

CA - Dunellen (no date)

Brief in Support of Notice of Motion
of Behalf of the Mayor and Council of the
Borough of Dunellen

pgs = 11 - w/ census stats

CA 001263B

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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 als.,

Plaintiffs,

- vs -

MAYOR AND COUNCIL OF THE BOROUGH OF
DUNELLEN, et als.,

Defendants.

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CIVIL ACTION

BRIEF IN SUPPORT OF NOTICE OF MOTION ON BEHALF OF THE MAYOR AND COUNCIL OF THE
BOROUGH OF DUNELLEN

HANDELMAN & JACOBS, ESQS.
By DENNIS J. O'CONNOR, JR.
On the Brief

CA001263B

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STATEMENT OF FACT

The plaintiffs in a class action suit allege that the defendants have engaged in certain exclusionary zoning.

The defendant, Borough of Dunellen, contends that it is a fully developed community with properly established zoning ordinances and these allegations of plaintiffs have no basis in fact.

STATEMENT OF THE LAW

As can be seen from the figures compiled by the Middlesex County Planning Board, page 36 in the Booklet "Selected Population and Housing Statistics for Middlesex County" a copy of said page is attached hereto. It shows that Dunellen Borough has the fourth densest housing pattern of all the municipalities in the county. Dunellen has 2,282 housing units per square mile. New Brunswick and Perth Amboy, the two municipalities who are not parties to this suit are more dense. Highland Park is the only other municipality, a party to this suit, who has a higher density of homes per square mile than Dunellen. By contrast there are four towns in the County that have housing densities under 100. It should be noted that from the same publication as mentioned above Dunellen which is one square mile in total land area has 7,072 persons per square mile. See page 16 of "Selected Population and Housing Statistics for Middlesex County" Supra, copy of which is attached hereto. Again the same statistics prevail where Dunellen is the fourth community in population density in the county. The first and third are Perth Amboy and New Brunswick who are not parties to the suit. Only Highland Park, among the parties to this suit has a greater population density. Again there are four towns in the county that have a population density under 500.

The court's attention is called to the affidavit of Frank DiLonardo who is a licensed real estate broker in Dunellen and has been for the last

twenty-six (26) years. Mr. DiLonardo states that there is no tract available for large multiple-family housing. He further states there is no room for a trailer park in Dunellen. Mr. DiLonardo also states that Dunellen does in fact permit Multiple-family dwelling having just approved a multiple-family unit within the last nine (9) months. Lastly, the courts attention is called to an article that appeared recently in the New York Times photocopy which is attached hereto. Said article is an indictment of mobile homes insofar as they become "firetraps". The article goes on to say that as of the present time there are no nationalized/^{site} standards, but that they are in the process of being formulated.

PROCEDURAL FACTS

As of this date, the plaintiff has not sort an Order pursuant to Rule 4:32-2 as to whether or not the class action can be maintained.

ARGUMENT OF LAW

POINT I

On the facts and the law plaintiffs have not made out a case against the defendant, Borough of Dunellen. Plaintiffs allege Dunellen does not allow mobile homes nor has Dunellen enacted a local housing law. Plaintiffs state without setting forth any facts that they are harmed and injured because Dunellen does not allow mobile homes. As can be seen from the article which is attached to the appendix there is a safety problem with regard to mobile homes which safety problem in a town as congested as Dunellen is at a legitimate governmental concern. The wisdom of the governing body is banning mobile homes under the circumstances of this case is something that is not subject to court review. Our Supreme Court says that the wisdom of legislative action or in action is not one subject to review by our courts. See Hardy vs Ruhnke 47 N.J. 10 at 22.

Within the context of the information presented in this Brief, the court can see that there is no room for a mobile park which would require the same room as perhaps a major subdivision. See Affidavit of Frank DiLorenzo and Housing Density Figures. I am sure that this particular court has been presented with statistical analysis relating to population density. I call the courts attention to the fact that there are 7,000 people per square mile in Dunellen which is a figure higher than the national average.

