

CA - East Brunswick

Apr. 8, 1976

Trial Brief of Township of East Brunswick Concerning
Special Factors and Standardizing

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*East Brunswick
Trial Brief*

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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

Plaintiff

vs.

THE MAYOR AND COUNCIL
OF THE TOWNSHIP OF
EAST BRUNSWICK, et al

Defendant

FILLED
Civil Action
APR 8 1976
DAVID D. FURMAN

TRIAL BRIEF OF TOWNSHIP OF EAST
BRUNSWICK CONCERNING SPECIAL FACTORS
AND STANDING

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PRELIMINARY STATEMENT

It is the understanding of defendant, East Brunswick, that the Court on March 23, 1976 requested the defendants to submit initial Briefs concerning special factors which may constitute valid superseding reasons for action or non-action taken by the municipalities to provide more housing opportunities for persons of low and moderate income. The Court also has invited Briefs on the question of the plaintiffs' standing to institute suit.

A second Brief will be submitted by East Brunswick with regard to fair share plans proposed by East Brunswick together with appropriate supporting documents.

POINT I

THE ZONING ORDINANCE LIMITATIONS
ON HOUSING FOR ECOLOGICAL AND
ENVIRONMENTAL REASONS IS JUSTI-
FIED BASED UPON THE SUBSTANTIAL
DANGER OF POLLUTION OF A REGIONAL
WATER SUPPLY, PREVENTION OF
FLOODING AND RELATED REASONS.

The Court in Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151 (1975) recognized the relationship between land use regulations and the preservation of the environment. The Court said at page 186:

"This is not to say that land use regulations should not take due account of ecological or environmental factors or problems. Quite the contrary. Their importance, at last being recognized, should always be considered. Generally only a relatively small portion of a developing municipality will be involved, for, to have a valid effect, the danger and impact must be substantial and very real (the construction of every building or the improvement of every plot has some environmental impact)- not simply a makeweight to support exclusionary housing measures or preclude growth-and the regulation adopted must be only that reasonably necessary for public protection of a vital interest."

The Court also recognized that additional low and moderate income housing would not be required in the residential "mix" if opportunity for such housing has already been realistically provided for elsewhere in the municipality.

(page 187)

The Mt. Laurel Court approved the action taken by the Trial Judge requesting the Township to compile information and estimates concerning the housing needs of persons of low and moderate income residing in the Township in substandard dwellings and those presently employed or reasonably expected to be employed therein (page 190).

The Court further suggested that developing municipalities might provide sections for every kind of housing from low cost and multi-family to lots of more than an acre with very expensive homes (pages 190-191).

The Mt. Laurel Court did not "intend that developing municipalities shall be overwhelmed by voracious land speculators and developers." (page 191)

With regard to remedy, the Court said the following:

"It is the local function and responsibility, in the first instance at least, rather than the Court's, to decide on the details of the same [amendments to correct deficiencies] within the guidelines we have laid down."
(page 191)

While leaving decision making to the local municipality, the Court admitted that there was no legal obligation to establish a local housing agency but only a moral obligation (page 192). After stating that the Trial Judge asked pertinent questions concerning housing needs, the Supreme Court held that this portion of his opinion was vacated as being premature.

Many mitigating factors were conceded by plaintiffs' witnesses: Before locating low and moderate income housing, Alan Mallach would consider the following:

1. Existing character of community
2. Middlesex County Master Plan
3. Preservation of Agricultural land
4. Soil types
5. Existing housing
6. Transportation facilities
7. Regional water supply

Barry Sullivan of the Division of State and Regional Planning in the New Jersey Department of Community Affairs noted that low and moderate income housing should not be located on slopes in excess of twelve (12%) per cent or on flood plains.

Even Ernest Erber conceded that environmental factors were relevant. Douglas Powell, Director of the Middlesex County Planning Board, testifying for the plaintiffs, referred to Exhibit P-49, Long Range Comprehensive Plan Alternative, and indicated that major aquifers and highly productive soils were located throughout much of East Brunswick (See chart opposite page 11).

Only Dr. Lawrence Mann, plaintiffs' most esoteric and least credible witness, would allow for no special factors to justify the absence of more low and moderate income housing, except, perhaps, for unique soil on which cranberries or

avocados could be grown. It was Dr. Mann who disagreed with the Farmland Assessment Act, the State Constitution, and the methods by which municipalities were interpreting the zoning statutes.

Mr. Mallach, relying upon figures prepared for the New Jersey Department of Community Affairs in 1970 based upon information which came in between 1967 and 1970, claimed that East Brunswick had in excess of 7,150 developable acres. In rebuttal, Gerald Lenaz of Raymond, Parrish & Pine, Inc. stated that there was a gross figure of 5,145 acres after subtracting public and other tax exempt lands, noncontiguous parcels under one acre and noncontiguous parcels incapable of other than odd-lot development due to shape. From that figure were subtracted those lands which are subject to severe environmental constraints, as identified by the Natural Resource Inventory. By applying a series of factors to the remaining acreage taking into account designated flood plain area, soils classified as stream overflow hazard areas, poorly drained soils exhibiting seasonally high water tables at the surface, and a series of other factors referred to in the Natural Resource Inventory, Mr. Lenaz indicated that there would be 2,251 developable acres. He then allocated fifteen (15%) per cent of that figure for public improvements and came up with a bottomline figure of 1,913 acres suitable for development.

