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- Trial Brief of Borough of Milltown Concerning Special Factors
- Cover letter to judge

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Borough of Milltown  
Middlesex County, New Jersey

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April 15, 1976

Hon. David D. Furman  
Middlesex County Court House  
P.O. Box 964  
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick, et al  
vs. The Mayor and Council of the Borough of  
Milltown, et als  
Docket No. C-4122-73

Dear Judge Furman:

Enclosed is trial brief on behalf of the defendant,  
Borough of Milltown. Copies of the brief will be served  
upon all attorneys of record.

Respectfully yours,

  
Charles V. Booram

CVB:ark  
enc.

cc: All Counsel

SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al

Plaintiff

vs.

THE MAYOR AND COUNCIL  
OF THE BOROUGH OF  
MILLTOWN, et al

Defendant

DOCKET NO. C-4122-73

CIVIL ACTION

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TRIAL BRIEF OF BOROUGH OF MILLTOWN  
CONCERNING SPECIAL FACTORS

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CHARLES V. BOOREAM  
Attorney for Borough  
of Milltown  
199 North Main Street  
Milltown, N.J.

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PRELIMINARY STATEMENT

The Borough of Milltown joins in the brief submitted by the Borough of Metuchen. In addition thereto we present this brief to cover special circumstances relating to the Borough of Milltown.

POINT I

MILLTOWN IS NOT A DEVELOPING  
MUNICIPALITY UNDER MOUNT LAUREL  
NOR IS ITS ZONING EXCLUSIONARY.

In Southern Burlington County N.A.A.C.P. v. Laurel Township, 336 A2d 713 (1975), (hereinafter Mt. Laurel) Mt. Laurel was referred to as a flat, sprawling township of 22 square miles, or about 14,000 acres in area. The Borough of Milltown on the other hand is one of the smallest municipalities in Middlesex County consisting of only 1.6 square miles or approximately 1,025 acres in area. Milltown is completely surrounded by North Brunswick and East Brunswick Townships and has no possibility of expansion. Practically all of the private property in Milltown is fully developed or built upon. The most accurate estimates obtainable reveal only approximately 100 acres of undeveloped land in the Borough of Milltown.

In Segal Construction Co. v. Zoning Board of Adjustment, Borough of Wenonah, (hereinafter Wenonah), 341 A2d 667 (A.D. 1975), 348 A2d 536, Petition for Cert. den., the Court stated:

"We conclude that the Borough of Wenonah remains unaffected by Mount Laurel. Wenonah is not a municipality of "sizeable land area;" it occupies scarcely one square mile of space. (Mount Laurel was described as a "sprawl-

ing township, 22 square miles, or about 14,000 acres in area"). Of the 660 acres which comprise this tiny borough, only 109 acres have yet to be developed and the only sizeable tract available for multi-family construction is the 41 acre parcel upon which Segal, as contract purchaser, proposes to erect its 340 unit condominium complex. In the Township of Mount Laurel, 65% of the township's land area remains vacant or devoted to agricultural use. Wenonah cannot therefore be regarded as one of the developing communities of "sizeable land area" to which the requirements imposed by Mount Laurel apply." Supra at 668

Wenonah had 109 of its 660 acres available for development while Milltown has only 100 of its 1025 acres available for development. Wenonah like Milltown was not a wealthy community. The average value of one family houses was \$23,000 with most of the houses valued at between \$25,000 to \$35,000. In Milltown the 1970 census figures reveal that over 27% of the one family houses were valued at \$20,000 or less while over 86% were valued at less than \$35,000.

In Wenonah the court stated that "Requiring multi-family use of this last sizeable parcel of developable land within this tiny borough would thus subject Wenonah to a judicially created explosive growth phenomenon for which it may be ill equipped to deal." Supra at 669. The same situation would be true in Milltown which does not even have a single available tract of land as large as the one in Wenonah (41 acres). The impact on the school system would also be

enormous. Milltown presently sends its high school students to the already overcrowded New Brunswick High School.