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As to prayer for relief that Dunellen has not established a public housing authority should be noted that this legislation is permissive. See N.J.S. 55:14A-1 et seq. The plaintiffs here would have the courts force Dunellen to pass a resolution which would create an authority that would be simultaneously an agency of municipal, state and federal government. See O'Keefe vs Dunn 89 N.J. Super. 383 at 396, aff'd per curiam, 47 N.J. 210. Furthermore, the local housing authority law is concerned with slum clearance and low income housing. See N.J.S. 55:14A-3. The act is designed primarily to enable municipalities to obtain federal aid for housing. The judgment as to whether or not a town wants federal aid or not is a political choice and not one subject to mandamus to the court.

The attention here is not unlike the permissive legislation under the planning act. See N.J.S. 40:55-1 et seq. The Court should note that not every municipality has created a planning board. The court should take notice that the fact that many municipalities in this state have not adopted land subdivision regulation ordinances much less created planning boards pursuant to the state enabling act above cited. In a situation presented at the Supreme Court Klingman vs Lutman 53 N.J. 517. The Supreme Court did not order the Borough of Deal to create a planning^{board} or to pass a subdivision ordinance, wherein that boroughs wisdom, which had pass^d a street ordinance, ~~The~~ Supreme Court upheld the municipalities action in banning the subdivision even though there was no subdivision ordinance.

Throughout Title 40, there are many statutes giving

municipalities permission to legislate in certain areas. See N.J.S. 40:48-1,2.

POINT II

Plaintiffs have not complied with the rules ^{of court} in this case. The plaintiffs seek to maintain a class action under rule 4:32. In this case, as of this date the plaintiffs have not shown the court that they have complied with 4:32-2B the Notice Requirement. A similar ruling recently decided by the U.S. Supreme Court in Eisen vs Carlisle & Jacquelin 40 Lawyers Ed. 2nd 732, wherein the Supreme Court ruled that as a prerequisite for maintaining the suit, the plaintiffs must show they gave the required notice to the municipalities of the class where there is no showing, and should be a determination of the notice requirement before this case proceeds any further and before the plaintiffs are allowed discovery to determine whether or not there is merit to their case. Eisen Supra.

POINT III

In the alternative there should be a severance as can be seen from the figures compiled by the county planning board. Dunellen is in a far different position than many of the municipalities in the county with regard to the complaint here. The fact of the population and housing density certainly does not provide common fact or law for the plaintiffs. The law to be applied to it, ^{an} all ready developed town is far different than the law to be applied to a town with much vacant land. Refer to Mount Laurel & Madison Township Cases.

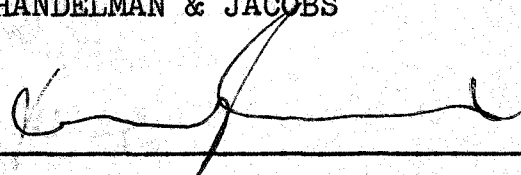
CONCLUSION

For the reasons above stated the defendant, Borough

of Dunellen herewith requests with relief stated in its moving paper.

HANDELMAN & JACOBS

BY

A handwritten signature in black ink, appearing to read 'Dennis J. Cummins, Jr.', written over a horizontal line.

DENNIS J. CUMMINS, JR.

