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Defendant, Township of South Brunswick Brief on Validity
of Zoning Ordinance

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Trial Brief

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DAVID D. BERNARD, R.S.M.

URBAN LEAGUE OF GREATER :
 NEW BRUNSWICK, etc., et als, :
 Plaintiffs, :
 v. :
 MAYOR AND COUNCIL OF THE :
 BOROUGH OF CARTERET, et als, :
 Defendants. :

SUPERIOR COURT OF
 NEW JERSEY
 MIDDLESEX COUNTY
 CHANCERY DIVISION
 Docket No. C-4122-73

DEFENDANT, TOWNSHIP OF SOUTH BRUNSWICK BRIEF ON
 VALIDITY OF ZONING ORDINANCE

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This brief on behalf of South Brunswick Township is written on the limited portion of the case specified by the Court and concerns itself only with the specific attack against the South Brunswick Township Zoning Ordinance and its alleged exclusionary sections. It does not refer to remedy nor does it discuss region, as I believe that the question of region is part of the remedy and shall be discussed in my answering brief.

While the Township is briefing the defenses that it has under the attack by the plaintiffs against its ordinance, it does not agree nor does it admit that the burden of proof has shifted in this aspect to the municipality. To the contrary, it is the belief of South Brunswick Township that under the terms of the Mt. Laurel Decision, the burden has not shifted to the Township. In the case of Southern Burlington County NAACP, v. Township of Mt. Laurel, 119 N.J. Super 164 (Law Div. 1972), the Supreme Court altered certain presumptions normally attendant to a municipal zoning ordinance. The plaintiff herein did not meet that burden and make that showing of proof. Specifically, the Court held that:

"...when it is shown that a developing municipality

in its land use regulations has not made realistically possible a variety in choice of housing, including adequate provision to afford the opportunity for low and moderate income housing or has expressly prescribed requirements or restrictions which preclude or substantially hinder it, a facial showing of violation of substantive due process or equal protect under the state constitution has been made and the burden and it is a heavy one, shifts to the municipality to establish a valid basis for its action or inaction." Mt. Laurel, supra at 181.

No such showing was made herein. Consequently, the normal presumption attendant to zoning ordinances apply herein.

The plaintiff's attack against South Brunswick Township ordinances can be summarized as follows:

1. The A-3 and A-5 Zone, lot sizes and frontages are excessive.
2. All other lot frontages and sizes do not provide for low or moderate income houses.
3. The Ordinance provides for no multi-family units outside of the PRD's.
4. There is an uneven distribution of vacant land.
5. The Township, while it provides twice as much residential land as the 1970 County projections, provides seven times the amount of industrial land projected by the County in its Master Plan, dated 1970.

6. Sixty percent of the vacant residential land is located in the large lot sizes A-3 and A-5.

South Brunswick Township believes that the history of the adoption of this ordinance and the factors considered in review thereof by the Township and in particular, its planning director, in the adoption of this ordinance are pertinent and important to the Court's consideration of the total zoning ordinance now in effect in South Brunswick Township. The Zoning Ordinance and Master Plan were adopted in 1974. Therefore, we have had approximately 15 months to evaluate the effects of the Zoning Ordinance and Master Plan.

The Township Committee in 1970 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; eg. Urban sprawls, strip zoning, and maintaining the goals of open space and better quality living. The Township governing body employed Carl Hintz as a full-time planner. He prepared Residential Alternative Study, which was begun in early 1972 and completed in November 1972. Carl Hintz, Township Planner, testified at length during the trial as to the preparation and content

of the Residential Alternative Study. That study was designed as a conceptual analysis of various residential development alternatives for the Township of South Brunswick. The study consisted of a review of the then existing Master Plan and Zoning Ordinance, various court decisions throughout the country, facilities and service plans as well as a review of ecologically sensitive characteristics of South Brunswick. The Residential Alternative Study identified seven ecologically sensitive characteristics in South Brunswick. These are:

1. Aquifer recharge areas of which there are three within South Brunswick.
2. Geological formations which bear upon the amount of development which can be placed upon the underlying strata.
3. Swamps and surface waters.
4. Woodlands which serve as a refuge for wildlife, cleanse the air and act as a buffer.
5. Areas of poor drainage which relate to run-off and septic system development.
6. Flood plains.
7. Prime agricultural soils. Mr. Hintz testified that this was not as much an ecological restraint as an aid in determining which areas should be saved for agriculture. (See DBS-1A Charts 2,3,4,5,6, and 7 of the South Brunswick

Township Master Plan.)

