

CA East Brunswick 19-Apr. 1976

Reply Brief on Behalf of Township
of East Brunswick
- w/ executive order 35
- w/ cert of attorney

pgs = 27

CA 001291B

EAST BRUNSWICK

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al

DOCKET NO. C-4122-73

Plaintiff

vs.

Civil Action

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

Defendant.

REPLY BRIEF ON BEHALF OF TOWNSHIP
OF EAST BRUNSWICK

BUSCH AND BUSCH
Attorneys for Township
of East Brunswick
99 Bayard Street
New Brunswick, N.J.

Bertram E. Busch
On the Brief

CA001291B

LEGAL ARGUMENT

The Court's attention is directed to Executive Order No. 35 signed by Governor Brendan Byrne on April 2, 1976, a copy of which is annexed hereto. It would appear that the defendant municipalities are being subjected to a multiplicity of standards and requirements emanating from the Executive branch of government as well as the Judiciary. Under the Executive Order, the Director of the Division of State and Regional Planning is required by February 2, 1977 to allocate housing goals. The factors to be considered are left to the discretion of the Director under Paragraph 3. Conceivably he may establish a housing goal for Middlesex County completely at odds with that proposed by Ernest Erber or Douglas Powell, who have each come up with their own criteria and numbers. Paragraph 12 of the Order provides that State officials, for purposes of providing incentive aid, shall give priority to municipalities which are providing a fair share of low and moderate income housing in accordance with the Order.

Plaintiffs concede on Page 21 of their post-trial brief that the court should exercise judicial restraint. It is submitted that Executive Order No. 35 is further reason for such an approach.

The Court's attention is also directed to a zoning case involving the Township of Montville in which Judge Gascoyne

ordered the Township to adopt a new zoning ordinance providing for low and moderate income housing no later than January 31, 1977. This time frame contrasts with the 45 day time limit which the plaintiffs suggest on Page 22 of the post-trial brief, footnote #3.

The Court's attention is directed to Appendix B, Part II submitted by plaintiffs. In this Appendix plaintiffs, in the name of providing housing for persons of low and moderate income, brush aside all planning techniques, good and bad. Many of the techniques such as requiring "no-look-alike" provisions and no slab houses, were written in the first place so as to prevent a repetition of the Urban decay which brings the plaintiffs into court. Plaintiffs presented no evidence against East Brunswick and no pretrial notice that the "no-look-alike" ordinance would be attacked, that the ordinance requiring a basement would be challenged or that an ordinance would be sought permitting conversion of single family dwellings to two or more dwellings. If plaintiffs' recommendations were followed, Short Hills might wind up looking like Newark and Far Hills like Manville.

The Court should limit its ruling to those ordinances involving lot size, frontage, square footage and multi-family housing.

With regard to the proposed Order submitted by plaintiffs as Appendix G, East Brunswick objects strenuously to sub-

paragraph (b), which purports to set the regional housing need for 1980 at 75,754 units. East Brunswick would agree with figures submitted by Doug Powell that the total number of new units required would be 11,300, with 5,000 required in the 20 Urban County communities.

East Brunswick objects to subparagraph d of the Order as to the 45 day time table, the requirement of a common formula, and the requirement that each plan submitted shall equal the alleged County need.

Objection to subparagraph e is also based on the 45 day requirement while objection to subparagraph f is based, in addition, to the requirement that defendants will meet regularly with plaintiffs in order to discuss progress.

The remaining terms of the proposed order are presumptuous.

If the Court should rule against any of the defendants, the ruling should, at the most, allocate a number of units or acres to be devoted for low and moderate income households. There should be no further requirement for any municipality to work in common with any other municipality, with the plaintiffs, or with the County. The court should retain jurisdiction to insure compliance. The remainder of plaintiffs complaint and proposed form of Order should be disregarded.

