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(appeal) pleadings ~~Amended~~ ~~MR~~ ~~#~~ ~~25~~ ~~ST~~

TT's reply letter brief in response to

#70: Δ's letter brief (E. Brunswick) re:

Middle Union Assoc's v. Mayor/Twp Committee of Holmdel

from from 5/2/78
- Cover letter

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NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.

Fair Housing Legal Program

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MARTIN E. SLOANE

General Counsel

May 2, 1978

Ms. Elizabeth McLaughlin
Clerk of the Appellate Division
State House Annex, Room 316
C.N. 006
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick, et al.,
v. Mayor and Council of the Borough of
Carteret, et al., Docket No. A-4681-75

Dear Ms. McLaughlin:

On March 21, 1978 defendant East Brunswick moved before this Court for leave to file a supplemental brief in the above-captioned case. On April 17, 1978 the Appellate Division granted that motion and East Brunswick has since filed its letter-brief dated March 7, 1978. Plaintiffs submit this letter-brief in response to that of East Brunswick.

Plaintiffs submit that East Brunswick's reliance on Middle Union Associates v. The Mayor and Township Committee of the Township of Holmdel, (App. Div., April 22, 1977), is unfounded. An examination of the Holmdel decision shows that the rationale used by the Court in striking down the trial court's approach to remedy has no applicability to the facts of the case at hand. Indeed, the opinion provides support for Judge Furman's ruling in the Urban League case.

In the Holmdel case, involving a challenge by a housing developer to the validity of the zoning ordinance of a single municipality, the Appellate Division found that the record developed at trial was insufficient to justify the allocation of 2100 multi-family units to that single municipality. In the instant case, by contrast, involving virtually all the municipalities in an identifiable region, the record made at trial provides ample evidence to support Judge Furman's assignment of fair share allocations to the various defendant municipalities.

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The Appellate Division in Holmdel found the record to be insufficient in several important respects:

First, the Court found: "There was no evidence of local residents living in squalor ... [nor] evidence that any of the local residents or employees were inadequately housed." (slip opinion at 11) This is due in part to the fact that the sole plaintiff in Holmdel was a developer, not low and moderate income persons in need of housing. In the case at hand plaintiffs are low and moderate income persons living in inadequate housing (See, e.g., T-Feb. 4-294-8; 299-21; T-Feb. 3-95-21; 103-22; 96-20; T-Feb. 11-78-14; 81-16), as well as the Urban League of Greater New Brunswick which seeks lower income housing for its members and clients. The "imperative need" for lower income housing (slip op. at 11) in Middlesex County was established by undisputed testimony of plaintiffs themselves and numerous expert witnesses, as well as by evidence contained in the community development block grant application submitted on behalf of 20 of the 25 municipalities in the County. See Urban League, 142 N.J. Super at 19-21.

Second, in Holmdel, the trial court based its remedial order on the brief testimony of only one witness. Moreover, most of this testimony was not germane to the trial court's order (slip op. at 14): By contrast, in the instant case, testimony by plaintiffs' witnesses on the issue of remedy required some four weeks and consumed several thousand transcript pages. See, e.g., testimony of Ernest Erber; Douglas Powell; Alan Mallach. This voluminous testimony provided the principal basis for Judge Furman's remedial order.

Third, in Holmdel the trial court determined the appropriate region on the basis of a single fact-- that 70 percent of the people living in Monmouth County work there (slip op. at 15). In the case at hand, plaintiffs presented extensive evidence on the issue of region, as reflected in Judge Furman's opinion, 142 N.J. Super. at 21-22. See also, e.g., testimony of Douglas Powell T-Feb. 10-805-6; 829-21; Point II, Brief and Appendix for Plaintiffs as Respondents, Cross-Appellants and Appellants. Of particular importance is Middlesex County's designation by the United States Office of Management and Budget as a Standard

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Metropolitan Statistical Area (SMSA). By official definition, Middlesex County is an integrated economic and social unit with a large population nucleus. 142 N.J. Super. at 21. Evidence on employment patterns and arteries of transport was also presented and relied upon by Judge Furman in his opinion. 142 N.J. Super. at 21-22 (and discussion of each municipal defendant). In short, plaintiffs submit that the extensive record on the issue of what constitutes the appropriate region is more than adequate to justify Judge Furman's determinati

Fourth, in the case at hand, the municipalities that make up the region were, in fact, before the trial court for remedial purposes. In contrast to earlier exclusionary zoning cases decided by this Court and the Supreme Court, this lawsuit is not concerned with the problems of the land use practices of a single municipality in isolation from those of its sister municipalities in the larger region. Therefore, "the correlative disadvantages of a court adjudicating an individual dispute" are not present here. Oakwood at Madison, Inc. v. Tp. of Madison, N.J. (1971), slip op. at 65. */ Indeed, in Urban League, in contrast to Holmdel, the precise issue is the aggregate impact of exclusionary land use policies practiced by a large number of municipalities in a well-defined region where the need for low and moderate income housing has been shown to be of crisis proportions. See 142 N.J. Super at 20.

Plaintiffs also emphasize that the Appellate Division in Holmdel, far from prohibiting allocation of a fair share of the regional need for low and moderate income housing units, welcomed use of this remedial tool in "appropriate circumstances":

If this requirement [to provide a specific fair share allocation of the regional low and moderate income housing need] were demonstrated to have been in response to a present and compelling need for housing of this type, it would have to be tolerated, and as stated by the trial judge, 'the municipality will just have to cope.' Oakwood at Madison, Inc., supra, does not preclude a trial judge from setting quotas in appropriate circumstances.

Slip op. at 11.

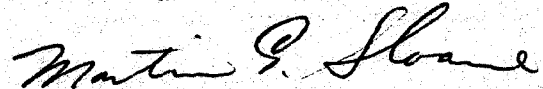
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The Supreme Court specifically cited Urban League, involving "all the municipalities in a region or county," id. n. 38, as a contrast to the problems inherent in litigation involving an "individual dispute."

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Plaintiffs submit that the Urban League case presents precisely the "appropriate circumstances" contemplated by the Appellate Division in Holmdel and by the Supreme Court in Oakwood at Madison. These circumstances warrant, and even require, the fair share allocation that Judge Furman ordered after consideration of the extensive testimony and other evidence presented in this litigation.

Sincerely,



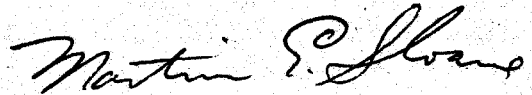
Martin E. Sloane
General Counsel

cc: All Attorneys

MES:da

CERTIFICATE OF SERVICE

I, Martin E. Sloane, hereby certify that two copies of the attached letter-brief have been served upon each attorney of record by ordinary mail on May 2, 1978.



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