

Post-trial brief on Behalf of Defendant, Township
of Edison and Supporting Affidavit

pg. 15

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*Post 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, a non-profit corporation)
of the State of New Jersey, CLEVELAND)
BENSON, FANNIE BOTTS, JUDITH CHAMPION,)
LYDIA CRUZ, BARBARA TIPPETT, KENNETH)
TUSXEY, JEM WHITE, on their own) Civil Action
behalf and on behalf of all other)
similarly situated,)

Plaintiffs,)

vs.)

MAYOR AND COUNCIL OF THE BOROUGH)
OF CARTERET, et al.,)

Defendants.)

BRIEF ON BEHALF OF DEFENDANT, TOWNSHIP OF EDISON
AND SUPPORTING AFFIDAVIT

INTRODUCTION

In accordance with the instructions of the Court rendered at the closing of the trial, this brief will be confined to the two points delineated by the Court, i.e. (1) justification of the failure to provide more low and moderate housing; (2) arguments against fair share allocations (and any other potential relief).

It has been the position of the Township of Edison from the onset of this litigation that its defense is essentially a factual one. Accordingly, Edison feels comfortable in restricting its brief to the two areas outlined in the Court's instructions for this brief; however, Edison feels it is necessary to point out, in the event of an appeal, that it does not waive any of the arguments and objections raised during the trial on a vast number of substantive and procedural matters involved in this case.

STATEMENT OF FACTS

The specific charges leveled by the plaintiffs against the Township of Edison in their complaint, are as follows:

1. Edison prohibits mobile homes.
2. It permits multi-family use on only a small amount of land;
3. It requires minimum floor areas in single

family homes from 960 sq. ft. to 1400 sq. ft.

4. It has an excessive amount of land zoned for industry.

5. It has not passed the necessary resolution enabling State Financial Aid to assist low and moderate income families with housing needs.

6. Despite having a public housing authority, it has not constructed units for families since 1963.

By way of affirmative proof, Edison demonstrated, and no contradictory evidence was adduced that:

(1) There are five trailer parks in the Township of Edison, which can accommodate 254 mobile homes and that there is currently a vacancy factor in excess of 10% of the available trailer space.

(2) The "small" amount of land available for multi-family is not small, but enormous; and, while a large number of units are already in place and occupied, an even greater number has been approved subject only to the developers picking up their building permits, and for economic reasons they are not being built.

(3) That there is nothing unreasonable or exclusionary in the minimum floor area requirements from 960 sq. ft. upwards, and that there is a huge number of single family residences at the lowest end of the market place.

(4) The land presently zoned for industrial purposes is entirely reasonable by virtue of the geography of the area when taking into account the unique highway patterns and interchanges, the availability of three major railroads, and the deep water channel along the Raritan River. It must also be considered, as was proven, that the major portions of two huge military complexes came into the private domain within very recent history and the character of those facilities had been already established by the Army's use thereof (i.e. the former Raritan Arsenal and the former Camp Kilmer).

(5) The lack of a resolution of legal approval is easily corrected, if correction is needed, by an administrative act on any two weeks notice. There has not been a scintilla of evidence advanced by the plaintiffs that this is a practical solution in Edison and contrary evidence was offered through the Business Administrator that successful funding for a vast number of units was presently being processed through HUD with Federal moneys.

(6) The Housing Authority of the Township of Edison is in the final stages of implementing a housing project in North Edison, which is creating 866 subsidized units, including apartments, single family homes and townhouse apartments.

Edison also proved, without contradiction, that only 17% of its land mass is available for further development..

POINT ONE

EDISON HAS DONE AN ADEQUATE AND COMMENDABLE JOB IN ACCOMMODATING AND PROVIDING FOR LOW AND MODERATE INCOME HOUSING.

In the affidavit of John Delesandro annexed hereto, it can be dramatically seen that municipalities have a far greater roll in collecting taxes than they do in enjoying the fruits of those collections.

Out of a total of \$35,000,000.00 raised by municipal assessment, the Township's share is roughly \$3,000,000.00 or approximately 8.5% that remains for municipal activities exclusive of education. When it is considered that for every thousand dollars of assessed valuation, it costs the Edison taxpayers \$37.50, it can readily be seen that any large expenditure has a devastating effect on the taxpayers. The roll of the State government in the area of housing has been almost nil. The following is a quote from "Land Use Controls: Present Problems and Future Reform", published by the Center for Urban Policy Research, Rutgers University (1974), at page 107:

M* * * in one way it may be true that New Jersey is a special case. The State Government historically has played a relatively small roll in helping municipalities to finance local services; and so in New Jersey, the pressure has been unusually strong for municipalities to engage in 'fiscal zoning'-- i.e., to use land use controls to attract 'good ratables', primarily non-residential development, and to discourage 'bad ratables', primarily low--and moderate--cost housing."

