

CA - Edison

9/24/76

motions by twp - transcript

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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
DOCKET NO. C.-4122-73  
APPEAL NO. 4720-75

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URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, et als.,

Motions by Township of  
Edison

Plaintiffs,

v.

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

Defendants.

Middlesex County Courthouse  
New Brunswick, New Jersey  
September 24, 1976

BEFORE : Honorable David D. Purman, J.S.C.

TRANSCRIPT ORDERED BY:  
Attorney for the Plaintiffs

APPEARANCES: Daniel A. Searing, Esq.,  
-and-  
Marilyn J. Morheuser, Esq.,  
Attorneys for the Plaintiffs  
  
Roland A. Winter, Esq.,  
Attorney for Township of Edison  
  
Alan J. Karcher, Esq.,  
Attorney for Borough of Sayreville

Stanley Grabon, C.S.R,

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MR.. WINTER: May it please your Honor, I have given a lot of thought about how to present this argument. It is unique to me in that it seems so obvious and simple and mathematical.

I considered resting on my moving papers, wondering at this late stage that the Urban League would have the temerity, would have the nerve to say that more than enough is still not enough.

Thanks to Mr. Karcher I got a copy from him of their objections to my motions, and now I have got to argue this. Your Honor, I waited a long time to make this argument, because all during the trial I maintained that the very recent master plan as implemented by the zoning ordinance of the Township of Edison was sincere in an effort to meet the obvious needs of its moderate and low income families, and that the administration of the Township of Edison worked seven" years on developing these plans and did so carefully with not only qualified, but very devoted planners.

\* Their efforts did make that provision, and I had every confidence thf despite the attack by/ the Urban League that the Township of Edison and its officials that enacted our present zoning law would be vindicated in this trial.

1                   Unfortunately, during the trial process, the  
2 plaintiffs, and I argued this during the trial, as  
3 your Honor will well recall, never came forward with  
4 an adequate formula by suggestion or proof or  
5 competent witness that would have provided to the  
6 defendants a measure, a guide, a rule to apply to our  
7 various zoning ordinances to see whether or not even  
8 by their standards we complied or we did not comply  
9 with their concept of fair share housing for a region.

10                   It took your Honor in the final analysis to  
11 provide us with that indispensable formula, and you  
12 laid it down, your Honor, in your decision at Page  
13 33, wherein you said that the guidelines could be  
14 considered as being reasonable if in the single-  
15 family residential areas, four single-family units  
16 to the acre were permitted. In the area of mobile  
17 homes, if between five and eight mobile home units  
18 could be permitted, and in multi-family zone areas  
19 if at least ten to the acre could be permitted.

20                   Edison's zoning law is in evidence, your  
21 Honor, and you will note that our mobile home units  
22 have a much higher rate of density than the minimum  
23 standards that you laid down on Page 33, and our  
24 multi-family units permit fifteen to the acre, but  
25 not ten.

1 By the standards laid down by your Honor we  
2 have arrived at a formula and applied it to our  
3 zoning map and we have had and we find that as zoned  
4 we have qualified under your definition and your  
5 formula a total of 5,957 units properly zoned for  
6 which no variance or anything else are required.

7 Your Honor also said that Edison's fair  
8 share currently is twenty-two hundred, and through  
9 1985 an additional 1,292 units. That's at pages 19  
10 and 32, your Honor, of your decision. The grand  
11 total of those through 1985 comes out to 3,492.

12 Now, your Honor also said at the very end of  
13 your decision that units where applications have been  
14 made that will eventually lead to the issuance of  
15 building permits, but for which no building permits  
16 have been issued as of the date of your decision, the  
17 municipality shall receive credit therefor.

18 In that case, your Honor, when I collated  
19 the information to prepare the affidavits, there was  
20 a conservative number of 2,907 under application.

21 \* I represent to your Honor that between that  
22 day and this there are almost two hundred additional  
23 applications in that category of residential use  
24 pending before the various boards and zoning board,  
25 planning board, site plan review committee, et  
cetera, on their way to approval.