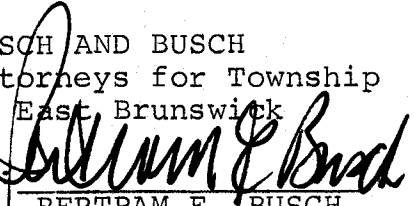
CONCLUSION

For the reasons set forth above, it is submitted that much, if not all, of plaintiffs post-trial material, be disregarded.

Respectfully submitted

BUSCH AND BUSCH
Attorneys for Township
of East Brunswick

BY


BERTRAM E. BUSCH
A Member of the Firm

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER NO. 35

WHEREAS, there exists a serious shortage of adequate, safe and sanitary housing accommodations for many households at rents and prices they can reasonably afford, especially for low and moderate income households, newly formed households, senior citizens, and households with children; and

WHEREAS, it is the policy of the State of New Jersey, as reflected in numerous acts and programs, to alleviate this housing shortage; and it is the law of the State of New Jersey that each municipality, by its land-use regulations provide the opportunity for the development of an appropriate variety and choice of housing for all categories of people, consistent with its fair share of the need for housing in its region; and

WHEREAS, it is the policy of the State that local government should be the primary authority for planning and regulating land-use and housing and housing development; and that the State shall provide appropriate assistance to local governments so that municipalities can meet their obligation to provide an opportunity for the development of an appropriate variety and choice of housing for all categories of people, consistent with the municipality's fair share of the need for housing in its region; and

WHEREAS, the laws of the State of New Jersey (P.L. 1944, c. 85; P.L. 1961, c. 47 P.L. 1966, c. 293; P.L. 1967, c. 42) authorize the Division of State and Regional Planning to conduct comprehensive planning, to plan for housing needs, and to provide planning assistance to local governments; and

WHEREAS, continuation of financial assistance by the federal government to the State for comprehensive planning under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974, is contingent upon the Division of State and Regional Planning carrying out an ongoing comprehensive planning process, including, as a minimum, preparation of a housing element and land-use element by August 22, 1977;

NOW, THEREFORE, I, BRENDAN BYRNE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the statutes of this State, do hereby ORDER and DIRECT that:

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J. Edward Corbett
GOVERNOR OF THE STATE

1. The Director of the Division of State and Regional Planning, in accordance with the provisions of this Order, shall prepare State housing goals to guide municipalities in adjusting their municipal land-use regulations in order to provide a reasonable opportunity for the development of an appropriate variety and choice of housing to meet the needs of the residents of New Jersey.

2. The Director shall allocate housing goals pursuant to this Order, as expeditiously as feasible, but no later than 10 months from the date of this Order and no later than 2 years after each future decennial census. Periodically the Director may reevaluate the adequacy of the current State housing survey and may make appropriate changes in housing goal allocations.

3. The Director shall complete a housing needs study which takes into account:

- (a) the existence of physically substandard and overcrowded housing in the State;
- (b) the existence in the State of households paying a disproportionate share of income for housing; and
- (c) other factors as may be necessary and appropriate.

4. All agencies of State Government shall cooperate with the Director and furnish such copies of any data, reports or records as may be required by the Director to discharge the responsibilities under this Order and as may be available in accordance with applicable law and regulations.

5. The State housing need as determined by the housing needs study shall serve as the basis upon which the Director shall formulate a "State Housing Goal" and allocate this goal to each county or group of counties. The formulation of the State housing goal, to the extent the Director deems appropriate, shall take into account the capacity of the public and private sector to ameliorate the State housing need within a reasonable time period. The Director also may announce the State housing goal in time stages.

6. a. The Director, in allocating this goal to each county or group of counties, shall take into account the following:

- (1) The extent to which housing need exists in each county or group of counties.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Page 3

- (2) The extent to which employment growth or decline has been experienced in each county or group of counties.
- (3) The extent to which the fiscal capacity to absorb the housing goal exists within each county or group of counties.
- (4) The extent to which appropriate sites to provide for the housing goal exist within each county or group of counties.
- (5) Other factors as may be necessary and appropriate.

b. Consistent with these standards, the Director may suballocate the housing goal or goals of a county or group of counties to groups of contiguous municipalities comprising major geographic areas of a county or group of counties.