Edison argues that for this and other reasons, the State of New Jersey was an indispensable party and should have been a party defendant in this suit. Without the State as a party defendant, there can be no effective remedy.

The municipality must perforce operate within the statutory law. It appears impossible to compel by judicial decree a type of planning and budgeting that would inevitably result in bankruptcy.

A fair analysis of a zoning scheme under existing statutory law must take the foregoing into account.

Edison's zoning scheme has demonstrated, by the graphic zoning map which it placed in evidence, that there are no favored or out of balance zones within its borders. Various designated uses must feed each other and compliment each other, not only from the point of adequacy, but also bearing in mind all of the tried and true criteria upon which intelligent zoning is based.

Without deprecating or failing to acknowledge the need for low and moderate income housing within Middlesex County, it has to be said that the accommodation of such housing needs should^{not}/be attained at the expense of all other legitimate criteria.

There is ample judicial precedent for examining motivation during a court test of the validity of municipal legislation. Certainly, there is an area of legitimate

inquiry in determining the validity of Edison's zoning law to inquire into whether or not "fiscal zoning was the only motivation for Edison's Zoning Code; but, we strenuously advance the argument that the other purposes, aims and goals of desirable and legal zoning objectives should be evaluated with equal weight.

Although it is Edison's contention that the burden of proof has not shifted to it, we are compelled to observe that all of the proofs tend to substantiate legitimate objectives and a reasonable balance in the zoning scheme.

Not only have the plaintiffs failed to bring in an indispensable party (the State of New Jersey), but they have fallen far short in demonstrating by affirmative proofs that Edison has historically or potentially excluded its share of low and moderate income housing. The fact is that Edison has an abundance of both, in being, and zoned for future development.

POINT TWO

EDISON HAS MET AND IS MEETING ITS RESPONSIBILITY TO ACCOMMODATE LOW AND MODERATE INCOME RESIDENCES.

Edison is no less disappointed than was the Court itself at the conclusion of the trial to find that the plaintiffs failed to come forward with a viable, credible or reasonable "fair share" plan.

We understood the Court's direction to the defendants to come forward, if possible, with our own concept of a "fair share plan"; however, Edison's defense being essentially factual, we did not engage or retain experts to aid in our defense. Accordingly, Edison does not have the expertise available to offer to the Court such a plan.

It is our contention that any reasonable plan, or formula, whether applied to Middlesex County as an area or to a greater area, will disclose that Edison's roll in the general scheme has been not only adequate, but generous.

At the outset, we urge that Middlesex County, as such, is not a viable or legitimate geographic area that should be constituted as a region upon which to base a fair share allocation or formula. The plaintiffs' attempt to establish Middlesex County as such a region defies our understanding.

Plaintiffs' argument that the County qualifies because it is a "standard metropolitan statistical area" cannot be supported by either reason or by definition.

On page 69, footnote 28, in "Land Use Controls: Present Problems and Future Reform", *ibid*, is the following quote:

"* * *The federal government defines a standard metropolitan statistical area as an integrated economic and social unit with a large population nucleus.

More specifically, 'each standard metropolitan statistical area must contain at least one city of at least 50,000 inhabitants...The standard metropolitan statistical area will then include the county of such a central city, and adjacent counties that are found to be metropolitan in character and economically and socially integrated with the county of the central city. In New England the requirement with regard to a central city as a nucleus still holds, but the units comprising the area are the towns rather than counties.¹ U. S. Bureau of the Census, Standard Metropolitan Statistical Areas 1967, at vii-viii (1967). The New York Standard Consolidated Area consists of the New York SMSA, Newark SMSA, Jersey City SMSA, Paterson-Clifton-Passaic SMSA, Middlesex County and Somerset County. The Chicago Standard Consolidated Area consists of the Chicago SMSA and the Gary-Hammond-East Chicago SMSA. We use 1960 definitions of each SMSA."

By this definition, Middlesex County does not qualify.

Moreover, in the same text, at page 108, the authors identify Morris, Somerset, Middlesex and Monmouth Counties as the "Four Outer Ring Counties" and say:

"* * * j_n traditional planners' jargon, these counties make up almost all the outer ring around the western edge of the New York--New Jersey Metropolitan area."

Again at page 111, of the same text, after analyzing the main corridor running through Middlesex County, the author says:

"Since the substantial amount of vacant land available in Middlesex County may still be relatively small, this corridor also necessarily includes adjacent areas in western Monmouth and southern Somerset.

