CA - Edison

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brief in support of notice of motion on behalf of Mayor + Council of twp

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C - 4122-73

URBAN LEAGUE OF GREATER NEW BRUNSWICK, etc., et al, Plaintiffs, vs. MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants.	)	Civil Action

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BRIEF IN SUPPORT OF NOTICE OF MOTION ON BEHALF OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF EDISON

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The instant suit is not susceptible to be tried as a class action.

In all candor, Edison agrees that class actions should be encouraged, and, that the application and interpretation of R.R. 4:32-1 and 4:32-2 should be liberally construed to permit class actions were appropriate and proper. Lusky v. Capasso Bros. 1972, 118 N.J. Super 369; 287 A.2d 736.

Edison also agrees with the rationale and fairness of class actions even when the trial may be cumbersome, complicated, difficult and expensive for the litigants. Chancery recognizes that the relative inconvenience and difficulty of the litigants must be subjugated to the good of the whole.

But.

One need but look at the typical areas in which the language and reasoning above has been uniformly applied. Typical situations involving insurance policies, labor contracts, the investment and disposition of trust funds of organizations, pension and retirement plans and the entire area of consumer frauds particularly lend themselves to this type of action.

To conglomerate 23 different zoning ordinances in the same law suit would frustrate the

beneficial effects and purposes of the cited Rules and reasons.

In the first place, any single plaintiff who overthrows any single ordinance accomplishes the effectiveness of establishing such invalidity for the rest of the world. In other words, for good or bad, the judgment of invalidation is an unimpeachable precedent that all can follow. There is no advantage in having a class of plaintiffs attempt to accomplish the same end. On the other hand, geography, physical development up to and including the time of the suit, and the present social-economic makeup of the respective municipalities mandate that there cannot be a fair and valid universal zoning ordinance that would apply identically to all or each of the 23 defendants.

There is nothing to be gained by preserving the class suit.

There is much to be lost if the class status of this suit is preserved.

Within the past two years, Edison has adopted a new and comprehensive zoning code. It was based upon a comprehensive master plan that was more than four years in preparation. Most, if not all, of the remaining defendants have much older zoning ordinances and many had

no master plan at all.

Edison should not be painted with the same broad strokes of the same broad brush that these plaintiffs are attempting to wield.

Edison would be enormously prejudiced if it were unable to defend its zoning code mano a mano with these plaintiffs.

The addendum to the complaint attempts to characterize certain of the peculiarities among the various municipalities is inaccurate and erroneous as applied to Edison.

While there is lip service to the effect that the Courts, in its discretion should be cautious about severing actions based upon the complaint alone or before trial, we reiterate that where it is obvious from the nature of the action and the hodge-podge of parties, that in proper cases the suit should be severed before there are undue complications that would thwart rather than promote substantial justice.

We therefore respectfully urge that the motion for severance be quickly granted in this case.

Respectfully submitted,

ROLAND A. WINTER, Attorney for
Defendant, Township of Edison