7. The housing goal allocated to each county shall specify a minimum number of housing units economically suitable for different segments of the population for which an adequate range of appropriate sites should be made available within the county. Appropriate sites include any land or residential structure that is suitable or amenable to providing a location for housing development, redevelopment, rehabilitation, or program of assistance for existing housing.

8. The Director, except as provided in Section 9 of this Order, shall allocate each county housing goal among the municipalities in a county and each housing goal for a group of contiguous municipalities selected pursuant to Subsection 6 b. of this Order among the municipalities within such a group. This allocation of a county housing goal among municipalities in a county or a group housing goal among the municipalities in a group of contiguous municipalities selected pursuant to Subsection 6 b. of this Order shall take into account the following factors.

- (a) The existence at the municipal level of physically substandard and overcrowded housing.
- (b) The existence at the municipal level of households paying a disproportionate share of income for rent.
- (c) Past, present and anticipated employment growth and relative access to these employment opportunities by

low and moderate income workers.

- (d) Relative availability of appropriate sites for housing on a municipal basis.
- (e) Relative capacity of municipalities to absorb additional housing units as measured by fiscal capacity.
- (f) Relative municipal shares of low and moderate income households, and anticipated change in such households.
- (g) Past, present and anticipated residential and non-residential municipal growth patterns.
- (h) The existence of a county development plan as it relates to fair share housing needs in that county.
- (i) Other factors as may be necessary and appropriate.

9. The Director may delegate to a county planning board the authority to allocate the county housing goal among the municipalities in the county and any housing goals for groups of contiguous municipalities selected pursuant to Subsection 6 b. of this Order among the municipalities within such groups. Such county planning board allocation shall conform to the standards in Section 8 of this Order and appropriate guidelines provided by the Director. If a county planning board does not allocate the municipal housing goals in a reasonable period of time, as determined by the Director and consistent with the time periods of Section 2 of this Order, or if the Director determines that the allocations do not conform to the standards in Section 8 of this Order and the guidelines provided by the Director; then the Director, consistent with the standards of Section 8, shall perform the housing goal allocation which had been delegated to the county planning board.

10. (a) The Director may promulgate the allocations required pursuant to Section 8 of this Order and may authorize a county planning board to promulgate allocations pursuant to Section 9 of this Order in time stages which give a priority to the promulgation of allocations for developing municipalities.

(b) The Director may promulgate the allocations required pursuant to Section 8 of this Order and may authorize a county planning board to promulgate the allocations required pursuant to

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Page 5

Section 9 of this Order by initially promulgating collective allocations to small groups of contiguous municipalities which individually would receive relatively low allocations pursuant to Section 8 of this Order.

11. The Director shall provide opportunities for the public, other agencies of State government; and regional, county, and municipal planning agencies to comment on the determinations of housing need and the allocation of housing goals pursuant to this Order.

12. State officials administering state and federal programs providing grant and loan aid and technical assistance to municipalities and counties for open space preservation, sewerage improvements, community development, local program management and comprehensive planning, housing development and demonstration projects, housing finance, interlocal services; and the construction, repair, and maintenance of municipal and county roads and bridges; local street lighting projects, and programs supporting public transportation shall, in accordance with existing law and for purposes of providing incentive aid consistent with the objectives of this Executive Order, give priority where appropriate to municipalities which are meeting or are in the process of meeting a fair share of low and moderate income housing needs. State officials participating in regional planning activities and regional clearinghouse review and comment decisions on municipal and county applications for federal funding shall take into account whether a municipality or group of municipalities is meeting or in the process of meeting a fair share of low and moderate income housing. Any municipality in which a disproportionately large share of low and moderate income households resides and which is making an effort to improve housing conditions shall not be assigned a lower priority under the provisions of this section.