TRI-STATE TRANSPORTATION COMMISSION

POPULATION PER SQUARE MILE OF LAND, BY DECADE

	POPULATION DENSITY				PERCENT OF CHANGE			
	1940	1950	1960	1970	1940-50	1950-60	1960-70	1950-70
** N.J.								
* MIDDLESEX								
CARTERET BORO	2,722	2,961	4,556	5,142	8.8	53.9	12.9	73.7
CRANBURY TWP	101	135	148	167	33.7	9.6	12.8	23.7
DUNELLEN BORO	4,873	5,719	6,840	7,072	17.4	19.6	3.4	23.7
EAST BRUNSWICK TWP	174	268	908	1,553	54.0	238.8	71.0	479.5
EDISON TWP	370	527	1,483	2,223	42.4	181.4	49.9	321.8
HIGHLAND PARK BORO	5,001	5,401	5,815	7,571	8.0	7.7	30.2	40.2
JAMESBURGH BORO	2,364	2,563	3,170	5,053	8.4	23.7	60.7	98.7
MADISON TWP	99	132	584	1,249	93.9	204.2	113.9	550.5
METUCHEN BORO	2,261	3,407	5,015	5,725	50.7	47.2	14.2	68.0
MIDDLESEX BORO	1,045	1,651	3,006	4,297	58.0	82.1	42.9	150.3
MILLTOWN BORO	2,343	2,524	3,397	4,044	7.7	34.6	19.0	60.2
MONROE TWP	73	98	139	217	34.2	41.8	56.1	121.4
NEW BRUNSWICK CITY	6,033	7,057	7,168	7,479	17.0	1.6	4.3	6.0
NORTH BRUNSWICK TWP	371	524	856	1,414	41.2	63.4	65.2	169.8
PERTH AMBOY CITY	9,373	9,393	8,087	8,255	.2	13.9-	2.1	12.1-
PISCATAWAY TWP	377	530	1,041	1,907	40.6	96.4	83.2	259.8
PLAINSBORO TWP	76	92	98	138	21.1	6.5	40.8	50.0
SAYREVILLE BORO	502	634	1,392	2,007	26.3	119.6	44.2	216.6
SOUTH AMBOY CITY	6,002	6,476	6,016	6,670	7.9	7.1-	10.9	3.0
SOUTH BRUNSWICK TWP	76	98	251	343	28.9	156.1	36.7	250.0
SOUTH PLAINFIELD BORO	656	977	2,154	2,547	48.9	120.5	18.2	160.7
SOUTH RIVER BORO	3,571	3,769	4,620	5,320	5.5	22.6	15.2	41.2
SPOTSWOOD BORO	549	834	2,052	2,764	55.6	140.3	34.7	223.7
WOODBRIIDGE TWP	1,128	1,484	3,399	4,265	31.6	129.0	25.5	187.4
	694	847	1,389	1,869	22.0	64.0	34.6	120.7

TRI-STATE TRANSPORTATION COMMISSION

HOUSING UNITS PER SQUARE MILE OF LAND, BY DECADE

	H O U S I N G D E N S I T Y				P E R C E N T O F C H A N G E			
	1940	1950	1960	1970	1940-50	1950-60	1960-70	1950-70
** N.J.								
* MIDDLESEX								
CARTERET BORO	659	817	1,342	1,578	24.0	64.3	17.6	93.1
CRANBURY TWP	29	50	44	51	72.4	12.0-	15.9	2.0
DUNELLEN BORO	1,284	1,623	2,126	2,282	26.4	31.0	7.3	40.6
EAST BRUNSWICK TWP	45	80	242	413	77.8	202.5	70.7	416.3
EDISON TWP	91	143	416	636	57.1	190.9	52.9	344.8
HIGHLAND PARK BORO	1,343	1,612	2,001	2,786	20.0	24.1	39.2	71.1
JAMESBURGH BORO	642	758	1,000	1,530	18.1	31.9	53.0	101.8
MADISON TWP	45	71	166	345	54.3	133.8	107.8	385.9
METUCHEN BORO	599	1,000	1,450	1,754	67.9	44.1	21.0	74.4
MIDDLESEX BORO	272	476	839	1,243	75.0	76.3	48.2	161.1
MILLTOWN BORO	543	774	1,053	1,292	20.4	36.0	22.7	66.9
MONROE TWP	18	30	38	69	66.7	26.7	81.6	130.0
NEW BRUNSWICK CITY	1,607	1,980	2,229	2,345	23.2	12.6	5.2	18.4
NORTH BRUNSWICK TWP	95	150	253	427	57.9	68.7	68.8	184.7
PERTH AMBOY CITY	2,365	2,749	2,669	2,857	16.2	2.9-	7.0	3.9
PISCATAWAY TWP	98	157	287	547	60.2	82.8	90.6	248.4
PLAINSBORO TWP	20	24	26	46	20.0	8.3	76.9	91.7
SAYREVILLE BORO	118	182	362	568	54.2	98.9	56.9	212.1
SOUTH AMBOY CITY	1,442	1,761	1,773	2,073	22.1	.7	16.9	17.7
SOUTH BRUNSWICK TWP	21	30	75	95	42.9	150.0	26.7	216.7
SOUTH PLAINFIELD BORO	161	265	575	673	64.6	117.0	17.0	154.0
SOUTH RIVER BORO	860	1,033	1,396	1,686	20.1	35.1	20.8	63.2
SPOTSWOOD BORO	175	271	570	743	54.9	110.3	30.4	174.2
WOODBRIIDGE TWP	274	413	921	1,187	50.7	123.0	28.9	187.1
	179	244	401	550	36.3	64.3	37.2	125.4