1 Included in this, your Honor, are subsidize!  
2 housing in the many, many, many, many hundreds;  
3 all of which we proved during the trial.

4 Now, your Honor, Edison has gone far beyond  
5 the minimum requirements laid down in your decision,  
6 \*  
7 and I shall refer to them as just the moral  
8 responsibility that municipalities have to repair,  
9 restore, engage in federal programs, to encourage  
10 not only the construction of new, but the rehabili-  
11 tation of old.

12 We had several ongoing programs which were  
13 all adduced at the time of trial, and I did not  
14 repeat these in my moving papers, but we do have a  
15 brand new comprehensive plan which I attached to my  
16 moving papers in toto.

17 Your Honor, as I look at the plaintiffs'  
18 alleged objections to my motion, I have to say that  
19 they are fortunate that Judge Purman is the judge  
20 and not I. For them to say on Page 2 that our  
21 affidavits are irrelevant because there is no  
22 showing—paragraph 3 at the bottom. There is no  
23 showing made that such possible new units are to be  
24 low and moderate income units. I think that's an  
25 insult to the Court because your Honor has defined  
that very phrase.

1           Your Honor has said in your decision that  
2           those qualifications are to be determined as having  
3           met those qualifications if you can get four single  
4           families to an acre, If you can get ten multi-  
5           families to an acre, or if you can get between five  
6           and eight mobile units to an acre.

7           For the plaintiffs to say at this late stage,  
8           after having failed to prove what their formula is,  
9           that your formula doesn't define it, that is nothing  
10          less than an insult. I think it is of great temerity  
11          for these people to argue that there is no formula  
12          and that the formula you laid down is insufficient  
13          to test the number of units that Edison actually has.

14          MR. SEARING: The plaintiffs stand by every  
15          word in their memorandum opposing Edison's motion.

16          I would just like to point out that your Honor's  
17          opinion on Page 33 in which you are indicating that  
18          within each municipality there may be certain  
19          flexibility of densities, you state that multi-  
20          family housing encompassing a diversity of housing  
21          but with mandatory minimums of low and moderate  
22          income units. You go on to talk about the densities  
23          in mobile homes.

24          What Edison has presented in its affidavits  
25          are totals of units which may or may not be built,

1 but which certainly no showing has been made that  
2 these units are to be made available to low and  
3 moderate income citizens, and as I read the opinion,  
4 that's what the issue in this case was all about.  
5 It is not simply how many new housing units in each  
6 municipality could be built under present exclusionary  
7 zoning provisions.

8 We would stand on our opposition to Edison's  
9 papers as being in any way in compliance with the  
10 judgment.

11 THE COURT: Well, the judgment has two  
12 approaches, Mr. Searing, correct? One is that the  
13 municipalities other than the three very—the three  
14 large townships with very substantial vacant acreage—  
15 and the other eight have the alternatives of rezoning  
16 all of their vacant acreage to provide the minimums  
17 required after correcting the imbalance, or alterna-  
18 tively, to rezone the vacant acreage specifically to  
19 provide these proportions of low and moderate  
20 income units.

21 « Now, I don't think that I foresaw this, and  
22 I don't know that the plaintiffs foresaw it, but  
23 Mr. Winter seems to have foreseen it during the  
24 course of the trial. But it seems to me a very  
25 serious argument that present zoning does provide



1 the potential for this number of low and this number  
2 of moderate income units.

3 MR. SEARING: Your Honor, I would have to  
4 say that that's not so, absent requirements in the  
5 zoning ordinances similar to those found and  
6 commended by your Honor in Plainsboro. There's been  
7 no showing that any of the applications under  
8 process now are going to be or to go toward low and  
9 moderate income housing other than the oral repre-  
10 sentations that Mr. Winter just made about the  
11 hundreds and hundreds of units that would apply.