In support of the testimony of Mr. Lenaz was that of Margaret Bennett, the author of the Natural Resource Inventory.

In addition to the factors referred to by Mr. Lenaz she mentioned aquifer recharge areas, agricultural soil suitability, soil frost action potential, soil shrink-swell potential, sub-soil shear strength, soil depth to bedrock and existing vegetation. She stated that the aquifer recharge areas near Farrington Lake recharged the Farrington Sands and that the recharge areas near Jamesburg Park provide intake for the Old Bridge Sands. Each of these aquifers provides a source of water for East Brunswick and the surrounding region.

Ms. Bennett further indicated that excessive development results in salt water intrusion into the drinking supply. She stated that in Sayreville, the Farrington Sands are so contaminated that they cannot be used for a fresh water supply.

She further identified as environmentally sensitive areas the tidal marshes which lie along the South River in the southeastern portion of the Township and along the Raritan River in the northeastern portion of the Township. She then generally identified the flood areas in East Brunswick and stated that where there were steep slopes, development should be of very low density.

Ms. Bennett further testified that the Pine Barrens located in the vicinity of Jamesburg Park, Ryders Lane and Tices Lane reach their northern most extent in this area. She urged that this unique vegetation type of the Atlantic Coastal Plain should be preserved.

With regard to the aquifer intake areas, she testified

that the volume of surface water run-off should be minimized and should be kept free of nutrient or toxic chemical pollutants.

With regard to 500 acres in the Riva Avenue section west of the Turnpike, she noted that this entire area was served by septic tanks. As stated on page 160 of the Natural Resources Inventory, which is in evidence, she writes:

"This quantity of waste poses a real threat to the quality of ground water in the vicinity since the area serves as an aquifer intake area for the Farrington Sands."

Ms. Bennett noted that there is little land remaining in the Township, as shown on Map #8, which is both naturally "most suitable" for development and not yet developed. She stated that none of the Township is safe for development involving landfill disposal of solid waste or involving septic systems due to the severe hazard of ground water and/or surface water pollution (See Natural Resources Inventory, page 202). Finally, Ms. Bennett noted that if the environmentally sensitive areas could sustain increased development it would be at an increased cost which would result in higher costs being passed on to the purchaser. This would defeat the very intent of low and moderate income housing.

Rose Sakel, a citizen who has been actively interested in preserving the environment over many years, testified that the County had not acquired all of the environmentally

sensitive land for Jamesburg Park in the southern portion of the Township. While the County has acquired 1,138 acres, Ms. Sakel suggested an additional 400 acres should be acquired in order to prevent pollution of the aquifer intake area.

Similarly, Douglas Powell testified for the Township with reference to the December 1975 Middlesex County Planning Board publication entitled "Critical Natural Features, Phase I" (in evidence). He stated that at least twenty to thirty per cent of East Brunswick soil covered major aquifers and referred to the chart in the exhibit opposite page 22. He further identified the flood plains, wet lands and forests in East Brunswick which are worthy of preservation.

Louis H. Budd, Jr., East Brunswick Zoning Officer, testified with regard to the flood plain maps and indicated that there are many areas not shown on the maps which are subject to continual flooding. He identified Beaverdam Brook, Irelands Brook, Saw Mill Brook and other waterways which create flooding conditions.

Leonard S. Hilsen, East Brunswick Director of Health, Environment and Welfare, testified that the entire area west of the New Jersey Turnpike was unsuitable for multi-family or high density housing. He referred to problems resulting from the saturation of septic fields.

By way of conclusion on this point, it is submitted that East Brunswick put forth an extremely strong environmental defense. It is submitted that P-104 and P-105, which

purportedly show existing and future land use in the Township, are to be given little or no weight. Because they are prepared from other documents, rather than from an in-depth knowledge of the land and local conditions, they are not trustworthy. In turn, the plaintiffs have relied upon State figures for developable vacant land in order to come up with a distribution of some of the low and moderate income housing among the municipalities. Since the plaintiffs' figures are incorrect, their distribution scheme must also fail.

POINT II

EAST BRUNSWICK HAS SATISFACTORILY
ANSWERED PLAINTIFFS' CHARGES OF
EXCLUSIONARY ZONING.

Plaintiffs, through Alan Mallach, put in evidence P-111, summary of zoning ordinance provisions for East Brunswick. Mr. Mallach objected to the minimum lot size, the minimum frontage, minimum floor area in all of the single-family residential zones. In the garden apartments zone he objected to the minimum site of four acres, the maximum density of 12 dwelling units per acre, the requirement that there be no more than twenty (20%) per cent of lot coverage, that the basement area equal thirty-five (35%) per cent of the first floor, that there be two parking spaces for each two bedroom dwelling unit and 1.5 parking spaces for each one bedroom dwelling unit, that air-conditioning be provided in garden apartments, and that there be 1,000 square feet of recreation area for each ten dwelling units. He noted that the median income for a family of four based upon the 1970 Census, was \$14,855.00, the highest in the County.

