

CA - South Brunswick

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Brief of Defendant in support of Motion for
Permanent Stay (1 copies)

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IN THE
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4685-75

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, ET AL.,
Plaintiff - Respondent,

vs.

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARTERET,
ET AL.,
Defendant - Appellant.

BRIEF OF DEFENDANT - APPELLANT, TOWNSHIP OF SOUTH
BRUNSWICK IN SUPPORT OF MOTION FOR PERMANENT STAY

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PROCEDURAL HISTORY

Defendant Appellant Township of South Brunswick adopts the procedural history as submitted by counsel for the Township of Cranbury.

INTRODUCTION

As did six other Defendant municipalities, Defendant Appellant Township of South Brunswick has authorized counsel for Defendant South Plainfield to move on it's behalf for a Stay of Judgement pending appeal. It is the understanding of counsel that the court requires from each municipality a statement as to it's efforts to obtain low and moderate income housing.

It should be noted that the decision to file an appeal in this matter came a scant six days prior to the deadline for filing. The decision was the final product of several joint sessions of the Planning Board and Township Committee. The ultimate resolution adopted by the governing body contains within it a statement of commitment to the production of low and moderate income housing and to that end a committee under the Planning Board was established to not only study possible solutions, but to make specific recommendations.

Additionally, South Brunswick Township had been without a full time planner for a period of months as a result of the resignation of it's then current planner. A new full time planning consultant has taken office on September 13, 1976.

It should also be noted that our current "PUD" ordinance calls

for a mix containing low and moderate income housing and one such project has already been begun. Additionally, a major senior citizens housing complex has received municipal approval and is awaiting final approval from the Federal Government for financing. Along with garden apartments, the township has three operating "mobile home parks" (not senior citizens parks) with a fourth expanded park under construction and designed to replace one of the three existing parks which is generally unfit.

ARGUMENT

FAILURE TO GRANT A STAY PENDING APPEAL WILL CAUSE IRREPAIRABLE HARM TO DEFENDANT AND IT'S CITIZENS WHILE THE CONVERSE WILL CAUSE NO DISCERNABLE INJURY.

Should the court not grant a stay pending appeal the sole solution seems to be either amend our zoning ordinance or face contempt. The finality of new legislation would make a mockery of the concept of an appeal as a matter of right. Simply put, there is no statutory or legal remedy which could reverse approvals granted under such an amended ordinance. The matter would become moot as to any and all applicants regardless of the outcome of the appeal.

Conversely, it is inconceivable that one may legitimately believe that deadline planning will give rise to an immediate result. Any applicant with a reasonable plan for the production of low and moderate income housing has a means of presenting such plans and

obtaining the requisite approval through a variance. While "zoning by variance" is hardly an acceptable solution, it presents better temporary safeguards than wholesale changes in zoning ordinances.

THE TOWNSHIP OF SOUTH BRUNSWICK HAS PRESENTED A MERITORIOUS APPEAL

As counsel on this appeal did not appear at the trial, I am temporarily unable to state with first hand knowledge all that went into the court's decision and Judgement. Accordingly, with regard to those general areas of appeal as are applicable to all, I bow to my learned colleagues and adopt their arguments at least until such time as transcripts are received and reviewed.

Without benefit of those transcripts, however, I can point to certain very specific instances directly concerning this Defendant.

1. Timed Growth-It is my understanding through memoranda that trial counsel offered proof of a staged or "timed" development which offer was rejected and testimony not heard. In Southern Burlington County NAACP, et als. v. Township of Mount Laurel 67 N.J. 151, 188 (1975) the court in footnote number twenty indicates it's concern over such factors but notes that it was not an issue therein. It would appear that the trial court would be in error in excluding such evidence notwithstanding the fact that it was outside the scope of Mount Laurel.

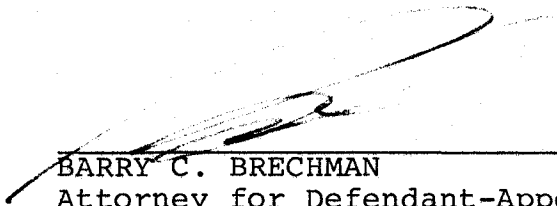
2. Industrial Development-It is Defendants contention that as a result of missapplication of statistics and a non uniform method of examining environmental factors, the court grossly overstated the amount of land zoned for industrial development.

3. Region-The Township of South Brinswick is a border community which contiguous to both Somerset and Mercer Counties. It's main tie to the "region" as adopted is by virtue of it's being a political subdivision within Middlesex County. In Mount Laurel Id at 189 190, the court pointed out that confinement "to or within a certain county appears not to be realistic..." In view of that decision, the record, we contend will bear out that the region as defined was for too broad or alternatively, too narrow. It is and will be our position on appeal that the court must make a basic finding of a "most appropriate region" based upon evidence presented and exclude from the litigation any municipality inappropriately joined and join as indispensable those not parties. It is undisputed that Middlesex County can be construed as a unit under certain criteria, but to do so is inappropriate when dealing with housing and population growth and movement.

It is obvious that this is a most complex case subject to reversal or modification, it is contended that to compel compliance at this stage would be manifestly unjust.

CONCLUSION

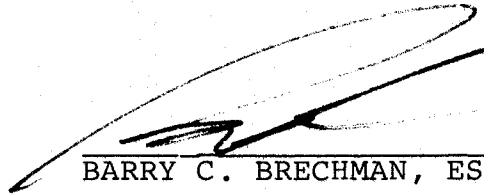
For the reasons herein set forth, Defendant Appellant Township of South Brunswick respectfully submits that it's joint application for stay pending appeal should be granted.



BARRY C. BRECHMAN
Attorney for Defendant-Appellant
Township of South Brunswick

CERTIFICATION

I hereby certify that service of this Brief was made by mailing the original and four copies to the Clerk of the Appellate Division, Superior Court, two copies of the Brief to counsel for Plaintiff and one copy each to all counsel of record.

A handwritten signature in black ink, appearing to read 'B. Brechman', is written over a horizontal line. The signature is stylized and cursive.

BARRY C. BRECHMAN, ESQUIRE