12 To my knowledge the only units to which  
13 those statements apply are the eight hundred units in  
14 the urban renewal area which Mr. Winter says or  
15 Mr. Godwin says in his affidavit that are not  
16 included in the single-family and multi-family units.

17 If Mr. Winter can show me some evidence that  
18 the units which he is discussing in this area at  
19 the density subscribed are available to the plain-  
20 tiff class, then I think that it would be a serious  
21 argument. Absent that showing, it is not, your  
22 Honor.

23 THE COURT: Well, I would almost think that  
24 you are seeking a rather unusual form of relief here,  
25 Mr. Winter, and also you, Mr. Karcher. You are

1 seeking an order of dismissal or an order of compliance  
2 with the judgment. Isn't that-right?

3 MR. WINTER: Yes, sir.

4 THE COURT: All right. Now, speaking of all  
5 eleven municipalities, Mr. Searing—as a matter of  
6 fact, I have a letter today from the Planning Board,  
7 the Planning Board attorney in Old Bridge Township.  
8 I think he sent a copy to you. He says that a  
9 certain number of low and moderate income units had  
10 been approved.

11 Now, it seems to me that in monitoring the  
12 judgment, that it may very well be that the munici-  
13 palities would send to the Court, with a copy to  
14 plaintiffs' attorneys, the specific facts as to new  
15 units added that fit within low and moderate income.  
16 Of course this would be particularly appropriate or  
17 significant where there is multi-family housing.

18 In other words, Mr. Searing, I would tend  
19 not to grant the motions today, but to suggest a  
20 procedure to apply to all municipalities that they  
21 submit to the Court with copies to counsel for the  
22 plaintiffs specific information as to new units  
23 added and then, for example, I would suppose that if  
24 Edison in the course of a year or two years, if it  
25 supplies data that they have replaced the present

1           substandard housing, that they have met or provided  
2           the number to correct the imbalance, that they have  
3           also provided the one thousand three hundred thirty-  
4           three units, they would at that time be in compliance  
5           with the judgment.

6                        Would you agree with that?

7                        MR. SEARING: Yes, sir, I would agree with  
8           that, providing that there are some assurances that  
9           the units we are discussing are low and moderate  
10          income units and not simply units which are being  
11          built on the open market today for middle and upper  
12          income families.

13                      THE COURT: Yes, of course. It would have to  
14          be satisfied, of course.

15                      Now, here is a letter from the Planning Board  
16          attorney in Old Bridge Township. He says, "Please be  
17          advised that the Planning Board is currently  
18          processing an application for one thousand two  
19          hundred fifty-six garden apartment units. A sub-  
20          stantial proportion of these garden apartment units  
21          qualify as low and moderate income housing.  
22          Upon final approval the Planning Board shall notify  
23          the Court and the developer and request appropriate  
24          credit therefor."

25                      I'm not sure that I foresaw the way that the

1 judgment would be implemented, but it seems to me  
2 that this would be an effective way of doing it.

3 MR. SEARING: Yes, sir. Plaintiffs intend  
4 request from Old Bridge how they assure that those  
5 units are for such low and moderate income. Hope-  
6 fully, they are and that they qualify under some  
7 subsidy program or there are tax abatements or there  
8 are satisfactory methods which the judgment dis-  
9 cusses to insure that the units are low and moderate  
10 income units.

11 MR. WINTER: May I be heard, your Honor?

12 THE COURT: Yes.

13 MR. WINTER: The last series of colloquy  
14 between you and Mr. Searing leave me with the  
15 unmistakable impression that the numerology set  
16 forth in my moving papers is now insufficient,  
17 because a new ingredient that I did not see in your  
18 decision, not did I see in the final judgment which  
19 implemented that decision, is now present.

20 THE COURT: You mean; replacing substandard  
21 housing?

22 MR. WINTER: Not substandard housing, your  
23 Honor, but there seems to be another qualification  
24 that somebody at certain income levels can afford or  
25 have subsidized whatever is built in the zones that

1 we allocated for low and moderate income housing.