Gerald Lenaz, testifying in opposition to Mr. Mallach, noted that notwithstanding the zoning, there were approximately 1,303 single family homes on lots having frontage of eighty feet or less. He also referred to the fact that 3,203 single family homes in East Brunswick had an assessment of less than \$35,000 and 5,838 had an assessment in excess of

\$35,000. This constituted 35.4% of the 1970 housing stock.

Mr. Lenaz pointed out that although the zoning ordinance prohibits mobile homes, a mobile home park exists in the Township. He further noted that the Township has repealed the portion of its ordinance which attempts to establish a bedroom ratio in the multi-family zone.

With regard to over-zoning for commercial uses, Mr. Lenaz noted that there are approximately 103 vacant potentially developable acres so zoned. This would represent about four acres per year over the next 25 years which is the ultimate growth period projected for the Township. Considering past trends of commercial development coupled with potential increased demand in office and service establishments, Mr. Lenaz felt that the amount of commercial land was not excessive.

Mr. Lenaz noted that East Brunswick is an upper-middle income community and a broad range of lot widths is desirable in order to encourage housing not only for those of low and moderate income but also for those of middle and upper income.

With regard to the minimum floor area requirements, which in East Brunswick range between 1,250 and 1,500 square feet, Mr. Lenaz cited Exhibit P-37 entitled "Land Use Regulation. The Residential Land Supply" Department of Community Affairs, April 1972. Page 19 of this Exhibit provides a standard recommending 1,150 square feet for a family of four, 1,400 square feet for a family of five and 1,550 square feet for a family of six. The document reads as follows:

"In short, minimum dwelling size should be related to the intended occupants of the dwelling which, although much more difficult to administer locally, would be significantly more equitable."
(page 19)

Since Mr. Lenaz indicated that East Brunswick was a commuter community of young families with several children, it would appear that the minimum square footage requirements in East Brunswick's ordinance were reasonable. On page 26 of Exhibit P-37 it is noted that the cumulative impact of lot size, frontage and building size requirements was not found to be appreciably more prohibitive of low and moderate cost housing than the impact of each requirement taken alone.

With regard to the multi-family zone, Mr. Lenaz felt that the density range of 12 dwelling units per acre and twenty (20%) per cent building coverage was reasonable. He noted that the ordinance concerning thirty-five (35%) per cent of first floor area was not mandatory, but only "where topographical conditions permit". With regard to the number of parking spaces, both Mr. Lenaz, and Carl Hintz, East Brunswick Township Planner, stated that the present standards were in fact low. Each would have preferred to provide 2.25 or 2.5 parking spaces for units having in excess of two bedrooms. This would be especially true in view of the fact that there are no longer any bedroom restrictions.

Both Mr. Hintz and Mr. Lenaz testified that 1,000

square feet of recreational space for each ten dwelling units comes down to a 10 x 10 foot plot for each unit. This was considered low based upon recognized standards.

With regard to plaintiffs' claim that an excessive amount of land has been zoned for industry, reference is made to Exhibit P-37, the relevant parts of which read as follows:

"The comparison reveals that although there is a phenomenon which might be termed 'overzoning' for industry, this has not been reflected in a reduction in the availability of land for residential development, but has been reflected in the provision of a smaller percentage of land for commercial development." (page 8, also see conclusion on page 25)

With regard to the claim that the four acre minimum lot area is excessive in a garden apartment zone, Mr. Lenaz testified that this area relates to the economical operation and maintenance of a multi-family project in a municipality such as East Brunswick which has some developable land remaining. Mr. Lenaz indicated that larger acreage would be preferable in order to integrate usable open space, parking, buffers and environmental concerns. The proliferation of small, multi-family sites in East Brunswick would produce other complications with regard to site access, traffic and area impact.

Finally, in answer to Mr. Mallach's testimony that arbitrary or broadly discretionary provisions such as cluster and open space zoning have a negative impact on persons of low and moderate income, the Court's attention is directed to

Exhibit P-111. East Brunswick has cluster options in the R-1 zone which provide for minimum lots of 20,000 square feet and in the R-2 zone which provides for minimum lots of 15,000 square feet. The standards and criteria of a cluster zoning and subdivision ordinance are in evidence as plaintiffs' Exhibit P-110.

By way of conclusion on this point, it is submitted that a municipality does not have to eliminate all minimum bulk, size and density requirements in order to affirmatively afford the opportunity for low and moderate income housing. If land in East Brunswick were zoned for multi-family use and density were increased and height limitations were eliminated, you would not wind up with low and moderate income housing. The result would be to drive up the cost of land which cost would be passed on to the tenants. Luxury highrise apartments, patterned after Fort Lee, would grace Highway 18.

A final note may be in order with regard to Mr. Mallach's complaint that all of the municipalities prohibit mobile home parks. The Court noted several times during the course of the trial that the case of Vickers v. Township Committee of Gloucester Township, 37 N.J. 232 (1962) is still the law of the State. In that case the Supreme Court of New Jersey held that no municipality can be ordered to zone for mobile home parks.