FIRE PERILS SEEN IN MOBILE HOMES

Auto Safety Unit Proposes Upgrading of Standards

By FRANCES CERRA

Labelling mobile homes "quick-burn firetraps," the Center for Auto Safety has proposed that the fire-safety standards for mobile-home construction be immediately upgraded.

In its proposal, presented to the Committee on Mobile Homes of the American National Standards Institute, the center cited what it called "grim" statistics: a study done in Oregon from 1970 to 1973 showing that the fatality rate in mobile-home fires was twice that in standard home fires, and the average monetary loss was one-and-a-half times as large, despite the lower value of mobile homes.

"Mobile homes' dismal fire-safety record is particularly disgraceful because it can be substantially improved through the use of existing technology," said the proposal.

Industry officials disputed the figures offered by the center and contended that mobile homes, in fact, have a better fire-safety record than conventional homes. They conceded, however, that the absence of any organized, mandatory nationwide reporting system for fire data makes all existing statistics inadequate and inconclusive.

Standards for mobile home construction, which have the force of law, are set by the Standards Institute despite the fact that it is a private, non-governmental organization, because the building codes of 46 states provide for their automatic incorporation. Only Hawaii, Vermont, Rhode Island and Wyoming do not use them as a basis for their building codes.

Federal Standards

Beginning next February, however, the United States Department of Housing and Urban Development will have the authority to set Federal safety standards for mobile homes under the recently passed Housing and Community Development Act.

The center for Auto Safety was begun by Ralph Nader and now operates as an independent, public-interest watchdog of all aspects of motor-vehicle safety.

Peter Maier, co-director of the center's mobile-home task force, which has been studying mobile-home safety problems for two years, said he believed that the use of very thin (5/32s of an inch) plywood panelling as the interior walls of mobile homes "is the major factor" in the deadliness of mobile home fires. The center is proposing, essentially, that such panelling be prohibited and that plasterboard be used instead.

Other Safeguards

In addition, the center wants to require manufacturers to line the furnace and water-heater compartments with noncombustible materials, and to make emergency exit windows easier to use. Mobile homes currently being produced must have emergency exit windows in every bedroom, but the center says that hard-to-remove storm windows and screens have made them almost useless in some cases.

"The center has no test data to support their recommendations," said John Martin, president of the Mobile Home Manufacturers Association. "The panelling we're using does just as much to protect lives as what they're recommending."

"Besides, the National Fire Protection Association says that mobile homes have a better fire record than standard homes."

George Tryon, administrative secretary of the mobile homes committee of the Standards Institute and assistant vice-president of the National Fire Protection Association, agreed with Mr. Martin. "According to our best estimate, fires occur every year in one out of 120 mobile homes, and in one out of 95 standard one-and-two-family homes," he said.

"I'm not saying that mobile homes do not have fire problems. They do. But we're working very hard on them and we feel we have a very proper standard based on the state of the art."

Meeting Set

Mr. Tryon said that the center's proposals would be considered at the mobile-home committee's next meeting in January, but insisted that obstacles exist to the use of plasterboard in mobile homes. The plasterboard cracks or shatters when the mobile homes are shipped by road, he said.

However, as the center pointed out in its proposals, two mobile home manufacturers are now successfully using plasterboard. Jerry Kennedy, a spokesman for Champion Home Builders Company, the second largest manufacturer of mobile homes in the country, said his company had been making homes with plasterboard for more than a year on a large scale and has worked out the transportation problems by wrapping metal strips around the plasterboard. The company switched to plasterboard initially, he said, because it was both safer and cheaper.