2 I argued during the trial, and I honestly  
3 felt, your Honor, that you were extremely close to  
4 dismissing Edison after my argument on my motion for  
5 dismissal because I have maintained down the line  
6 that the only thing a municipality can do beyond its  
7 moral obligation to apply for federal programs, and  
8 it cannot do so out of its tax revenues, is to zone  
9 land to permit low cost and moderate cost housing.

10 There is no way that our building department,  
11 our building inspector, our planning board, our  
12 zoning board, our site plan review committee can put  
13 its finger in the face of a builder or developer and  
14 say that notwithstanding you have sufficient acreage,  
15 notwithstanding that your filed plans satisfy the  
16 traffic, the elevations, the sewers, the roads, not-  
17 withstanding that your shrubbery satisfies our  
18 esthetic sensitivities, we are going to deny you this  
19 building permit unless you go to the government and  
20 build some kind of a federal program so that the  
21 low and moderate income people can afford to live  
22 here.

23 We do not have the political power or the  
24 constitutional power to insure that. To attach  
25 additional conditions to our unqualified overflow of

1 housing as determined by your Honor's formula is  
2 after the fact. I must say this to your Honor, I  
3 have taken an undeviating position in this case,  
4 limited participation because I have lived with our  
5 master plan and our zoning law, and I know that we  
6 provided for the poor and moderately poor.

7 I took that position unequivocally during the  
8 course of the trial. I counseled my township council  
9 and my mayor and my boards. Now your Honor's  
10 formula comes down and everybody understands that  
11 Edison was not only minimal with the requirements to  
12 meet its obligation to the low and moderate income  
13 families, it was magnanimously generous.

14 It has twice as much as the formula provides.  
15 To say now that we have to do something for  
16 Mr. Searing to qualify these numbers after the  
17 application of your Honor's formula is something  
18 after the fact and never took place during the trial.  
19 I want to say one other thing, your Honor. It is  
20 all well and good, and Mr. Searing is duly qualified  
21 to try this case, but he comes from Washington. I  
22 have a nightmare about this case that it is the  
23 Urban League and Mr. Searing that are never going to  
24 be satisfied until Middlesex County is one huge,  
25 solid block of multi-family units stacked five high,

1 made out of old pop bottles and beer cans, because  
2 that's the only material that will satisfy a private  
3 developer to build this kind of housing without  
4 sudsidation.

5 I don't know what more Edison can do. We  
6 can't constitutionally deny the building permits.  
7 We have got more than twice as much as your Honor  
8 required.

9 I find myself procedurally in a position  
10 where I have written to the Appellate Division and  
11 said I like the decision below. I intend not to  
12 appeal or participate in the appeal, because there's  
13 plenty of contests on both sides, and I like the  
14 formula. I like the decision.

15 I have not applied for a stay. I have got  
16 my Township on a timetable where we are preparing  
17 **for**-the Land Use Ordinance that's got to be adopted  
18 by February the 1st, and the only alternative that I  
19 have, if more is not enough, if too much is not  
20 enough, is to make an immediate application to appeal  
21 just this motion because it is not interlocutory  
22 any more. It is final now. I won't agree to  
23 satisfying Mr. Searing.

24 He's welcome to come to my town hall and see  
25 my programs and know what we are doing with our

1 money, but I'm not going to consent to an order by  
2 this Court at this stage to ran that part of the  
3 department to the satisfaction of Daniel Searing,  
4 and'I don't think that the Court should order it.

5 THE COURT: We might hear from Mr. Karcher.

6 MR. KARCHER: Thank you, your Honor. I  
7 wanted to in many ways reiterate what Mr. Winter has  
8 said, although he has done it very persuasively,  
9 very convincingly as far as I am concerned.

10 We in Sayreville also shared Edison's  
11 enthusiasm for the initial opinion and what we under-  
12 stood that opinion to hold.