13. The Director may establish procedures and guidelines for determining whether a municipality has reasonably accommodated its municipal housing goal, as determined pursuant to this Order, and may report periodically on the progress of municipalities in complying with their respective allocations.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Page 6


14. The Director of the Division of State and Regional Planning shall continue to prepare comprehensive housing and land-use plans for guiding development decisions in this State. This comprehensive planning activity, consistent with the fair share housing objectives of this Order, shall continue to be a part of the housing and land-use programs of this State.



GIVEN, under my hand and seal this
2nd day of April,
in the year of Our Lord, one
thousand nine hundred and seventy-
six of the Independence of the
United States the two hundredth.

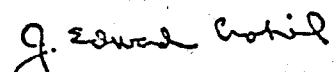

GOVERNOR

ATTEST:


Executive Secretary to the Governor

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SECRETARY OF STATE

BUSCH AND BUSCH

99 BAYARD STREET

NEW BRUNSWICK, N. J. 08903

(201) 247-1017

ATTORNEYS FOR Township of East Brunswick

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al

Plaintiff

vs.

THE MAYOR AND COUNCIL OF THE TOWNSHIP
OF EAST BRUNSWICK, ET als

Defendant

SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C-4122-73

CIVIL ACTION

CERTIFICATION

1. My name is Gerald Lenaz and I am a licensed professional planner employed by Raymond, Parish & Pine, Inc. I testified on behalf of the Township of East Brunswick in the above captioned matter.

2. Attached to this Certification is a letter dated April 19, 1976 addressed to Bertram E. Busch, Esq., Township Attorney for

the Township of East Brunswick together with two memoranda in response to Appendix A and Appendix B submitted to the Court by the Plaintiffs.

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: April 19, 1976


GERALD LENAZ



Raymond, Parish & Pine, Inc.

519 Federal Street Camden, New Jersey 08103 (609) 541-9441

GEORGE M. RAYMOND, A.I.P., A.I.A.
NIEL J. PARISH, P.E., A.I.P.
L. W. PINE, A.I.P.

April 19, 1976

GERALD C. LENAIZ, AIA, AIP
Director, New Jersey branch office

BERNARD J. BULLER, P.E., A.I.P.
EDITH LANDAU LITT, A.I.P.
WILLIAM R. LUCAS, A.I.P.
WILLIAM R. McGRATH, P.E.
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DANIEL SHUSTER, A.I.P.
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MICHAEL WEINER, A.I.P.

Mr. Bertram E. Busch
Busch & Busch
Counsellors at Law
99 Bayard Street
P. O. Box 33
New Brunswick, New Jersey 08903

Dear Bert:

Enclosed are two separate memorandums relating our comments to the materials you forwarded us last week. I might point out that our earlier memos (March 11 and March 23) provide further insights into the issues raised by the various Appendices forwarded. They can be used as you deem appropriate.

It appears that with the introduction of the Mallach "fair share" model, the plaintiffs are establishing an arena for negotiation. In that regard, I have the following observations to offer:

- (1) On a simple basis, we have developed a fair-share scheme related to balancing new jobs with new housing units (March 23 memo). It too, however, is subject to scrutiny as is any model.

Perhaps the route to follow is to gain from the court an agreement as to the basic principles that should be included in a fair-share program, without a definitive allocation method established.

The responsibility for devising such a method should rest with the County Planning Agency, as the "regional" body. Each municipality could then participate in an open discussion to decide the best "method" for its own collective destiny.

The courts could define a time limit for results. I feel the end result will be more equitable, since political realities and practicalities of implementation can occur in a more conducive atmosphere, free from courtroom strategies.

While we have suggested some criteria to be used in arriving at a fair-share scheme, there is an obvious danger in trying to find the perfect criteria or attempting to perfect selected criteria to exact indicators. A fair-share scheme for this county should really be a negotiated process amongst the municipalities under the burden of a legal mandate.