The Appellate Division held in Wenonah that "Wenonah could not be regarded as the last hope for Gloucester County. On balance, the minor contribution of Wenonah to the housing needs, if there be any, of Gloucester County, as against the major impact on Wenonah resulting from this contribution, removes any constitutional or statutory compulsion upon this borough to provide this alternative mode of housing." Supra at 669. The same rationale must apply to Milltown. Milltown certainly cannot be regarded as the last hope for Middlesex County. The minor contribution of Milltown to the housing needs, if there be any, of Middlesex County, as against the major impact on Milltown resulting from this contribution, removes any constitutional or statutory compulsion upon this borough to provide additional multi-family housing. In June, 1970 the Middlesex County Planning Board released its study of the 1975 unmet housing needs in the County. The Planning Board identified 100 sites in the county and proposed the 24 most attractive ones for development. The Board found that if these sites were fully developed by a Regional Housing Authority by 1975, they could adequately house the 11,241 households in need of housing with incomes below \$10,000 annually and willing to move to new neighborhood locations. None of the 24 proposed sites is in the Borough of Milltown.



In Camden National Realty v. Township of Cinnaminson,  
No. L-37016-73 (N.J. Super. Law Div. Burlington Co. decided  
July 8, 1975), the trial court held that Cinnaminson was  
substantially developed in view of the fact that only 17.8%  
of the township's land area or 856 acres, remained vacant and  
buildable. In Milltown less than 10% of the land area is  
vacant and buildable. The Cinnaminson court found that the  
Township had met its fair share of residential development  
despite the absence of any multi-family housing whatsoever  
and a housing stock substantially more expensive than the  
County average. Milltown provides extensive multi-family  
housing with over 23% of all housing in the Borough being  
devoted to multi-family housing; 60% of all housing in the  
Borough is available for under \$25,000 and; 90% of all rental  
units are available for under \$200 per month. These figures  
are from the 1970 census and they reveal that Milltown has  
a housing stock less expensive than the County average.

The Court held that to apportion the low income  
people in the region based on the respective population of the  
municipalities in the region would be unfair to Cinnaminson.  
Cinnaminson had largely developed and accomodated low income  
families in the 1950's and 1960's and should not be forced to  
add to its existing share of low income families. The  
plaintiff's fair share formula would penalize the already  
developed communities by giving them a new and higher share  
of this group while allowing the substantially undeveloped

areas in the region to escape with a lesser allocation since they presently have a lesser population. The same situation exists in the present case. Milltown largely developed in the 1920's through the 1950's and is presently almost fully developed. Milltown is primarily made up of low and moderate income families. Over 65% of all families earned under \$15,000 a year according to the 1970 census. To add to this figure under the plaintiff's fair share formula would be to penalize Milltown for having developed while allowing municipalities with vast expanses of vacant land to escape virtually without change.

In Fobe Assoc. v. Borough of Demarest, (A-1965-73, decided July 2, 1975), the Court held that:

"Given the zoning ordinance of the municipality, which completely excludes multi-family dwellings from within the municipality, no board of adjustment or governing body could find with any degree of candor or legal propriety that the grant of a variance to construct a complex of multi-family dwellings will not substantially impair the intent and purpose of the zone plan and zoning ordinance. N.J.S.A. 40-55:39 (d)."

The Borough of Milltown does permit multi-family dwellings. According to the 1970 census there were 485 multi-family units or 23% of all dwellings in the Borough were devoted to multi-family use. Apartments exist in the Borough at 7 different locations.

In Taberna v. Township of Montgomery, No. L-699-73 P.W.

(N.J. Super. Law Div., Somerset County, decided July 29, 1975),  
the Court held:

"The present apartment/townhouse zone is sufficiently large to meet the township's obligations as projected in the above two approaches. (2 alternative fair share plans submitted by defendant's experts). Consequently, the Court finds that the defendant's have carried their burden and have shown that Montgomery has met its fair share of the regional need for low and moderate income housing."