13 The numerology was, as far as Sayreville-  
14 Sayreville had the abiding conviction throughout the  
15 trial that we were providing and we had spent tens  
16 upon tens of thousands of dollars in redoing our  
17 master plan and adopting our PUD, and we had that  
18 conviction throughout the trial that we were taking  
19 care of and providing for the moderate and low income  
20 families.

21 The guidelines as Mr. Winter said, the  
22 guidelines that appeared in your opinion, your  
23 Honor, were very satisfactory. All we have done in  
24 the memorandum attached to our moving papers is we  
25 had our planner prepare, within the framework of that



1 opinion, exactly what Sayreville does, and of course  
2 the numerology works out to mathematics and they are  
3 irrefutable.

4 We have more, we have double the amount that  
5 the guidelines set down and are called for in that  
6 decision. We have excluded single-family—even  
7 excluding single-family detached residences, we still  
8 have 4,869 potential units, all of which qualify  
9 under the terms of the formula of more than four per  
10 acre of single-family dwellings and something like  
11 twenty-five hundred apartments at a density of twelve  
12 to an acre.

13 To pass on for a moment, your Honor, I just  
14 think that those figures, they are unequivocal and  
15 they are Irrefutable. There is no other conclusion  
16 that can be reached except the fact the Sayreville  
17 has more than enough\*

18 Now, I don't know how plaintiffs can say  
19 more than enough is not enough, but we are not in a  
20 position to go out and recruit people, your Honor.  
21 Are we supposed to drag them in, as the Gospel says,  
22 from the by-ways and highways and tell them that you  
23 have got to come and you have got to live in  
24 Sayreville whether you like it or not?

25 We can't do that. I don't think that anybody

1 ever envisioned us to do that.

2 All we can do as governmental entities is to  
3 provide a framework and provide a basic zoning docu-  
4 ment that will allow the marketplace to work with  
5 certain incentives.

6 Those incentives do not work, it is not our  
7n fault. We can't be held responsible for it. We  
8 can't possibly be held responsible for it.

9 I would also like to mention, your Honor,  
10 with what-you are saying about as to monitoring, if  
11 that is true, Sayreville has had a very unique  
12 position since the time of this trial. We have had  
13 an extremely unique situation where I would say that  
14 because I know for the figures that we are preparing  
15 for submission to the federal government with regard  
16 to the public works administration, that many familids  
17 in Sayreville, residents there now have dropped  
18 down, have slipped back into what are low and  
19 moderate income levels, and I would say that any  
20 Census taken today would show that Sayreville has  
21 already met that.

22 If it is going to be a system that is based  
23 upon how many people in that category presently  
live there, there is no question that we far surpass  
25 at this given state in time the county average of

1 low and moderate income families residing within the  
2 Borough of Sayreville.

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With the grace of God that may be only a temporary situation, but as it stands in hard reality today, without question the economic realities of the income statements for the year 1976 will reflect that Sayreville, taken as a whole, has higher than the County average in moderate and low income families because there are six hundred and some odd residents who have had no salary whatsoever this year except for twenty-five or thirty dollars per week.

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So at this moment we more than qualify. I think that we have to get credit for that. Even with that aside, with that taken as a tangential issue, the facts remain that they are not irrelevant as plaintiffs contend. We do have on paper and our zoning ordinance comports with exactly the guidelines that your Honor has set forth in the opinion and the numbers cannot be refuted.

\*\* Thank you.

MR. WINTER: One more word, your Honor, before Mr. Searing rebuts. I ask you to take note of two things from my affidavits.

I argued during the trial that the governing

1 body is powerless to do anything but zone in  
2 accordance with reasonable standards to permit mod-  
3 erate and low cost housing. I reiterate that today.

4 I want to point out to your Honor that the  
5 argument that I made during the trial, the economic  
6 situation was such that a lot of this land that was  
7 zoned to permit the type of dwellings we are talking  
8 about here was unused. I think that it is a remark-  
9 able figure that from the date of your decision,  
10 your Honor, we have had up until today three thousand  
11 one hundred seventy-two apartment dwellings applied  
12 for.