POINT III

PLAINTIFFS URBAN LEAGUE,
CHAMPION AND TUSKY LACK
STANDING TO INSTITUTE THE
COMPLAINT AND ALL CLAIMS
UNDER FEDERAL LAW SHOULD
BE DISMISSED.

Several motions were made by the defendants both during the pretrial discovery period and during the trial to dismiss all claims arising under the Federal Civil Rights Statutes in view of the fact that there was no evidence of violation. On March 2, 1976, upon motion of the defendants, the Court struck from the issues wilful and deliberate racial discrimination against minorities. On March 18, 1976 the Court granted a defense motion to strike from the complaint any claim that there had been a joint effort or conspiracy to deprive the plaintiffs of their Civil rights. On the same date the Court denied without prejudice a motion by the Township of East Brunswick to strike plaintiffs' claim for attorneys fees under the Federal Civil Rights Act and New Jersey Rule 4:42. On March 2, 1976, the Court granted a motion by the Township of East Brunswick to dismiss the complaint of Lydia Cruz but denied the motion of East Brunswick to dismiss as plaintiffs the Urban League of Greater New Brunswick, Inc., Judith Champion and Kenneth Tuskey.

In view of the fact that Ms. Cruz was the sole representative of the Community of low and moderate income Spanish

speaking people, it is submitted that that class is no longer represented in this case.

It is crucial for the defendants to strike all claims under the Federal Civil Rights Act since this is the only vehicle which the plaintiffs can use in order to collect an attorneys fee from the defendants.

The defendants have relied upon the U.S. Supreme Court case of Warth v. Seldin, 43 Law Week 4906 (June 24, 1975). In that case various organizations and individuals resident in the Rochester New Yrk Metropolitan area challenged the zoning laws of the suburban town of Penfield claiming violation of the First, Ninth and Fourteenth Amendment rights and in violation of 42 U.S.C. §§1981, 1982 and 1983. The same sections relied upon by the plaintiffs in the pending case. The U.S. District Court dismissed the complaint and the Court of Appeals for the Second Circuit affirmed holding that none of the plaintiffs had standing to prosecute the action. Plaintiffs claimed to represent all taxpayers, low and moderate income persons, black and/or Puerto Rican/Spanish citizens and all persons employed but excluded from living in Penfield who are affected or may in the future be affected by the defendants' policies and practices. The arguments and defenses in Warth are similar to those raised in the pending litigation.

The Court addressed the threshold issue as follows:

"In essence, the question of standing is whether the litigant is entitled to have the Court

decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on Federal court jurisdiction and prudential limitations on its exercise....

In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III... As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf.... The Art. III Judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action!..

"First, the Court has held that when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction... Second, even when the plaintiff has alleged injuries sufficient to meet the 'case or controversy' requirements, this court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."
(43 Law Week 4908)

The Court interpreted the foregoing to mean that the plaintiff must allege a distinct and palpable injury to himself even if it is an injury shared by a large class of other possible litigants. The court then addressed the question of whether the actions of the municipality were the cause of the plaintiffs' inability to locate suitable housing there. The conclusion was that the enforcement of ordinances against third parties including developers and builders have the consequence of precluding construction of housing suitable to the needs of plaintiffs at prices they might be able to afford. The Court concluded that the inability of plaintiffs to locate in Penfield was the consequence of the economics of the area housing market rather than the municipality's assertedly illegal acts.

The United States Supreme Court affirmed the Court of Appeals in dismissing the complaint on the grounds that none of the plaintiffs had standing to invoke the court's jurisdiction.

Warth should be applied to the instant case with respect to all federal issues. In addition it is a guide to the court on the standing of the Urban League of Greater New Brunswick, Inc., which seeks to invoke the rights of others, and the plaintiffs Judith Champion and Kenneth Tuskey. Ms. Champion represents a de minimis class. She is a Caucasian divorced woman having two children, receiving no child support from her ex-husband, receiving welfare assistance and student

grants, attending college on a full-time basis and not holding down a job. It is inconceivable that any change in the zoning practices of the Township of East Brunswick could help Ms. Champion. She does not need "affordable" housing in East Brunswick. She simply needs more money.

Similarly, Mr. Tuskey does not represent a class intended to be protected by the Mt. Laurel decision. He is a Caucasian residing in Kendall Park which he described as a community of 1500 families, 60 of whom are minority families. He is satisfied with his accommodations, is not seeking housing and is not in the low or moderate income class. He was concerned with economic and racial integration stating that the proper remedy would be reached when each municipality reflected general national population figures as to race and economics. He admitted that he had not been injured but that he only wanted others to share his life style.

Even Mrs. Barbara Tippitt is a questionable plaintiff. She admitted that her family would not qualify for assistance from the New Brunswick Housing Authority because her husband makes too much money. On several occasions she stated that she really likes where she lives, that there was plenty of grass for her children to play on, and that her main objection seemed to be that her children had to wait for a school bus in the cold.

This would leave only Cleveland Benson, the head of a household consisting of 11 people, as a viable plaintiff.

It is submitted that Mr. Benson does not represent all classes of low and moderate income persons and accordingly the complaint should be dismissed.

