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S. Brunswick

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Pretrial Memorandum with
Cover Letter

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NOV 17 1975

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November 12, 1975

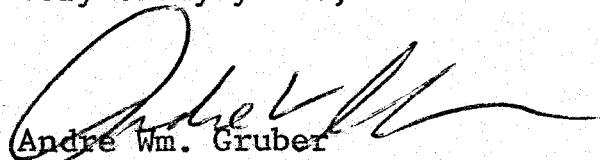
Honorable David D. Furman
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick, et als
vs. Borough Council of Cateret, et als
Docket No. C-4122-73

Dear Judge Furman:

Please find enclosed an original Pretrial Memorandum and an original plus two copies of Factual and Legal Contentions on behalf of the Township of South Brunswick for the Pretrial Conference scheduled for November 17, 1975 at 1:30 pm.

Very truly yours,


Andre Wm. Gruber

AWG:bjz
cc: All Attorneys of Record

CA002027D

Attorney(s): SEIFFERT, FRISCH, GRUBER & CAFFERTY

Office Address & Tel. No.: 1215 Livingston Avenue, North Brunswick, N. J. 08902

Attorney(s) for Defendant, Township Committee of the Township of South Brunswick 201/249-2141

URBAN LEAGUE OF GREATER NEW BRUNSWICK, a non-profit corporation of the State of New Jersey, et als

SUPERIOR COURT OF NEW JERSEY

CHANCERY MIDDLESEX DIVISION COUNTY

Plaintiff(s)

vs.

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

Defendant(s)

Docket No. C-4122-73

CIVIL ACTION

PRETRIAL MEMORANDUM OF

TOWNSHIP OF SOUTH BRUNSWICK

1. NATURE OF ACTION: Class action suit challenging the Defendant municipalities' zoning ordinances and other land use policies and practices.

2. ADMISSIONS AND STIPULATIONS: As set forth in Request for Admissions.

3-4. FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto).

5. DAMAGE AND INJURY CLAIMS: NONE

6. AMENDMENTS: NONE

7. LEGAL ISSUES AND EVIDENCE PROBLEMS: Validity of zoning ordinance of the Township of South Brunswick (see attached list); standing to allege Federal grounds for relief; existence of a proper class; joinder of indispensable parties; lack of jurisdiction for failure of justifiable issue; failure to state a claim upon which relief can be granted; burden of proof.

8. LEGAL ISSUES ABANDONED: NONE

9. EXHIBITS:

10. EXPERT WITNESSES: NONE

11. BRIEFS: As required by Court.

12. ORDER OF OPENING AND CLOSING: Usual

13. ANY OTHER MATTERS AGREED UPON: NONE

14. TRIAL COUNSEL: Andre Wm. Gruber, Esq. for South Brunswick Township

15. ESTIMATED LENGTH OF TRIAL: Unknown

16. WEEKLY CALL OR TRIAL DATE: As set by Court.

17. ATTORNEYS FOR PARTIES CONFERRED ON
MATTERS THEN AGREED UPON:

19

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED, except Defendants South Brunswick has to answer supplemental interrogatories and Plaintiff's expert witnesses have not been listed in answers to interrogatories and Defendants South Brunswick Township requests an extension of discovery from the date as said expert witnesses are listed to conduct depositions.

19. PARTIES WHO HAVE NOT BEEN SERVED:

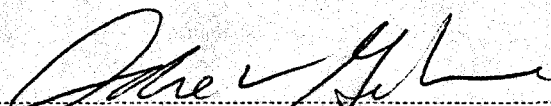
NONE

PARTIES WHO HAVE DEFAULTED:

NONE

SEIFFERT, FRISCH, GRUBER & CAFFERTY
Attorneys for Defendant
Township of South Brunswick