13 Now, the economy is pushing the development  
14 of this land and these things will be built and they  
15 will be occupied. But the other side of the coin is  
16 not similarly true, your Honor. If by virtue of your  
17 decision, and if you had taken a different formula,  
18 it was necessary for Edison to take, let's say, a  
19 thousand acres from whatever, and then put it into  
20 multiple and small lot single-family residential,  
21 there would be nothing in that to create the drive,  
22 the impetus for the actual buildings to house the  
23 people.

24 It takes an economic impetus, whether it is  
25 subsidy from the federal government or demand for

1 housing, whatever it is. It is an impetus that  
2 doesn't lie within the power of the municipality.

3 So the argument of Mr. Searing that we have  
4 got to do more than provide high saturation and high  
5 density land should fall on deaf ears when your Honor  
6 hears it because there isn't anything constitutionally  
7 that the municipality can do.

8 Edison is doing something by making available  
9 to its residents every conceivable type of federal  
10 program.

11 If Mr. Searing wants to kind of guarantee  
12 that the next administration will do it, make it  
13 available, we'll include that in the order; but there  
14 is nothing in the constitution or background of the  
15 behavior of Edison to indicate anything but that  
16 this is one of the most farsighted communities,  
17 sensitive to the needs of the moderate and low  
18 income families in the entire area.

19 MR. SEARING: Your Honor, I think that the  
20 rhetoric in this argument is rapidly overtaking  
21 reality. There has been no new zoning in either  
22 Sayreville or Edison that I know of. There have  
23 been no new opportunities for low and moderate income  
24 families. There have been no trials of any incen-  
25 tives that Mr. Winter and Mr. Karcher have dis-

1 cussed.

2 The point that I am trying to make is that  
3 there is one column missing from all of these affi-  
4 davits regarding new units, and that is the rental  
5 ranges and the purchase prices.

6 If we had that kind of column to match up  
7 with your Honor's opinion regarding low and moderate  
8 income units, regarding the definition of low and  
9 moderate income, then we could make a judgment.

10 Absent that, we cannot.

11 THE COURT: It might be determined that at  
12 that time that Edison had met its fair share and  
13 Sayreville had met its fair share.

14 MR. SEARING: Provided we had those figures,  
15 yes, sir. There then could be such a determination.

16 THE COURT: Well, I think that there are two  
17 alternatives this afternoon. One would be for an  
18 attempt even now to secure an agreement with counsel  
19 for Edison and with counsel for Sayreville as to  
20 terms similar to those applying to Woodbridge,  
21 Helmetta, and Militown, and so forth.

22 In other words, I am talking about a condi-  
23 tional dismissal.

24 The other alternative would be that - well,  
25 I've indicated that at some point there can be an

1 order of compliance and I would, as I stated  
2 earlier, view the applications now as premature until  
3 there is specific information as to rentals or purchase  
4 price of houses or whatever it may be.

5 \* MR. WINTER: I really didn't follow that.  
6 What information is that?

7 THE COURT: Well, 1,256 units are being built.  
8 Two hundred twelve of them will rent at \$200 a month  
9 or whatever it is.

10 MR. WINTER: Unfortunately^ I won't have that  
11 information to me until the new ordinance goes into  
12 effect, which has nothing to do with this now. We  
13 passed a new aspect to our rent ordinance where we'll  
14 have a firm handle on rentals.

15 Would your Honor do this? If you have any  
16 hesitancy at all that it might be premature, and you  
17 have voiced that it is, continue this matter subject  
18 however, that the requirement to pass and adopt a  
19 new ordinance is stayed and give me a month to continue  
20 this motion to give you the information on how much  
21 apartments rent for in Edison Township. I'll give it  
22 to you unit by unit and then with all of them in it,  
23 and then I will supply that information to you. But  
24 I have to say in all frankness, your Honor—

25 THE COURT: We are not talking about existing

1 housing. We are talking about housing to be built.