POINT IV

EAST BRUNSWICK IS PRESENTLY MEETING
ITS AFFIRMATIVE OBLIGATION TO PROVIDE
LOW AND MODERATE INCOME HOUSING.

East Brunswick is one of the twenty communities which joined together on the Community Development Revenue Sharing Urban County Application. (The five who did not were New Brunswick, Perth Amboy, Sayreville, Woodbridge and Edison). Nora Gonzalez of the Middlesex County Planning Board testified that East Brunswick had filed a Housing Assistance Plan in order to determine the needs of lower income households. She stated that the total housing assistance needs in East Brunswick through the 1978-1980 period was One Thousand Six Hundred Eighteen, including 850 families presently residing in East Brunswick and 768 additional families expected to reside in the community.

The Housing Assistance Plan further showed that there were 240 substandard units in East Brunswick of which 214 were suitable for rehabilitation.

Shelley Waxman, East Brunswick Community Development Coordinator, testified that the Township's major effort in housing is in the area of rehabilitation of existing units. The Township Code Enforcement Program is the principal component of this effort. The Program, funded by HUD at

\$60,000 for each of the three Program years (1975-1976, 1976-1977 and 1977-1978), is the Metropolitan Entitlement amount. This includes salaries for code enforcement officer, community development coordinator, secretary, computer programmer (part) and computer time and equipment. She indicated that the Program is designed to bring substandard units up to code standards and provide in those areas public services and facilities such as street trees and lights, road improvements, open space development, and improvement of neighborhood facilities. The Township has a three-year rehabilitation goal to assist 91 rental units and 203 homeowner units.

Ms. Waxman indicated that the Township effort would be assisted by the CDRS Urban County allocation with distribution as follows:

1975-76	\$7,000	Low-cost rehabilitation loan fund
1976-77	\$10,000	Supplement to loan fund
	\$74,000	Rehabilitation-neighborhood improvement
1977-78	\$34,000	Open Space Development - Public Improvement in code areas

In addition, East Brunswick is expected to receive \$17,000 of the \$200,000 under the Urban County application

for a housing rehabilitation program during 1976-77.

In addition, the Township has participated in the New Jersey Department of Community Affairs Section VIII Program for handicapped in existing units. She indicated that the Township is attempting to obtain fourteen such units for the elderly and handicapped in rental units for families of low income.

In addition, East Brunswick is cooperating with the Middlesex County Economic Opportunities Council's program for winterization. The MCEOC provides materials and labor for minor repair to homes in need of new insulation, storm windows and the like. Two houses are being completed at this time. In its HUD application, East Brunswick set a three-year goal of one hundred assisted new, rental units. Techniques to accomplish this would include incentives to builders and private sponsors which are being considered in the proposed new Master Plan (see below).

The Court's attention is directed to Exhibit T-53, the Urban County application. In filing this application, East Brunswick agreed to cooperate with the County in order to obtain publicly assisted housing. Page 7 of the Agreement with the County obligates East Brunswick to identify the general location of lower income housing, to survey the housing, to establish housing assistance needs and goals.

As the Agreement states:

"Each municipality decided to take a regional approach in place on an independent approach for the coordination of larger community development investments, increased housing opportunities and related jobs through the County's urban area . . . Aggregate housing needs for the Urban County area are in keeping with the County's Adopted Interim Master Plan." (Pages 4 and 5)

POINT V

PLAINTIFFS' FAIR SHARE ALLOCATION
PLAN IS UNFAIR BECAUSE IT PERPETUATES
DENSITIES WITHOUT REGARD TO EMPLOYMENT
OPPORTUNITIES

Initially, it is submitted that the Fair Share Plan presented by Ernest Erber conflicts dramatically with figures offered by plaintiff by Douglas Powell. While Mr. Erber claimed that 52,999 new housing units were needed in Middlesex County in 1970, Mr. Powell stated that only approximately 11,300 new units were needed in the entire County by 1978, 5,000 of which were to be located in the twenty Urban County municipalities and the balance in the five municipalities which did not join in the Urban County application. By way of general criticism of the Erber formula, it is submitted that he has attempted to perpetuate existing densities without regard to present and future job opportunities in the municipalities in question. In fact, he has failed to take into account suitability of vacant land and has considered developable land only for the purpose of redistributing a "balance". He failed to consider existing jobs in the municipality in a ratio either with existing jobs in the County or existing population in the municipality. He failed to relate the lands zoned for commercial and industrial use in the municipality to similar

lands in the County. He failed to consider the number of low and moderate income persons who reside in East Brunswick and who commute to work outside of Middlesex County. He failed to relate the number of existing low and moderate income persons in the Township to the proposed housing in the Township on the developable vacant land. He had never heard of the formula utilized by Judge Merritt Lane, Jr. in Middle Union Associates v. Zoning Board of Adjustment of Holmdel, Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1149-72 P.W. (May 15, 1975). In that case, Judge Lane established that Holmdel had seven percent of the jobs in the County and that, therefore, it would be required to provide seven percent of the need for low and moderate priced housing units in the County.