- (2) In devising a fair-share scheme, the criteria below, for various parts of the scheme, would seem important to be considered. It is not an inclusive list but a basis for initiating a negotiated fair-share scheme. We would tend to favor an unweighted application of the allocation criteria. If needed, a numerical average of various criteria can be taken, since no one factor can really assess the appropriate distribution.

NEED

- Agreement that county is basis for plan.
- Establishing the existing need for lower-income (low plus moderate) housing units; there seems to be general agreement on this already established through the County's and Township's Housing Assistance Plan (HAP) (e. g., substandard units plus financially imbalanced units).
- Non-resident commuters should be excluded from the calculations, since their regions should provide housing opportunity. Inclusion of this figure is an artificial inflation of need.
- One could develop projected need based on the number of new lower-income jobs in the county and its municipal areas.

INITIAL ALLOCATION

- On an equal basis, distribute the total need to each municipality.
- Distribute total need in the proportion that a municipality's existing lower-income units are to the county.
- Distribute total need in the proportion that a municipality's population is to the county.
- Distribute total need in the proportion that total lower-income units are to the total county population, as well as its inverse.
- Distribute total need in the proportion that a municipality's projected jobs (or lower-income jobs) are to the total projected county jobs.

An average of the above would be used as the initial allocation number.

MODIFIED ALLOCATION

Once an initial allocation is made, a series of modifiers could be applied related to the suitability of an area to absorb lower-income housing units.

- Credit for existing lower-income units in a municipality.
- Availability of vacant land suitable for development.
- Availability of serviced vacant land suitable for development (with utilities) to 1980.
- Where impact on the school system will not be detrimental (e. g., assessed valuation per pupil, overcrowding in schools, existing additional school capacity—an average of the three).
- Where impact on the municipal service system will not be detrimental (e. g., per capita financial resources, remaining municipal indebtedness—an average of the two).

IMPLEMENTATION ALLOCATION

With an allocation scheme in hand based on need and fair share, a realistic assessment of actual implementation should be made—the allocation plan should be "strategized." This is perhaps the most difficult part of the fair-share scheme; but if the plan is to be realized beyond a legal mandate, it should be considered.

- Areas should be designated to develop lower-income units before others. Such areas should receive priority in receipt of federal housing subsidies. In fact, such funds should be a condition of meeting the priorities.
- An upper limit of units should be set for those first-priority areas; when reached, then priority would shift to second areas, third and so on.
- Priority could be established according to an overall short-range development plan established by the county with municipal participation.


Rate of anticipated growth in each community should be the basis for encouraging priority rankings. Faster growing communities, particularly in terms of jobs, should be expected to provide suitable housing opportunities in proximity to such jobs.

Finally, adjustments should be made within a 5-year period. Changes in growth rates, receipt of subsidy funds, revised projections made of new or lower housing needs, etc. would all account for readjustments of priorities and allocations. Guarantees of consistency in allocation criteria, as well as credit for provision of lower-income units, have to be made to insure an equitable long-term application of a fair-share scheme.

Good luck in court!

Sincerely,

RAYMOND, PARISH & PINE, INC.



Gerald Lenaz

GL:ie
Enclosures
cc: Mr. C. Hintz



Raymond, Parish & Pine, Inc.

519 Federal Street Camden, New Jersey 08103 (609) 541-9441

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April 19, 1976

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MICHAEL WEINER, A.I.P.

MEMORANDUM

To: Bertram E. Busch, East Brunswick Township Attorney
From: RAYMOND, PARISH & PINE, INC.
Subject: Reactions to Urban League - Appendix B - Part 1

The plaintiff's Appendix B - Part 1 generalizes on restrictive elements found in eleven defendant municipalities' (East Brunswick included) zoning ordinances. We provide the following observations keyed to the plaintiff's points regarding restrictive elements, also noted on their chart "Summary of Exclusionary Elements."