The tract in question in Taberna is located in Somerset County, an area in which land zoned for multi-family housing is rare, and immediately adjacent to Princeton, an area in which luxury housing demand is great. Milltown on the other hand is located near New Brunswick, an area in which land zoned for multi-family housing is abundant.

Milltown's zoning ordinances are not exclusionary. The 100 vacant acres in the Borough include 40 acres in the industrial zone of which 12 are non-developable, because they are extremely marshy or hilly. This acreage is almost entirely adjacent to the New Jersey Turnpike and both the Plaintiff's Attorneys and Your Honor have conceded that this is the best use for this land. The fully developed industrial acreage in the Borough is also primarily adjoining the New Jersey Turnpike or the Raritan River Railroad. The existing industry is small and can be characterized as light industry. The Milltown ordinances specifically permit office buildings for administrative, governmental, educational and business

purposes in the industrial zones. The only uses expressly prohibited are: 1) Trucking or bus terminals or depots and 2) Storage or repairing of heavy equipment (over three tons gross weight) except to extent necessitated by actual construction on property where located. These are the only two uses expressly prohibited in any of the Milltown zoning ordinances. In addition, garden apartments may be permitted anywhere in the Borough including the industrial zones.

The Borough of Milltown's ordinances provide for 5 residential zones. The R-18 zone has a minimum lot requirement of 18,000 square feet with a minimum frontage of 120 feet and minimum floor area of 1,300 square feet. This zone is very small and is entirely along Ryder's Lane, a major thoroughfare. It is also the only area in the Borough without sewage. Also there is a special provision in the zoning ordinances 20-9.3 which provides that if the lots are faced on and have access to an interior residential street and have no access to Ryder's Lane, then the minimum (frontage) requirement may be reduced from 120 feet to 90 feet and the lot area reduced from 18,000 square feet to 13,500 square feet. In addition there is no vacant land in this small R-18 zone.

The R-10 zone has a minimum lot requirement of 10,000 square feet with a minimum frontage of 90 feet and a minimum floor area of 1,300 square feet. The R-8 zone has a minimum lot requirement of 8,000 square feet with a minimum frontage of 80 feet and a minimum floor area of 1,200 square feet. The

R-6 zone has a minimum lot requirement of 6,000 square feet with a minimum frontage of 60 feet and a minimum floor area of 1,100 square feet. The R-4 zone has a minimum lot requirement of 4,000 square feet with a minimum frontage of 40 feet and a minimum floor area of 1,000 square feet.

All 5 of these zones permit the conversion of single family dwellings into a multi-family dwelling by special permit and numerous multi-family dwellings exist throughout the Borough in all of these zones except the R-18. Garden Apartments are permitted by special permit anywhere in the Borough including the residential zones.

The Borough of Milltown also provides for 3 commercial zones. Two garden apartment complexes presently exist in the commercial zones. Multi-family homes are also permitted in these zones by special permit. The business section of the Borough is primarily in the geographical center of the community, with a neighborhood offshoot on Ryder's Lane. Like the other sections, it is almost fully developed and is a typical small retail business community.

There are approximately 10 acres still available for development in the commercial zone and 50 acres in the residential zones. Approximately 25 acres in the R-10 zone and 25 acres in the R-8 zone. Of these 50 acres approximately 10 acres are undevelopable because they are marshy and subject to flooding, leaving 40 acres which could be built upon.

There were 2,067 housing units in the Borough of Milltown in 1970. The most accurate estimates reveal that only 164 building permits have been issued since 1970. Of the 2,067 units shown on the 1970 Census, about 1,582 are 1 unit structures while the balance of 485 units are multi-family. These 485 units represent 23% of the total housing units in the Borough. Owner occupied units comprise 1,630 out of the 2,067 units while the balance, 377 units, are renter occupied. These 377 units comprise 18% of the total units in the Borough.