Dated: November 12, 1975¹⁹

By 
Andre Wm. Gruber, Esq.
A Member of the Firm

ATTACHMENT TO PRETRIAL MEMORANDUM OF TOWNSHIP OF SOUTH BRUNSWICK

7. The Complaint should be dismissed on the grounds that Plaintiffs do not constitute a class; Defendants do not constitute a class as defined by the rules of Court; Plaintiffs have failed to present a justifiable issue before the Courts under the Declaratory Judgment Act; it fails to set forth a claim upon which relief can be granted; Plaintiffs fail to allege that any specific act or ordinance enacted by the Defendant has resulted in damage or injury to any Plaintiff which would give rise to equity jurisdiction; Plaintiffs have failed to exhaust their administrative remedies in accordance with the rules of Court and the Laws of the State of New Jersey; Plaintiffs' remedy, if any is required, is available at law in the nature of a Prerogative Writ; it fails to include indispensable parties including the State of New Jersey, the United States of America, Middlesex County and the remaining municipalities in the State of New Jersey; the issues presented by Plaintiff's Complaint are political issues and not subject to judicial determination, the proper forum for the resolution of political issues is in the bodies, Federal, State, County and Local which are legislative and executive in nature; and it fails to conform to the rules of pleading as provided by rules of Court and inhibits the ability of the Defendant to formulate complete answers thereto.

3-4. FACTUAL AND LEGAL CONTENTIONS

In 1970 the Township Committee of the Township of South Brunswick committed itself to a complete review of the then Township Master Plan and Zoning Ordinance for the purposes of adopting a comprehensive plan to meet the Township's fair share of regional housing needs while at the same time avoiding the more visible effects of rapid urbanization and suburbanization; e.g. urban sprawl, strip zoning, and maintaining the goals of open space and better quality living. Based upon this commitment the Governing Body employed a fulltime planner, the first community of its population level to do so. In so hiring the planner, the Township Committee directed that his first priority be the preparation of a Residential Alternatives Study, which was begun in March 1972 and completed in November of the same year. In addition to the appointment of a fulltime planner and the Residential Alternatives Study, Ordinance 45-73, enacted January 17, 1973, was based upon analysis and consideration of numerous studies. Specifically, those studies may be outlined as follows:

(a) Housing Study by Gershen Associates, dated November, 1970.

(b) Route One Study by Gershen Associates, dated August, 1969. (213-22-25; 214-1-4)

(c) Master Plan Summary by Gershen Associates, dated December, 1971 and adopted by the Planning Board December,

1971 (209-16-19).

(d) Safety Study by Robert Clerico and Carl Hintz, South Brunswick Planning Board, dated April, 1972.

(e) Residential Alternatives Study by Carl Hintz, South Brunswick Planning Board, dated November, 1972. Begun in March, 1972 (209-20-24).

(f) Moratorium Ordinance, adopted and extended to December 31, 1973 by the Township Committee and upheld by the Honorable Leon Gerofsky in Schuh Investment v. South Brunswick Township, Docket No. L-28997-72 P.W.

The Housing Alternatives Study, as set forth above, began in early 1972 and was completed by Carl Hintz in November, 1972. (211-10-17) A Moratorium Ordinance was adopted in late 1972 and extended to December 31, 1973 by the Township Committee. (211-18-24) The Moratorium was upheld by the Honorable Leon Gerofsky in Schuh Investment v. South Brunswick Township, Docket L-28997-72 P.W.

The Planning Board and Township Committee began its analysis and consideration of the Housing Study in December of 1972. The review was completed in mid 1973. A series of public hearings were held throughout the Township at which time public input was sought. After reviewing all public comments the Planning Board prepared the Zoning Ordinance and unanimously passed it to the Township Committee. The Township Committee approved it without a dissenting vote.

In addition several studies are currently in progress and upon completion the results of these studies will also be con-

sidered in connection with their impact upon Ordinance 45-73 and the proposed Master Plan, the details of which are more fully set forth later in this brief. Those studies are as follows:

(a) Parks Master Plan, now being prepared by Carl Hintz, begun April, 1974. Publication and adoption should occur shortly.

(b) Air Quality Management Plan and Program for Middlesex County, being prepared for the Middlesex County Planning Board, is projected to be in draft form by August 1974. This will evaluate future and existing air pollution quality and standards from 1971-2000.

(c) Middlesex County Groundwater Quality and Quantity Study, which is being prepared by the Middlesex County Planning Board, will be used to inventory and point out directions for land use, based on groundwater supply.

(d) Study, funded by Department of Community Affairs, to analyze and determine South Brunswick's "fair share" of regional supply and demand for low and moderate income housing. Study will be completed shortly.