In most instances, testimony has already been provided by the Township in areas where alleged points of "exclusion" are questionable or the basis for plaintiff's allegations as specifically applied to the Township are not reasonable. To that extent, we have summarized past testimony and refer the reader to the trial record for a further explanation of the summary remarks.

Point (1)—(3) We concur that residential zones should be provided within which varied standards from "minimal" to "high" can be achieved. Testimony has been presented which noted the existence in the Township of modest single-family housing on small lots within the modest standards presented by the plaintiffs. Cluster zoning provisions exist in both R-1 and R-2 zones (highest lot size requirements) allowing reduction in lot size and building area to the next lower residential zone. This essentially provides lot size reductions from 43,560 to 20,000 SF and from 20,000 to 15,000 SF with reductions in lot frontages and building floor area.

Further, the Township is in the process of revising its Master Plan and pertinent zoning ordinances to increase the extent of residential land area available for modest-cost housing.

Point (4) Some of the sub-points here don't apply to East Brunswick's ordinance. Testimony established that the basement requirement was an option available due to topographic considerations. It was applicable only to the multi-family use zone in the Township ordinance.

Point (5) Multi-family uses are permitted in East Brunswick's zoning ordinance in the 0-1 district. The plaintiff's chart is incorrect in this regard.

Point (6) Inapplicable, since multi-family uses are permitted by right.

Point (7) There are about 4 vacant acres remaining in the 0-1 zone of the Township. A total of 111 acres exist.

Point (8) Testimony has been introduced regarding East Brunswick's parking requirements as not being excessive.

Point (9) Testimony has been previously introduced responding to the various allegations of restrictive provisions cited in this point. The testimony established the reasonableness of the Township's ordinance with regard to the applicable allegations [e.g., sub-point 9(a), (c), (e) — bedroom restrictions were rescinded from the ordinance during the trial proceedings, and (g)].

Points (10)+(11) Mobile homes exist in the Township, although not by right. It is questioned whether every municipality must provide for every conceivable form of housing type within its boundary.

Point (12) Inapplicable, since PUD or similar zone does not exist in the ordinance.

With regard to the plaintiff's "Standards for the Cleansing of Exclusionary Zoning Ordinances," we have the following reactions:

Point (1) We are troubled by the implication of following the plaintiff's reasoning and standards in this point, although we can appreciate the intent.

With regard to standards, the effect of utilizing the plaintiff's suggested standards, without modification, would create physically intolerable residential developments.

For example, a lot density of 10 dwelling units per acre is suggested for both modest single-family detached and attached dwellings. Further, lots of 6,000 SF or less are advanced.

With regard to detached units on lots of 6,000 SF or less, a density of 10 to the acre would result in average lots of 4,350 SF; the housing units produced on such lots would have little setback, open space or physical amenity. The very premise of innovative land design principles to reduce construction costs and enhance to the maximum the livability of a residential area subject to higher density is violated.

We believe lots, 1/4 acre or 10,000 SF in size, for single-family detached homes should be a lower limit in a zone created solely for detached units. Below this lot size, either some form of clustering should prevail, keying lower lot size to increased open space, or only attached units should prevail. In the broad sense, this would at least produce a tolerable residential environment with adequate and modest physical amenity, providing reasonable site design principles are established. This is not to say that smaller lots for detached units are not possible. However, such further reductions in a 1/4 acre lot size should be permitted only under some form of "clustering" ordinance provisions. This will ensure a more economical and physically pleasing residential area in a planned fashion. Perpetration of "cookie-cutter" subdivisions will be eliminated, and wasteful use of diminishing land resources in Middlesex County will be avoided.

With regard to attached units in a fee simple arrangement, lot densities of 10 to the acre is exceedingly high. In order to create a livable environment, common planning practice suggests a range of 5-8 units per acre.

In an attempt to create higher densities, a host of additional design standards is required. These would ensure that inhabitants of such denser areas, at a minimum, would have adequate open space, which physically makes higher-density living a pleasant experience and not just a tolerable existence.