2 MR. WINTER: How am I going to know that,  
3 your Honor? Where possibly—Xl'ranot clairvoyant.

4 THE COURT: As I say, I think it's premature.  
5 I think that what is being carried out in Old Bridge  
6 is what I would have in mind. We don't have to have  
7 the rentals. We don't require Mr. Karcher to go out  
8 on the highways and by-ways and round people up. It  
9 is enough that there are units there.

10 MR. SEARING: I'm going to contact counsel Jn  
11 Old Bridge and determine exactly how they made that  
12 representation.

13 Plaintiffs are going to require more evidence  
14 than a simple affidavit that these are a thousand low-  
15 and moderate; income units. No builder worth his salt  
16 starts any construction project without having some  
17 idea of how much he wants to market those houses for,  
18 and I suggest to counsel that they go ask the  
19 builders what the rental ranges are going to be.

20 MR. WINTER: With all due respect, I'm not  
21 interested in that. I read your decision, and I am  
22 enamored with it, and I want to live or die by it.

23 THE COURT: You disarm me when you say that.

24 MR. WINTER: I'm not interested in going out  
25 and canvassing buildings or having any township



1 personnel in the township going out and canvassing  
2 buildings. I think that I understand your decision.  
3 I think I understand your judgment.

4 I do not want to negotiate backwards from  
5 that with Mr. Searing. I want to live by your  
6 decision and judgment.

7 I want your Honor to tell me as a result of  
8 this motion whether I have more, as much as, or less  
9 than what is required by your formula, and that's all  
10 that I want.

11 MR. KARCHER: Might I be heard? I think that  
12 that is something that is essentially in the applica-  
13 tion of both Mr. Winter and myself and I have  
14 discussed this at length with my town and they have  
15 read and I have given them the opinion, and they  
16 cannot understand how these numbers can be changed.

17 What would be the P<sup>o</sup>i<sup>nt</sup> in adopting a new  
18 ordinance that would create even greater numbers?  
19 If our numbers are satisfactory within the framework  
20 of the opinion, what possibly could be solved and  
21 what possibly could be gained by putting in another  
22 ordinance?

23 We don't want to go through the expenditure  
24 of thousands upon thousands of more new dollars to  
do what?

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If we already have in excess of the number required, what is the point in adopting a new ordinance?

The only thing that is ever going to tell is time in that respect, and if that's what Mr. Searing wants and if his argument is that the only proof of the pudding is in the eating, then we really do need time.

We are not going to have this solved in one month or one year or two years. We can't determine all of these factors which he talks about, the rental levels and the cost per house. They are all variables. This is all variables. They will shift from year to year and day to day.

The one thing that Sayreville would likely care about is we would like a ruling if we are going to be mandated to adopt a new ordinance. We can't see what would possibly be accomplished by that. We can put in a provision to say fifty units per acre; <sup>anc\*</sup> if a builder comes in and wants to put in marble floors and gold walls, they are still not going to rent at the levels that Mr. Searing wants them to. That's not going to accomplish anything.

What we would really like to acquire today, the ruling or decision from this Court as to the fact

1 that our present ordinance as far as the numbers are  
2 concerned is satisfactory.

3 MR. SEARING: Mr. Karcher and I find our-  
4 selves in agreement that we don't want builders coming  
5 in putting up gold and marble units which are going to  
6 rent above the ranges which low and moderate income  
7 citizens can afford, but you can't determine compli-  
8 ance with the judgment solely on the basis of number.  
9 It just cannot be done.

10 I don't understand the attempt by these two  
11 communities to take one small portion of your Honor's  
12 opinion, deleting a sentence regarding mandatory  
13 minimums of low and moderate income units, and try to  
14 build their case for compliance around it. I think  
15 that your Honor's ruling is clear. We need the  
16 other figures.

17 THE COURT: I would like you to respond,  
18 Mr. Searing, and possibly you are not ready today  
19 and this would take some time, but I think it is a  
20 serious contention on both sides. I can't say that  
21 I foresaw it.