With regard to the Erber plan, he assumes that 23,492 heads of households working in Middlesex County but living elsewhere would prefer to locate in Middlesex County. Not only is this an unjustified assumption, but it fails to give a credit to Middlesex County for those persons of low and moderate income living here but working elsewhere. Accordingly, the entire County need which is the basis for allocation in Column I of his plan is suspect. Equally important, from East Brunswick's view, is the fact that East Brunswick is allocated 2,968 units in Column I

while municipalities such as Monroe, Plainsboro, Cranbury, and South Brunswick, all having substantial vacant land and existing industry, have far lower numbers.

While Column 2 purports to give a credit for those low and moderate income families who are adequately housed, Column 4 not only takes away the credit but adds additional units to those municipalities allegedly having land.

The so called Fair Share in Column 5 states that East Brunswick's share in 1970 was 3,167 while Cranbury has 602, Plainsboro has 432, Monroe has 1,925 and South Brunswick has 2,147.

It is apparent that Erber has perpetuated densities by unjustly burdening those municipalities which have both a population base and vacant land. No attempt was made by Erber to "net out" acres in order to determine how much of the land actually is developable.

With regard to Erber's projections for the period 1970-1975, it is submitted that he failed to take into account the actual construction and failed to revise projections, notwithstanding the fact that the Middlesex County Planning Board sharply downgraded its population and job projections. In January, 1976 in a document entitled "Estimates and Preliminary Projections of Population and Employment, Middlesex County, New Jersey" (in evidence as an East Brunswick Exhibit), similarly the projections for 1975 -

1980 are inaccurate.

With regard to employment, the January 1976 Middlesex County Master Plan report shows that there will be far fewer manufacturing jobs in the County than was previously anticipated. The jobs which will be generated will largely be white collar, service oriented and professional. There is no indication that the existing or future jobs in East Brunswick will provide employment for persons of low and moderate income. In addition, there is no indication that transportation in East Brunswick will be adequate to bring persons of low and moderate income residing in the Township to their employment.

It is submitted that the Urban County Housing Assistance Plan of March 1976 concluded that for those already employed in the County and residing elsewhere, there was enough low and moderate income housing available. The application states "Within the Urban County and for the twenty municipalities as a group, there is no need to estimate additional housing for expected to reside as a result of households already working in the area being considered."

Plaintiffs Exhibit P-66 indicates that Middlesex County has more residents in the labor force than it does jobs and the trend is worsening. In 1960 the County had 102,560 jobs but 128,705 workers, a difference of slightly more than 26,000. In 1970 the County had 204,380 jobs but 233,817 residents in the labor force, a difference in excess

of 29,000. Any plan which fails to take into account the regional trends and the national population shift to the south and west should not seriously be considered by the Court.

POINT VI

PROPOSAL BY EAST BRUNSWICK.

On April 7, 1976 the Township of East Brunswick held a public hearing on a proposed Master Plan. Another hearing is scheduled for April 13, 1976. While East Brunswick in no way concedes that its present ordinance is invalid or that it is not presently meeting its fair share of the regional need for low and moderate income housing, it suggests that certain features of the proposed new Master Plan would more than meet the obligations which East Brunswick has to its own citizens of low and moderate income and to those of the region.

When the 1970 Master Plan was adopted, it was anticipated that a new Interchange on the New Jersey Turnpike would be located at the southern boundary of East Brunswick near Church Lane. Accordingly, much of the land in that area was zoned for industry. It was also assumed that the Driscoll Expressway would connect the East Brunswick-South Brunswick area to Toms River. Because these proposals now seem indefinite, the proposed Master Plan has suggested rezoning substantial industrial acreage to Planned Residential Communities having three to five dwelling units per acre.

The plan also suggests in the center of town rezoning R-2 lands at low to medium densities with a range of five to twelve dwelling units per acre. Density bonuses are proposed for a developer who would apportion fixed percentages of the

units for low and moderate income housing, in which case he would be able to develop at the maximum density. In addition, three small zones are proposed for medium-high density housing at 28 to 36 dwelling units per acre.

It is submitted that if the proposed Master Plan is adopted by the East Brunswick Planning Board and ordinances are implemented by the East Brunswick Township Council then the existing standards for lot size, frontage and minimum floor area in the single family zones should be upheld as should the amenities for the multi-family zones. Mt. Laurel does not require ~~that~~ all minimums be eliminated but only that the municipality provide a broad range of housing. People are still permitted to purchase homes costing in excess of \$100,000. With all due deference to the other municipalities in the County, it would be inconceivable that such housing would be built in municipalities such as Helmetta, Jamesburg or Carteret, while we can envision the same in Metuchen, Cranbury or East Brunswick.

POINT VII

PROPOSED FAIR SHARE PLAN
BY EAST BRUNSWICK.

While East Brunswick objects to the Urban League method of preparing a housing allocation plan, it nevertheless submits the following adjustment to that plan through Table D-1 which is based on Tables E-1 through E-3 prepared by Gerald Lenaz of Raymond, Parrish & Pine, Inc. Table E-1 assumes that the figure of 23,492 relied upon by Mr. Erber to reflect the unmet need of heads of households working in Middlesex County but living elsewhere is invalid.