We are troubled by the plaintiff's suggestion to allocate at least 3 times the amount of residential land needed to provide flexibility for uneven growth rates. This, in effect, is blatant "over zoning" for residential uses.

Clearly, the very essence of sound community planning is to create an appropriate balance between various land uses in an area; a principle implicit in the State's new Municipal Planning Act. Over-zoning land to account for uneven residential growth will not ensure the production of X housing units on Y acres.

More direct control of the private-housing sector to stimulate or retard housing construction, coupled with consumer demand, enables such production schedules to be achieved. Indeed, such devices are beyond the realm of zoning.

The idea of maximum building areas, with exceptions for eventual additions, for modest single-family housing is a good one. However, we would suggest a sliding scale of maximums be created, keyed to bedroom sizes, as opposed to the flat "1,000 sq. ft. finished interior floor area" suggested by the plaintiff. This will allow some flexibility in dealing with 3, 4 and 5, or larger, bedroom houses within reasonable health and safety standards for livability.

Point (2) Here again, we are troubled by the plaintiff's design standards without additional standards relating to open space, modest site amenity, etc. In multi-family environments, it is exceedingly important to realize the necessity to provide adequate open space, both unimproved and improved, if such environments are to be livable assets in a community.

A variable multi-family density of 10-15 units per acre should be the minimum provision; this affords a variety of garden apartments or other forms of rental unit development to be achieved (condominium townhouses for example). By accepting the plaintiff's flat 15 du site, development of varied rental units type is hampered.

Parking maximums of 1.5/unit offered by the plaintiff is unreasonable and could create severe local traffic safety problems in multi-family developments having larger bedroom units. We would suggest a sliding scale of parking needs geared towards bedroom type. This is a more equitable approach and will allow for a realistic number of parking spaces in each multi-family project.

For those portions of a mixed residential area in which modest multi-family units might be provided, we would agree that if modest minimum floor-space requirements are required, they should be the NJHFA minimum room area standards and not the square footages suggested by the plaintiffs.

We cannot agree with the plaintiff's concept of "over-zoning" for multi-family uses for similar reasons stated earlier in this memorandum.

Point (2) implies a separate zone for multi-family housing under "reasonable and modest standards." We trust we have misinterpreted this implication, since it in effect fosters the creation of isolated areas of "modest" housing in a community. We strongly urge the principle of mixed residential land use developments, containing modest to conventional style residences,

as a basis for avoiding area-wide segregation of people by age and social class. Very clearly, the latter will be the end result of the plaintiff's proposal in suburban communities.

Point (3) We are in agreement with the basic principles advanced regarding use of the PUD or similar mixed use development zones. However, we would offer some clarification on the plaintiff's considerations to be used in drafting PUD-type ordinances.

We cannot agree, given the current mechanisms available to local municipalities for raising money to provide local services, that minimum amounts of industrial/commercial development in a PUD should not be stipulated. One of the basic tenets in a PUD is the inclusion of residential and all forms of compatible, non-residential uses. It is to be a small "town-in-town" where job opportunities are to be provided its residents. Clearly, reasonable standards need to be devised, as noted in the State PUD Law, further clarified in the State's new Municipal Planning Act, regarding the extent of commercial/industrial use in a PUD.

If local communities are to remain fiscal solvent, it must have the management control afforded it by a PUD to control residential growth in relation to supportive, non-residential uses. Again, reasonable requirements can be devised to permit this necessity without being "exclusionary" or "restrictive" as defined by the plaintiffs.

The plaintiffs imply that the size of a PUD is subject to scrutiny. We would caution that in an attempt to develop reasonable standards, the very premise of a PUD be considered. It is a mixed-use technique subject to overall density controls and a host of other factors. Its size, therefore, should vary depending on its purpose, mix of uses, density, location in an area (urban, suburban or rural situation), etc.

Point (4) Conversion comments are not directly applicable to East Brunswick.