22 Now, deficiencies are pointed out in the  
23 zoning ordinances of both Edison and Sayreville, but  
24 I think that you would tend to agree that those were  
25 the two of the eleven municipalities that were most

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marginally in the case. Would that be fair to say?

MR. SEARING: Well, I wish that your Honor wouldn't ask me that.

THE COURT: All right. Certain infirmities were pointed out in the zoning ordinances in both Edison and Sayreville. Now, Mr. Winter and Mr. Karcher apparently are not proposing to delete or rectify those particular infirmities.

For example, looking at Sayreville, the minimum lot sizes for planned unit developments are excessive. It is not proposed that those be reduced. What is proposed is looking just at the judgment, that they already have zoned their vacant land, existing zoning of their vacant land. This, of course, was not clear on the facts brought out at the trial. The existing zoning of their vacant land now provides the potential for the allocation to those respective municipalities.

I think that it has to be a serious contention here. I would suggest that an additional thirty days beyond October 7th be given to both Edison and Sayreville, and that more specific information as to rentals, for example, or multi-family housing detail suggesting that low and moderate income units can be built may be supplied by the municipalities, and the

1 I would like to have an argument supported by briefs  
2 as to why this is not in compliance.

3 I had tended to think that compliance would  
4 be determined over a period of years as units were  
5 built and proof was supplied to the Court that they  
6 fit within or a proportion of the units fit within  
7 the definition of low and moderate income.

8 I had tended to think that it would be a  
9 matter of monitoring or supervision over a period of  
10 years, maybe until 1985.

11 These municipalities are pressing for some-  
12 thing sooner. Possibly we have to reopen the hear-  
13 ing just looking at the vacant land and making factual  
14 determinations.

15 As I say, it is not something that I foresaw.  
16 Mr. Winter and maybe Mr. Karcher did foresee it.

17 The only order today will be an additional  
18 thirty days to both Edison and Sayreville.

19 MR. WINTER: Your HONor indicated that you  
20 want briefs. From the way that you framed the  
21 query, may we expect that we will receive Mr. Searling's  
22 brief before we respond?

23 THE COURT: That may be, but I also suggest  
24 to you that further specific data might be valuable

25 MR. WINTER: To that end could I ask that

1 you presume upon your Clerk to provide me a photo-  
2 stat of a letter from the planner in Old Bridge that  
3 impressed you so that I could have some guidelines  
4 to furnish you with the kind of information that you  
5 want?

6 # . .

7 THE COURT: This is as to specific proposed  
8 construction, something before the planning board.  
9 I take it that you have a number of projects open,  
10 too.

11 MR. WINTER: Yes, we do, sir. This would be  
12 of particular interest to me. I might be able to  
13 present you with something concrete.

14 MR. KARCHER: One last question. Will your  
15 Honor also entertain, as I mentioned before, addi-  
16 tional data with regard to the changing demographic  
17 of Sayreville and the fact at the moment that we-

18 THE COURT: I hope that's a temporary condi-  
19 tion, Mr. Karcher. I'm familiar with it from other  
20 litigation before this Court.

21 MR. WINTER: Are you fixing another return  
22 date, your Honor, for this adjournment or just  
23 approximately thirty days?

24 THE COURT: Well, what was the date? Was it  
25 October 7th? That becomes November 6th then.

1 MR. SEARING: That's Saturday, your Honor.

2 November 5th?

3 MR. WINTER: He even wants the extra day.

4 MR. SEARING: Or the 12th, your Honor? We  
5 will give them another week.

6 THE COURT: All right. November 12th.

7 MR. WINTER: When do you want us back here,  
8 your Honor? Do you want to fix a date for that,  
9 or shall we make another motion or are you continuing  
10 this motion or what?

11 THE COURT: I thought that we were making  
12 it November the 12th.

13 MR. WINTER: All right. That's okay.

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15 **II** : **\*\*\*\*** **\*\*\*\***

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CERTIFICATION

I, STANLEY GRABON, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript.



STANLEY GRABON, C.S.R.