Table E-3 concedes far more than need be conceded by East Brunswick since it starts with a base of 3,395 acres rather than the 1,913 acres to which Mr. Lenaz had testified in court. It also assumes that the County has 101,328 acres of developable land. Since most of the municipalities having developable land have "netted out" acres, presumably the developable land in the County is significantly less. This would push up East Brunswick's percentage of developable land and would increase the redistribution of the balance of unmet need showed in Column 13 on Table E-3. Even taking into account the overly generous approach in the attached Tables, East Brunswick's share for 1980 would be 1,875 rather than 4,529 as proposed by the plaintiffs.

More realistically, East Brunswick proposes a fair share plan based upon job generation. Under this approach,

the following methodology is suggested:

- (a) determine number of new jobs expected in the region
- (b) define East Brunswick's share of the region's job growth by utilizing the following ratio applied against the total new job estimates:

$$\frac{\text{East Brunswick's developable zoned vacant job producing lands}}{\text{County Developable Zoned Vacant Job producing lands}}$$

Job producing lands include industrial and commercial land uses.

- (c) determine what percentage of these jobs will be held by low/moderate income salaried employees
- (d) determine number of new low/moderate income households as result of new job generation.

Tables F-1 through F-3 apply this basic approach on two assumptions; jobs based on existing zoning as well as the proposed Master Plan. Table F-1 estimates East Brunswick's share of regional employment based on existing zoning and proposed Master Plan. Table F-2 calculates East Brunswick's fair share as a result of its present zoning. Table F-3 calculates East Brunswick's fair share as a result of the revised Master Plan proposals. To these fair share estimates would be added the existing low/moderate income housing need. The existing need has been extracted from the Township's Housing Assistance Plan prepared as part of its participation in the Community Development Revenue Sharing Program. This method has been used as a guide in developing the revised

Master Plan.

It is submitted that an allocation method which is based on relating new housing to new jobs is an equitable concept in achieving a balanced housing plan where workers could conceivably live in the town of their employment, if they so desire.

Finally, it is submitted that the Urban County Method is similar to the housing/job formula set forth above, with the exception that its allocation scheme is based on a sub-County area assumed job growth rate. The method is used as part of the County's application for community development funds of which the Township is part. With the one qualification resting on how the sub-area growth rate is established, East Brunswick would find this method worth pursuing together with the method relating jobs to housing in achieving a reasonable and workable regional housing plan.

CONCLUSION

For the reasons set forth above, it is submitted that the complaint should be dismissed against the Township of East Brunswick.

Respectfully submitted,

BUSCH AND BUSCH
Attorneys for Township
of East Brunswick

By Bertram E. Busch
BERTRAM E. BUSCH
A Member of the Firm

TABLE D-1

SUMMARY: SELECTED FAIR SHARE HOUSING NEED PROJECTIONS
FOR EAST BRUNSWICK, N.J.
1975 - 1980

		1975	1980
		Total # Low/Moderate Income Units	Total # Low/Moderate Income Units
Urban League Estimates	Initial	3767	4529
	Adjusted	1583	1875
Job/Housing Balance Estimates	A	1353	1561-1706
	B	1353	1479-1548
Urban County HAP Plan Estimates		1469	2121

Note: Total need includes existing units and new additional units that are needed.

1. Urban League Estimates: Initial - see NCADH. inc. memo 2/2/76.
Adjusted - based on Tables E-1, E-2, E-3 by RPP, Inc.
2. Job/Housing Estimates: Based on Tables F-1, F-2, F-3 by RPP, Inc.
A = under present township zoning ordinance.
B = under proposed master plan.
3. Urban County HAP: See March 1976 application.

TABLE E-1

DETERMINATION OF INITIAL ALLOCATION BASED ON EQUAL SHARE
 EAST BRUNSWICK, N. J.
 (Urban League Method, Adjusted)

	1 Total Units	2 # Substd. Units	3 # Std. Units	4 Twp. % of County Total Std.	5 Unmet Hsg. Need	6 Initial Allocation Equal Share
EAST BRUNSWICK	9,095	244	8,851	5.4%	---	1,612
COUNTY	171,711	8,266	163,445	100.0%	29,854	29,854

- Sources:
1. 1970 Census - "Selected Population & Housing Statistics for Middlesex County
 2. "Quality of Housing" - 1975 by Middlesex County Planning Board (MCPB)
 3. Subtract Col. 2 from Col. 1.
 4. From Col. 3.
 5. 1970 estimate by MCPB - Urban County HAP 1975 includes expected to reside.
 6. From Col. 4 and Col. 5.

TABLE E-2

DETERMINATION OF # LOW/MODERATE INCOME FAMILIES ADEQUATELY HOUSED
 EAST BRUNSWICK, N. J.
 (Urban League Method, Adjusted)

	7 Family Incomes Under \$8, 500	8 Net Housing Need	9 # Low/Mod Families Adequately Housed	10 Adjusted Share
EAST BRUNSWICK	991	592	399	1, 213
COUNTY	34, 519	29, 854	4, 765	25, 089

Sources: 7. 1970 Census

8. 1970 Estimate by MCPB - Urban County HAP 7/75.