The 1970 census figures reveal that over 27% of the single-family homes in Milltown were valued at \$20,000 or less while over 86% were valued at less than \$35,000. The census figures also disclose that of the total of 349 units available for cash rent, 140 or over 40% were available for under \$100 per month while 168 or 48% were available for between \$100 and \$150 a month. Thus 308 units or over 88% of all rental units were available for under \$150 a month. Since 1970, due to inflation the property values and monthly rental ranges have undoubtedly increased, yet it cannot be realistically argued that Milltown does not provide low and moderate income housing. The median rental range was \$109 a month and the median value of single family homes was \$23,900.

According to the 1970 census, the median family income in the Borough of Milltown was \$12,955 for 1,736 families.

The per capita income of persons was \$3,879. The income of 33 families or 1.9% of all families was less than the poverty level. A total of 413 individuals were below the poverty level based upon the 1969 Federal Figure of \$3,743 or less. Milltown consists of basically low and middle income families. 461 families or over 26% of all families earned an income of under \$10,000 in 1970. 677 families or over 38% of all families earned an income of between \$10,000 and \$14,999. 498 families or over 28% earned an income between \$15,000 - \$24,999, while only 100 families or 5% earned over \$25,000 and no family earned over \$50,000. 1138 or over 65% of all families in Milltown earned under \$15,000 a year.

According to the 1970 figures there were 47 substandard housing units in the Borough. These figures may have been true in 1970 but not today. It is now safe to say that there are no substandard (lacking plumbing) homes in the Borough.

Despite the fact that the existing Milltown ordinances are not exclusionary the Borough has agreed to amend its zoning ordinance. A new ordinance will be introduced changing the minimum frontage in the R-10 zone from 90 feet to 80 feet and the minimum floor area from 1300 square feet to 950 square feet. The minimum floor area in the R-8 zone will be reduced from 1200 square feet to 950 square feet. This ordinance will also permit multi-family dwellings in all three commercial zones without the former requirement of obtaining a special permit. Garden Apartments will be increased from a maximum

of 10 dwelling units per acre to a maximum of 15 units per acre.

An analysis of the facts pertaining to Milltown reveal a Borough with an established character. A fully developed community consisting of one-family owner occupied residences, with significant multi-family housing spread throughout the community; a compact downtown business section and comparatively small industrial area basically separated from the residential portions by the New Jersey Turnpike and the railroad; and zoning regulations consistent with the actual uses in the Borough with appropriate zones for single family, multi-family, business and industry. Population wise, the community represents a mix of high, moderate, and low income people with the latter two categories comprising the majority.

Less than 10% of Milltown's land now remains undeveloped. All available lots require no more than a minimum floor area of 950 square feet with an 80 foot frontage requirement. Garden apartments are permitted anywhere in town by special permit. Multi-family dwellings are permitted anywhere in the commercial zones. In residential zones single family homes may be converted to multi-family homes. Milltown does not limit bedrooms and contains no vacant land that is not properly zoned. 23% of the homes in the Borough are multi-family homes, 60% of the housing is under \$25,000, 88% of the rental units are under \$150 per month, the median family income in the Borough is \$12,955. Milltown has provided its



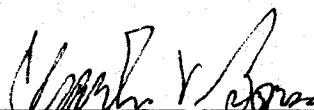
fair share of low and moderate income housing.

Under the criteria used by the Supreme Court in Mt. Laurel and by the Appellate Division in Wenonah, Milltown is not a developing community and is obviously not guilty of exclusionary zoning. Thus no remedy is applicable to the Borough of Milltown.

CONCLUSION

For the reasons set forth above the Borough of Milltown requests that the court sign the order of dismissal upon which the court has already ruled, free from any conditions, and without costs or attorney's fees to any party.

Respectfully submitted,

  
CHARLES V. BOOREAM, Attorney  
for Borough of Milltown