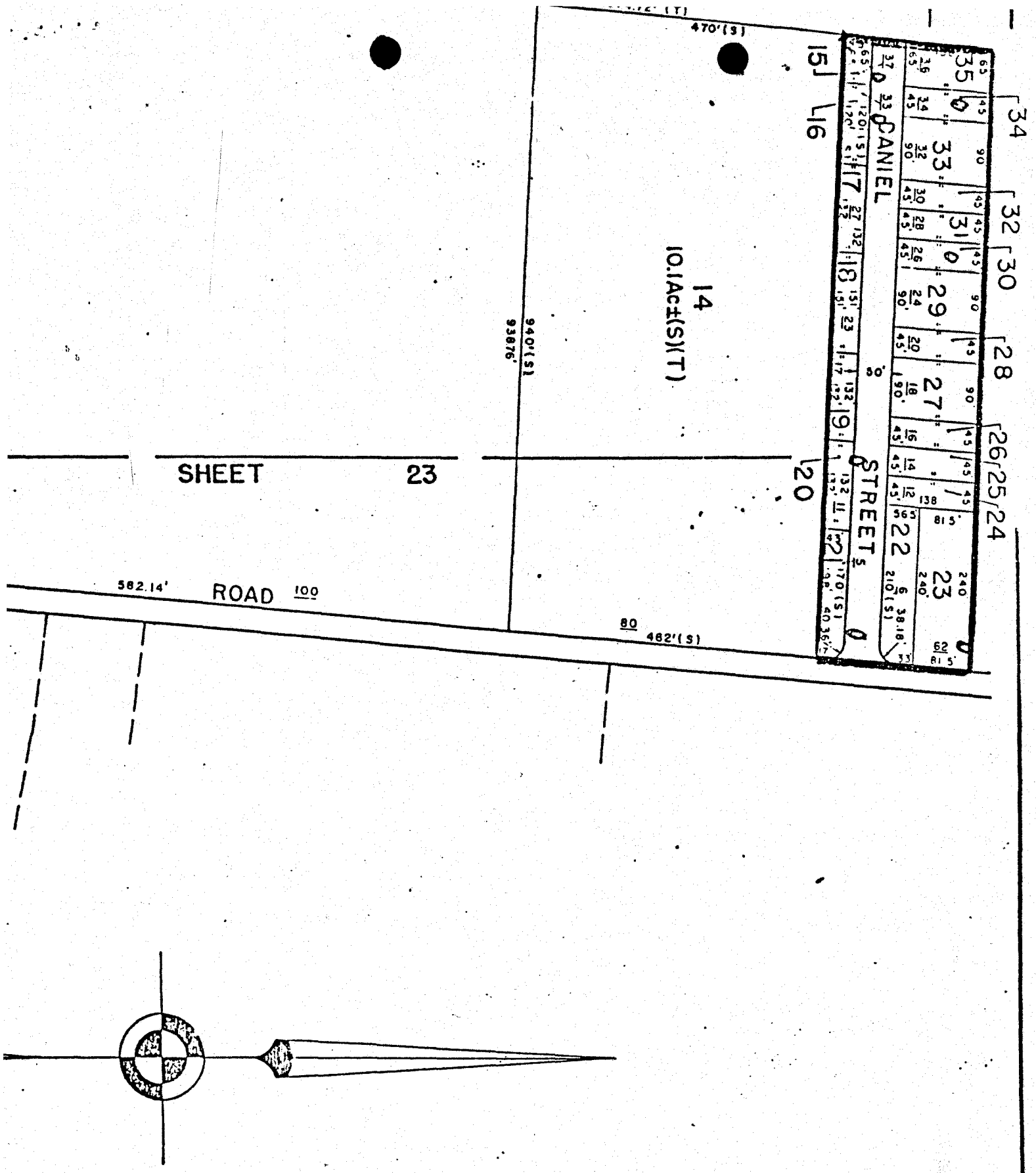
By
Anthony Apicelli

William G. Hyland, Attorney General
of the State of New Jersey, Attorney for
Third Party Defendant

By
Paul G. Levy, Assistant Attorney
General

SCHEDULE "A"
Part of Sheet 8, Tax Map
Township of East Windsor
Dated October, 1963
Revised to October 1, 1974





SCHEDULE "A" (Cont'd.)

Part of Sheet 19, Tax Map
Township of East Windsor
Dated October, 1963
Revised to October 1, 1974

APPENDIX F

HUD NEWS
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON D.C. 20410

HUD-No. 76-66
Phone (202) 755-5277
(Norris)

FOR RELEASE:
Wednesday
March 3, 1976

Secretary of Housing and Urban Development Carla A. Hills has announced that HUD intends to allocate $20 million in supplemental Section 8 funds to communities participating in "Areawide Housing Opportunity Plans."

The HUD initiative, authorized under the Housing Assistance Payments program, is intended to stimulate federally-assisted housing opportunities for lower income families.

The areawide planning organizations must submit plans that meet minimum eligibility requirements to be considered for supplemental funding.

The plan must address areawide housing assistance needs and goals, increase housing opportunities for lower income families outside the community where they currently live, and it must be endorsed by at least 80 percent of the local government units served by the planning organization.

The organization must demonstrate that the plan can be implemented and that additional units actually will be built with the supplemental funds. (A list of proposed eligibility requirements accompanies this release.)