9. Subtract Col. 8 from Col. 7.

10. Subtract Col. 9 from Col. 6 (on Table E-1).

TABLE E-3

FAIR SHARE HOUSING NEEDS 1975 - 1980
EAST BRUNSWICK, N. J.
(Urban League Method, Adjusted)

	11 Vacant Land	12 % of County Land	13 Redist. of Balance of Unmet Need	14 Fair Share 1970	15 % Fair Share Total	16 Total Inc. 1970 - 75	17 Fair Share 1975	18 Total Inc. 1975 - 80	19 Fair Share 1980
EAST BRUNSWICK	3,395	3.4	162	1,375	4.6	208	1,583	293	1,875
COUNTY	101,328	100.0	4,765	29,854	100.0	4,518	34,372	6,373	40,745

- Sources:
11. Vacant Developable Land - 1975 "Preface to Planning."
 12. Based on Col. 11.
 13. Col. 9 (4,765 units) balance redistributed by % of Col. 12.
 14. Col. 10 (Table E-2) plus Col. 13.
 15. Based on Col. 14.
 16. Fair Share % (Col. 15) of 4,518 units - new housing produced 1975. MCPB figures interpolated.
 17. Col. 14 + Col. 16.
 18. Fair Share % (Col. 15) of 6,375 units - new housing estimated 1975 - 1980. MCPB figures interpolated.
 19. Col. 17 + Col. 18.

TABLE F-1

EAST BRUNSWICK'S SHARE OF PROJECTED REGIONAL EMPLOYMENT, 1975-80
(Job/Housing Balance Method)

	1975 # of Jobs	1980 Est. # of Additional Jobs
REGION ¹ (Middlesex County)	240,400	28,000 - 43,450
EAST BRUNSWICK SHARE ²		
Existing	12,100	---
A Projection	---	987 - 1,520
B Projection	---	564 - 869

Sources: ¹ Estimates by MCPB - 1/76 interpolated by RPP, Inc.

² Based on ratio of Township zoned & vacant developable job producing lands to those in the County. Ratio assumed constant for period of projection.

A projection based on existing Township zoning = 3.5%.

B projection based on Proposed Master Plan = 2.0%.

TABLE F-2

EAST BRUNSWICK'S FAIR SHARE BASED ON EXISTING ZONING, 1975-80

(Job/Housing Balance Method)

	EXISTING ¹ Low/Mod Hsg. Need	FAIR SHARE ²						Total Need 1975 - 1980
		1970-1975 Additional ³ Housing Need			1975-1980 Additional Housing Need			
		# Low	# Mod	Total # Units	# Low	# Mod	Total # Units	
EAST BRUNSWICK	850	186	317	503	82 - 139	126-214	208-353	1561 - 1706

Sources: ¹Based on East Brunswick HAP - 1976.

²Determined as follows:

- a) Regional share of jobs (Table F-1) X .7 = Total new household units.
(.7 factor reflects ratio of average State employed household heads to total number of resident households, which means about 30% of all households have more than one wage earner.)
- b) Total new household units X .32 = Total # new low/mod units needed.
(.32 factor taken from Urban County HAP, which indicates 32% of new jobs to be created would be for low/mod income salaried households.)
- c) Total # low/mod units X (.37) or (.63) respectively to determine low/mod income units.
(.37 and .63 factors from 1970 Census.)

³Total number derived as in Footnote 2 adjusted by existing low/moderate units available in Township from Tax Assessor Records 1975.

TABLE F-3

EAST BRUNSWICK'S FAIR SHARE BASED ON PROPOSED MASTER PLAN, 1975-1980
(Job/Housing Balance Method)

	FAIR SHARE ²							Total Need 1975 - 1980
	EXISTING ¹ Low/Mod Hsg. Need 1975	1970-1975 Additional ³ Housing Need			1975-1980 Additional Housing Need			
		# Low	# Mod	Total # Units	# Low	# Mod	Total # Units	
EAST BRUNSWICK	850	186	317	503	47-72	79-123	126-195	1479 - 1548

Sources: ¹Based on East Brunswick HAP - 1976.

²Determined as follows:

- a) Regional share of jobs (Table F-1) X .7 = Total new household units.
(.7 factor reflects ratio of average State employed household heads to total number of resident households, which means about 30% of all households have more than one wage earner.)
- b) Total new household units X .32 = Total # new low/mod units needed.
(.32 factor taken from Urban County HAP, which indicates 32% of new jobs to be created would be for low/mod income salaried households.)
- c) Total # low/mod units X (.37) or (.63) respectively to determine low/mod income units.
(.37 and .63 factors from 1970 Census.)

³Total number derived as in Footnote 2 adjusted by existing low/moderate units available in Township from Tax Assessor Records 1975.

TABLE G-1

EAST BRUNSWICK'S FAIR SHARE BASED ON URBAN COUNTY HAP PLAN

1975 - 1980

	EXISTING Low/Mod Hsg. Need 1975	FAIR SHARE						Total Need 1975 - 1980
		1970-1975 Additional Housing Need			1975-1980 Additional Housing Need			
		# Low	# Mod	Total # Units	# Low	# Mod	Total # Units	
EAST BRUNSWICK	850	229	390	619	241	411	652	2121

Sources: Urban County HAP - March 1976 - Fair Share #'s to 1975 & 1980 interpolated by RPP, Inc.