Two large major subdivisions were developed during the last decade in the township: Kendall Park, now complete, was started in 1957 and was completed in the mid 60's, and Brunswick Acres which began construction in the late 1960s and is currently nearing completion. ^(212-2-25, 213-1-4) Prior to these subdivisions, residential development had been essentially confined to villages and farms existing since the eighteenth century. In addition to the above subdivisions a recent major subdivision, known as Fresh Impressions, containing approximately 135 single-

family residences, is nearing completion. (213-3-4) The Township of South Brunswick currently contains three mobile home parks, (259-23) Brookdale Mobile Home Park, Oakdale Mobile Home Park and Monmouth Mobile Home Park, containing in toto approximately 500 units. Moreover, Oakdale Mobile Home Village has been given permission to relocate its park and increase its size from 150 units to 270 units. (259-24-25,260-1) Two large apartment complexes, Barrett Gardens and Kingston Terrace, are also located within the Township and contain approximately 300 rental units. (259-18-22) On or about September 5, 1972 the Township Committee of the Township of South Brunswick granted a use variance on premises known as Block 34, Lots 1 and 25 and Block 35, Lot 14 to permit the construction of 307 multi-family units. (262-19-22) Finally, in or about June 18, 1974 a use variance was granted for premises known as Block 95, Lot 75G to permit the construction of 76 multi-family garden-type apartments to be rented to individuals 62 years of age and operated by a non-profit corporation. This variance was granted in conformity with the proposed Master Plan. (263-17-23)

Section 401 of Ordinance 45-73 divided the town into the following 15 districts with the minimum lot size indicated below:

DISTRICT

DESCRIPTION

A-5 Rural Agricultural

Minimum lot width of 150 feet at the street line, a minimum depth of two hundred feet and a minimum lot area of five acres.

A-3 Residential-
Agricultural

Minimum lot width of 150 feet at the street line, a minimum depth of 200 feet and a minimum lot area of three acres.

R-1 Single Family/
Cluster

The minimum width shall be one hundred fifty feet at the street line, a minimum depth of two hundred feet and a minimum lot area of one acre. Where approved and adequate public sewer and water systems are provided at the site, the minimum lot width shall be one hundred twenty feet, the minimum lot depth shall be one hundred seventy-five feet and the minimum lot area shall be 30,000 square feet.

R-2 Single Family/Cluster

Where approved and adequate public sewer and water are not provided at the site, the minimum lot requirements shall conform with those as set forth in the R-1 district. Where approved and adequate public sewer and water are provided at the site, the minimum lot width shall be 150 feet and the minimum lot size shall be 30,000 square feet. This section also provides for clustering concept to reduce the minimum lot size to 20,000 square feet.

R-3 Single-family/Cluster

Where approved and adequate public sewer and water are not provided at the site, the minimum lot requirements shall conform with those set forth in the R-1 District. Where approved and adequate public sewer and water are provided at the site,

the minimum lot width shall be 100 feet, the minimum depth shall be 150 feet and the minimum lot size shall be 20,000 square feet. This section also provides for clustering with a reduction of the minimum lot size to 15,000 square feet in which case the minimum lot width shall be 100 feet and the minimum depth shall be 125 feet.

R-4 Village Residential

Where approved and adequate public sewer and water are not provided at the site, the minimum lot requirements shall conform with those set forth in the R-1 District. Where approved and adequate public sewer and water are provided at the site, the minimum lot width shall be 75 feet, the minimum depth shall be 100 feet and the minimum lot size shall be 10,000 square feet.

**PRD-5 Green Village/
Option**

Section 526 of the Zoning Ordinance, PRD Green Village Option provides that the total minimum tract size for a general PRD Green Village and Green Village Town Center shall be 100 contiguous acres. The maximum overall density for PRD-5 shall not exceed five dwelling units per acre. The net density for residential sections shall be averaged over the tract and, in no case, shall Multi-family units exceed 15 units per acre, townhouses and single-family attached units 8 units per acre and single-family detached 4 units per acre. Furthermore, that section requires provision of not less than 5% of the total dwelling units for low income and a least 10% of the dwelling units for moderate income. That provision further requires the minimum detached single family lot size shall be 10,000 square feet.

**PRD-7 Green Village Town
Center Option**

Same provisions as PRD 5 as per Section 526 of the zoning ordinance except that the maximum overall density shall not exceed 7 dwelling units per acre.