Point (5) As noted earlier, we question the necessity of every municipality providing for every form of housing type. Surely, if the test of providing adequate modest housing units for a projected demand can be satisfied, of what concern is the housing type by which the demand is met? It should be a local prerogative as to how it will meet its housing obligation.

Point (6) In principle we would agree to the concept of differential standards as well as special expectation provisions for modest housing units as advanced by the plaintiffs. In application of the principles we would urge caution.

Clearly, in separate zones designating single-family or multi-family use, coupled to density bonus or incentive techniques, differential standards on lot and unit size makes sense. But to designate on a zoning map, in a suburban community, a district "modest single- or multi-family" zone only perpetuates social isolation and exclusion.

In the eleven communities under question, land remains in an amount to make mixed residential use zones a more realistic method for achieving a heterogenous community. Within such mixed residential zones, differential standards could be applied coupled to incentive or bonus criteria. This will allow a more successful community balance, in terms of incomes, housing types, etc., to occur.

GL:ie



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MEMORANDUM

To: Bertram E. Busch
East Brunswick Township Attorney

From: RAYMOND, PARISH & PINE, INC.

Subject: Urban League Fair Share Allocation Formulas

Highlighted below are our comments regarding Appendix A and Appendix A,
Part II - Fair Share Allocation Formulas.

Appendix A - Refinements to Mr. Erber's Model

We are still concerned with the model, as the explanation in Appendix "A" offered no real variation with the exception of modification in the ratio of initial distribution based on existing housing stock.

The model is still weighted towards continuation of existing densities (although somewhat mitigated by the above comment) and still burdens the towns with large amounts of vacant lands, irrespective of their job-producing potential or suitability for development.

Further, it continues to impose a superficial regional housing burden by including housing needs attributed to lower income, non-resident commuters who work in the county. The model makes no adjustment for the fact that the region in which such workers reside also have an obligation to provide housing

opportunities. Further, no adjustment is made for more lower-income workers living in, but working outside the county.

Appendix A, Part II - Mallach Model

In general terms, the Mallach model suffers from some of the same drawbacks as noted in the Erber model with regard to an unfair imposition of housing need for non-resident commuters without appropriate adjustments. We concur with the Mallach model in regard to its final step; that it is within a municipality's purview to adopt its own housing strategy to accomplish meeting its local and "fair share" needs.

With regard to the methodology, it in principle is simple enough to follow, although we question the following methodological techniques:

- (a) A clearly defined "vacant land" availability is needed. In principle it should exclude all that is not suitable for development by reason of natural impediment, public/semi-public ownership or physical concerns.

We disagree that capacity of infrastructure, or rather the lack of it, should not be considered in arriving at the initial distribution. While in some communities, over time, infrastructure may be developed in heretofore virgin land; in others, for a variety of reasons expansion of infrastructure will be clearly infeasible and never developed.

Adjustments should be made for this fact so that an artificial and an unrealistic share of regional housing is not allocated.

We believe both vacant land and proximity to employment should be given equal weight in any formulas. If anything, employment should be overly weighted in order to achieve a closer job/housing relationship, reducing commuter time and expense.

- (b) We concur that proximity to employment is a key factor in any distribution method. For reasons relating to difficulty in developing and administering a fair share scheme, the Mallach proposal, basing

employment proximity in sub-regional groups of municipalities instead of the county as a whole, should be held in abeyance. His formula example goes to the total county as a base for statistical use which is a simpler route to follow.

- (c) The income distribution scheme is heavily weighted towards dispersal of units, particularly in its adjustment for disparity between an existing municipality's percentage of lower-income families to that in the county. In short, those with less get more and vice versa.

Clearly, if adjustments for disparity are made, then other adjustments should be made. For example, additional adjustments for each municipality's ability to absorb such additional units should be made. The "ability" based on fiscal resources, school capacity, etc. should be used to modify the results of such an income distribution scheme if it is to be equitable for all concerned.