Notwithstanding our belief that Middlesex County

is **inappropriate** as a zoning district suitable for the establishment of a fair and reasonable fair share housing formula, Edison fails to see on what basis suitable zoning legislation could be enacted without striking down N.J.R.S. 40:55-30 et seq. Here again it is evident that the State of New Jersey was an indispensable party that should have been named defendant in this litigation. In effect, the plaintiffs' argument launches a collateral attack on the zoning laws of this State.

If a thread of rationale can be gleaned from the dissent in *Vicars v. Gloucester Twp.*, 37 N.J. 232, 181 A.2d. (1962) 129, and the opinions in *DeSimone v. Greater Englewood Housing Corporation*, 56 N.J. 428, 267 A.2d 31 (1970), and the landmark case of *Southern Burlington County N.A.A.C.P. vs. Mt. Laurel Township*, 67 N.J. 151, 336 A.2d 713, it is that local governments are under an affirmative duty to make appropriate provisions for all groups in the population, including low and moderate income people. Edison finds nothing in either the rationale or the specific language of the **decisional** law which deprives the local government of the right to employ its judgment in determining needs and provisions on a local basis.

If that be so, we suggest to the Court that Edison has acquitted itself in a laudible affirmative way and that plaintiffs' entire case against Edison merely


quibbles on matters of judgment.

If that be so, the plaintiffs simply want to substitute their judgment for that of the elected officials who have the responsibility of fulfilling their respective offices.

CONCLUSION

For the reasons set forth, Edison feels that the plaintiffs have not made out a case sufficient to strike down the zoning laws of the Township of Edison. Moreover, as will be seen from the affidavit of the Business Administrator annexed hereto, the Township of Edison has a present and future rehabilitation plan under HUD programs with federal moneys for rehabilitation and modernization funds.

Respectfully submitted,



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Township of Edison

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Defendants.)

STATE OF NEW JERSEY)
) ss. . . .

COUNTY OF MIDDLESEX J

JOHN DELESANDRO, of full age, being duly sworn ;
according to law, upon his oath, deposes and says:

1. I am the Business Administrator of the Township ;
of Edison and as such am familiar with the local budget ;
and our present HUD programs.

2. The 1976 Municipal budget discloses that
approximately \$35,000,000.00 will be raised by local taxation \
of which Middlesex County receives \$8,000,000.00 or 23%,
the municipality retains approximately \$3,000,000.00 which

is approximately 8 1/21 and the balance of \$24,000,000.00 is allocated for schools and education. Without going into ratios, assessments and the like, the actual tax bill per tax payer works out to the equivalent of about \$37.50 per \$1,000.00 of assessed value.

The Township of Edison through its Housing Authority Administrator at the present time shows 160 units of subsidized housing, which breaks down to 90 units in the North Edison Gardens and 70 units in the Julius Engel Apartments.

As I testified during the trial, the Housing Authority is presently awaiting approval for the development of 251 single unit houses, 240 Senior Citizen apartments and 375 townhouses under the 2-3-6 program administered by HUD.

3. During the past four years the Edison Township Housing Authority has done rehabilitation work at the North Edison Gardens and Julius Engel Apartments utilizing \$793,000.00 of HUD money. The present and existing application with HUD provides for an additional \$612,450.00 for further modernization funds.

4. In addition to the foregoing, Edison Township is participating in the Community Development Block Grant Program. Under this program, are the following project figures:

1975	-	\$30,000.00 for rehabilitation of substandard housing.
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1976 - \$ 68,000. for rehabilitation grant loans.

1977 - \$ 70,000. for rehabilitation grant loans.

5. Under the same program, there is presently projected the following amounts for replacing deteriorating curbs and gutters in specified low income house areas as follows:

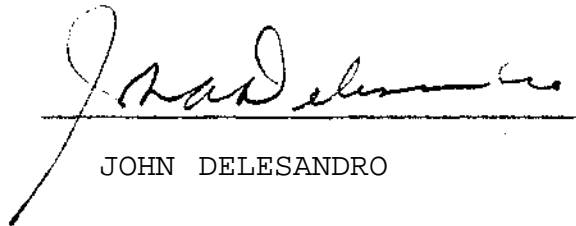
1976 - \$ 70,000.00

1977 - \$ 70,000.00

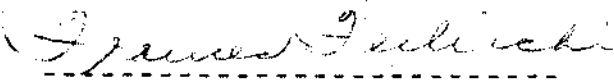
In addition to all of the above, the Township of Edison has projected for the rehabilitation and upgrading of North Edison Gardens, specifically installation of new exterior siding, as follows:

1976 - \$ 37,000.00.

1977 - \$ 63,000.00.

 (LS.)
JOHN DELESANDRO

Sworn and subscribed to
before me this 6th day
of April, 1976.



FRANCES FERLICCHI
Roiary Public of New Jersey
"My Commission Expires May H 1978"