HUD requires the planning organizations to prepare regional housing allocation plans as a condition for continued planning assistance funds under Section 701 of the Housing Act of 1954.

The program and anticipated eligibility requirements are being announced in advance of publication in the Federal Register to allow interested areawide planning organizations and their member jurisdictions to begin considering participation. The proposed regulations will be published later this month.

The funds announced today are in addition to those already allocated by HUD under the Housing and Community Development Act of 1974. The Act requires a proportional allocation on the basis of the relative needs as to population, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions.

The supplemental allocations will be equivalent to at least 20 percent, but not more than 50 percent, of the total FY 76 Section 8 allocations to areas and communities served by the areawide planning organization.

(To Accompany HUD-No. 76-66)

PROPOSED MINIMUM ELIGIBILITY REQUIREMENTS FOR AWARD OF SUPPLEMENTAL SECTION 8 FUNDING TO COMMUNITIES PARTICIPATING IN "AREAWIDE HOUSING OPPORTUNITY PLANS"

To receive consideration for supplemental Section 8 units, an "Areawide Housing Opportunity Plan" must contain each of the minimum requirements below. In the event that qualifying plans exceed the available Section 8 units, special preference factors will be applied. These will be announced in the Federal Register as part of the program regulations.

1. An assessment, on an areawide basis, of the housing assistance needs of lower income households.

2. An assessment of the housing assistance needs of lower income persons (including households expected to reside in the community as a result of existing or planned employment opportunities) by household type and present form of housing tenure, including households displaced or to be displaced; or an estimate of households acceptable to HUD, with a specific timetable for completion.

3. Goals for the distribution of lower income housing on an annual basis which reflect the needs identified above.

4. Provision for encouraging greater housing opportunities for lower income households outside their current jurisdictions.

5. Individual agreements between the areawide planning organization and each participating jurisdiction within the area served by the organization (or an equivalent provision acceptable to HUD) on the goals for the number of lower income housing units to be provided each year. To qualify for these supplemental allocations, the goals and needs in the Housing Assistance Plans (HAPS) of participating jurisdictions must be consistent with the goals and needs contained in these agreements.

6. The Plan must be endorsed by the various levels of government involved.

7. The Plan must have been endorsed by 80 percent of the units of local government in the area served by the areawide review agency, which represent at least 75 percent of the population of the area. There must be adequate enabling legislation for lower income housing within all participating jurisdictions.

8. The planning organization must demonstrate that the Plan can be implemented and that an additional allocation of Section 8 units can be used. HUD will consider the status of current allocations in awarding supplemental allocations.

APPENDIX G

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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.

Civil Action

ORDER

Based upon the above findings of fact and conclusions of law, this Court hereby Orders:

a. that the region to be considered in the development of fair share housing allocation plans consists of Middlesex County plus areas outside the county from which low and moderate income housing needs radiate into the county;

b. that the county-wide fair share of the present and prospective regional need for low and moderate income housing projected to 1980 is 75,754 units. This figure shall be utilized in preparing fair share housing allocation plans through 1980;

c. that those provisions of the zoning ordinances found to be exclusionary in the above findings of fact and conclusions of law

are stricken;

d. that defendants within 45 days shall present to the Court and plaintiffs plans which determine their fair share allocation of the County's low and moderate income housing need of 75,754 units. The plans must utilize a common formula in arriving at the allocation. Such plans must incorporate the following elements:

1. the sum of the numerical need identified in the various fair share plans must equal the County need of 75,754 units projected to 1980.

2. the plans developed must provide a variety of locational choice for low and moderate income families and thereby reduce the existing concentration of such families within Middlesex County.

3. the plans developed must take into account the amount of vacant,developable land, proximity to employment, and the preservation of existing housing stock.

e. that each defendant within 45 days shall present to the Court and plaintiffs a detailed plan, including timetables, for the implementation of the fair share allocation to insure units in place by 1980. Such plan shall include, but not be limited to:

1. changes in zoning ordinances to facilitate provision of low and moderate income housing;

2. provision for subsidized housing.

f. that defendants will, during the 45 day period:

1. meet regularly with attorneys and planning consultants for plaintiffs to discuss progress in developing their fair share allocation plans, including methodology and techniques for implementation;

2. make available to attorneys for the plaintiffs all supporting documents, reports, analyses and data used by the defendants in their efforts to comply with this Order;

3. on or before the end of the 45 day period, complete and submit to the Court and attorneys for plaintiffs the final form of proposed amendments to the zoning ordinances;

4. report, by way of written affidavit, to this Court, with copies to the attorneys for the plaintiffs, on the 30th and 45th day from the date of this order. Said reports shall include a thorough and detailed statement of the defendants' efforts toward implementation of the aforementioned Order. Said statement shall include, but not be limited to; (a) name(s) of those officials, employees, and/or agents of the municipality who are working

on said implementation; (b) hours worked by each during each reporting period; (c) statement of work product completed as of the date of each report; and (d) proposed interim recommendations arrived at during each reporting period.

g. within 15 days following submission by defendants of their fair share allocation plans, plaintiffs shall submit their comments concerning such plans to the Court, including specific objections thereto and recommendations for appropriate revisions.

h. pursuant to R-4:42-8, costs are awarded to the plaintiffs, upon proper application.

i. this Court will retain jurisdiction.

David D. Furman, JSC