

CA - Madison

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D's brief in Support of Motion
to Dismiss P's Complaint

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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 als:

Civil Action

DEFENDANT'S BRIEF IN SUPPORT OF MOTION
TO DISMISS PLAINTIFF'S COMPLAINT

LOUIS J. ALFONSO
on the Brief

STATEMENT OF FACTS

Plaintiffs seek to declare the Zoning Ordinance of the Township of Madison and various other municipalities in Middlesex County unconstitutional.

STATEMENT OF LAW

The Township Zoning Ordinance of Madison Township was originally held invalid in 1971 in Oakwood at Madison, Inc., vs. Township of Madison, 117 N.J. Super. 11.

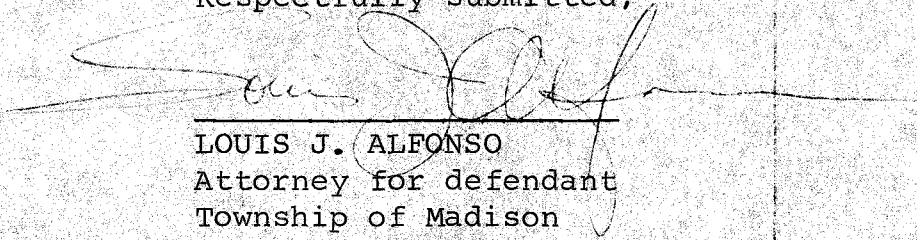
The Township appealed to the Supreme Court of New Jersey and while the appeal was pending, amended its ordinance by including cluster zones, PUD zones and various other modifications. The Supreme Court remanded the case back to the Superior Court where another trial was held on April 29, 1974. The amended ordinance was also declared invalid. (Oakwood at Madison vs. Township of Madison, Superior Court of New Jersey, Middlesex County, Law Division, Docket L-7502-70 PW)

In the Oakwood Case, Supra, the same constitutional issues were raised that are now being raised by the plaintiffs in the case at bar. The law is clear that constitutional issues are proper subjects of res judicata stated by Hilgendorff vs. American Can Co. 42 N.J. 32 certia denied 379 US 826 (1964).

The factual picture is basically the same as the case at bar as was the Oakwood case. Therefore, there are no real issues left to be litigated as previous judgment order confirms.

Therefore, the defendant, Township of Madison respectfully requests plaintiff's complaint as to wit be dismissed.

Respectfully submitted,



LOUIS J. ALFONSO
Attorney for defendant
Township of Madison