C-1 Local Commercial

The minimum lot size for commercial uses shall be 10,000 square feet, the minimum lot width shall be 80 feet and the minimum depth shall be 100 feet.

C-2 General Commercial

The minimum lot size shall be 30,000 square feet, the minimum lot width shall be 150 feet and the minimum lot depth shall be 200 feet.

I-2 General Industrial

The minimum lot size shall be 2 acres.

I-3 General Industrial

The minimum lot size shall be 3 acres.

**LI-2 Light Industrial/
Office/Research**

The minimum lot size shall be 2 acres.

**LI-3 Light Industrial/
Office/Research**

The minimum lot size shall be 3 acres.

**LI-4 Light Industrial/
Office/Research**

The minimum lot size shall be 4 acres.

The following projections and comparisons prepared by the Middlesex County Planning Board should be examined in connection with the South Brunswick Township Zoning Ordinance. In accordance with County projections, based upon the South Brunswick Plan, the total residential acreage allocated by the South Brunswick Township Plan by the year 1993, is 10,990 acres. The Middlesex County Planning Board Interim Master Plan calls for 8,244 acres of residential acreage in the Township of South Brunswic

South Brunswick by the year 2000; and the Middlesex County Planning Board Alternative Plan, for the year 2000 calls for 6,809 acres. The Projection of dwelling units under the proposed South Brunswick Master Plan for single family calls for the year 1993 13,736 single family and 10,432 multi family units for a total number of dwelling units of 24,168. The Middlesex County Interim Plan calls for 26,757 dwelling units in the year 2000 and the Middlesex County Alternative Plan calls for 29,398 dwelling units in the year 2000. Population projections based on South Brunswick for the year 1993, totals 106,399; the Middlesex Interim Plan calls for a 99,525 population and the Middlesex County Alternative Plan calls for a 96,296 population. The Planning Director for the Township of South Brunswick has indicated that a population growth rate of approximately 10% is expected for the 1993-1996 and the 1996-1999 periods. Based upon this projection, the population could be expected to reach at least 128,000 in the year 2000, which is beyond the County's plan alternative projection. At a projected family size of 3.82 persons per family, the housing stock would be increased by approximately 5,000 units for a total of 29,000 units, which is consistent with the County's projection for the year 2000. (298-10-22)

In connection with industrial land uses; it is estimated

that the Township of South Brunswick plan calls for 8,362 acres of industrial land, the Middlesex County Interim Plan calls for 3,560 acres of industrial land, for the year 2000; and the Middlesex County Plan alternative for the year 2000, 3,000 acres. In arriving at the number of jobs generated by such acreage allocations, the County computed employees at the average of 8-10 employees per acre of industrial use resulting in 67,000 to 83,000 jobs in the Township. Based upon South Brunswick's 1993 estimate of 8,362 acres for industrial land, and using the rate of 1.36 workers per family used in the County's Plan Alternative, there would be at least twice as many jobs as workers resident in the Township and as available dwelling units. Projecting population to the year 2000, there would still be 27,000 to 43,000 more jobs than workers in the Township. However, it should be noted that the industrial trend in South Brunswick has been toward the development of distribution centers, which have relatively low employee per acre ratios, and higher employee-salary ratios. The Township Planner has stated that it is the opinion of the Planning Board of South Brunswick Township that such trend will be continued in the Township. Based upon this assumption and maintaining the present acreage requirements concerning allowable site coverage, the planning board of Middlesex County,

reduces its figure to a factor of six workers per acre. Based upon this factor, employment in the year 2000, would be approximately 50,000 versus approximately 40,000 residents in the Township.

It is asserted by the Township and will be shown during the trial, that even this figure of six employees per acre is too high for the type of industry that will be located in the Township of South Brunswick and in fact applying a factor of 3 employees per acre results in a more accurate projection, bringing the actual job vs. residents into line. Applying the factor of 3 employees per acre employment would be approximately 25,100 versus approximately 40,000 workers resident.

An analysis of Ordinance 45-73 indicates that the following acreages have been devoted to the following residential zones:

<u>ZONE</u>	<u>ACREAGE</u>
A-5	718.78
A-3	8,817.09
R-1	3,301.95
R-2	2,305.62
R-3	1,906.30
R-4	81.64
PRD-5	252.50
PRD-7	504.32

In conjunction with the adoption of Ordinance 45-73, the Planning Board of the Township of South Brunswick adopted an amended Master Plan. The proposed Master Plan, as the Zoning Ordinance, was based, among other studies, upon the Residential

Alternatives study. The proposed Master Plan was commenced in February of 1972 and is currently under consideration. The Master Plan is predicated, as set forth above, on various studies, including the Residential Alternatives Study, which involved a consideration of various judicial decisions, including Oakwood at Madison, op.cit, infra, a consideration of the Township's fair share of the regional housing needs including the appropriate mix of housing and a consideration of ecological factors. Significantly, the goals and objectives of that plan are as follows:

- "(1) Provide for rejuvenation and replenishment of natural resources (ecologically sensitive characteristics);
- (2) Provide for normal and expected growth;
- (3) Provide for variety in housing, including provision for low and moderate income families;
- (4) Seek compatibility between land uses and avoid land use conflicts;
- (5) Develop a plan which can be more economically beneficial than customary urban development."

The Master Plan further provided for a Community Facilities

Plan, which is based upon an analysis and inventory of the Township's existing facilities. That plan, based upon the future landuse plan and circulation plan; is designed to determine whether facilities are adequate or need upgrading. As part of the Master Plan, a table was prepared, containing the specific facilities, as related to the plan, their acreage and suggested time schedule for development. Among the items listed in the facilities are included schools, parks, municipal buildings, post offices, fire stations, ambulance and first aid stations and library. As previously indicated, the table also provides a detailed time frame for the implementation and expansion of the required listed facilities in conjunction with the Master Plan.

Ordinance 45-73 provides two Planned Residential Development options. PRD-5 contains approximately 252.50 acres. The PRD-7 option contains approximately 504.32 acres. In conjunction with the current zoning ordinance, the Master Plan calls for a phasing of additional PRD options in the future. Specifically two additional PRD options, which may be either PRD-5 or PRD-7, depending upon the housing or residential trend, are scheduled for implementation between 1978 and 1981. The first area designated for future PRD option is located in Dayton and contains 297.6 acres and the second area contains

in excess of 200 acres. The Master Plan further provides for an additional PRD option between the years 1982 and 1985, to be located in the Heathcote area and containing approximately 414.68 acres of land. During the years 1986 to 1989, the Master Plan contemplates the implementation of an additional PRD option in the Heathcote area in the approximate acreage of 432.37 and finally, during the years 1990 to 1993, an additional PRD area, in the approximate acreage of 310.8 acres, is contemplated under the terms of the Master Plan. As becomes evident, the Master Plan in conjunction with the existing Zoning Ordinance is an attempt to phase growth over a period of years in conjunction with implementation of Facilities Plan and industrial and job growth within the Township of South Brunswick.

While planning for more housing and orderly growth of the community, the township has successfully opposed several projects which would have done violence to the Housing Alternatives Study. In the case of Samuel J. Hamelsky V. Township of South Brunswick, et. als., Docket #L-10244-72 the Board of Adjustment of the Township of South Brunswick denied an application for a use variance to erect a Planned Community Development on the premises consisting of townhouses, garden apartments, recreational areas and a shopping area. Plaintiff

thereafter filed suit seeking relief on two counts: (1) that the then Zoning Ordinance of South Brunswick was invalid and unconstitutional or (2) that special reasons exist for approval of the variance. The Trial court per the Honorable John E. Bachman, rendered a Final Judgment for plaintiff. On appeal the appellate division, in a decision dated June 27, 1974, reversed the decision of the trial judge holding that plaintiff failed to establish any special reasons warranting the recommendation of the variance. The Supreme Court has recently denied certification.

In the case of Frischling, et als. v. Board of Adjustments of the Township of South Brunswick, et als., (App. Div. 1973) Docket No. A-2271-71, the defendants had appealed from a Law Division judgment reversing the action of the South Brunswick Township Committee in disapproving plaintiff's application for a variance for the construction of a townhouse complex on a 9.75 acre site in the R-A Zone at the time (limited to one acre, one-family residences and farming and agricultural activity). The Appellate Division reversed the decision of the Law Division and held there existed no special reason for the grant of the requested variance.