In addition, the Township Committee actively sought and received funds provided by the Department of Community Affairs, State of New Jersey to analyze and determine South Brunswick's "fair share" of its regional supply and demand for low and moderate income housing. (See DSB-14)

The Township Committee after a great deal of forethought and public input, adopted the present Zoning Ordinance and Master Plan. A review of the Master Plan and Zoning Ordinance will show that the Zoning Ordinance is the first step of the implementation of the goals and development of South Brunswick Township. The present effect of the Zoning Ordinance is to create a balanced community. While under the terms of Mt. Laurel there may be some facially exclusionary aspects, those aspects are justified by the ecological restraints imposed upon the Township by its physical characteristics and do not brand this ordinance as exclusionary. The Township Ordinance does provide and has made realistically possible the opportunity for an appropriate variety in choice of housing for all categories of people who may desire to live in South Brunswick.

The mere fact that the Zoning Ordinance protects the

ecologically sensitive areas, does not in any way preclude it from providing its fair share of housing for low and moderate income families. South Brunswick Township admits that there are housing needs for low and moderate income families at the present time. The Township believes that the evidence before this Court indicates that the Township is meeting that need and stands ready to accept and provide for its fair share of low and moderate income housing. The determination has been made by South Brunswick, based upon the regional survey that was made under grant by the Department of Community Affairs, of what their fair share of low and moderate income housing is. That share is approximately 900 new units. The Township Planner indicated the Township has made available sufficient provisions in its present Zoning Ordinance to provide for these 900 units as follows:

1. A 76 unit low and moderate income housing units to be built by a nonprofit agency known as Raritan Valley Community Corporation.

2. Permits expansion of existing Mobile Home Parks by an additional 350 units.

3. Approved PRD with 61 low and moderate income housing units specifically designated.

4. There exists vacant land in PRD's zone in the

amount of 550 acres which will provide 385 number of units. The Township Planning Board has the power under the Zoning Ordinance to revise or increase the 10% minimum rate of low or moderate income families. Approximately 12% of those units that can be constructed under the present PRD Zoning would match the Township needs as indicated by the Department of Community Affairs Study. As Carl Hintz testified, it is practical to assume that the vacant land in the PRD Zone will be constructed because the owner of the remaining acreage has approached the Township and has requested that sewer lines be brought to his property and in fact made a contribution of \$75,000 toward the construction of the original main trunk of the sewer line in order to have sewerage available for his property.

Even if the Court rules that the Township of South Brunswick has miscalculated its fair share of low and moderate income housing, the Township, without disturbing the ecologically sensitive areas could adjust the number of acres in its PRD zones to accomodate the additional low and moderate income housing ordered by this Court. It might be noted at this point that Doug Powell in his testimony, indicated that the number of new low and moderate income units which in his

estimate is needed by the County to be 10,000; 5,000 of which should be located in the twenty communities that are participating in the community development fund. South Brunswick has already provided in its existing ordinance 900 of those estimated 5,000 units which is almost 20% of the estimated new units.

With regard to the amount of the industrial zoning in the Township, the Court had evidence presented from two sources. The first source was the Middlesex County Master Plan adopted in 1970. The County Master Plan indicates by the year 2000 South Brunswick would have consumed approximately 550 acres of industrial zoning in the last two years, it is proposed by South Brunswick that the amount of industrial land presently zoned in South Brunswick Township's necessary to create the jobs needed for its residents in the year 2000 is reasonable.

The South Brunswick Township Master Plan considering all the environmental factors and the present industrial zoning and has projected a population of 100,000 for the year 2000. The majority of the population growth to take place in the PRD areas both in the present zoning ordinance and proposed PRD Zones in the Master Plan. The ultimate population projection of 100,000 people also assumes a

work force of approximately 40,000. There was testimony in the case by Carl Hintz and a survey introduced into evidence to show that the present industrial acreage is necessary to that the existing industry in South Brunswick has a number of jobs per industrial acre of 3.15. Carl Hintz testified that it would be reasonable to anticipate that since this job ratio is developed under the existing industrial zoning, it will also be reasonable to assume that these ratios would not change very much in the future. If that were the case, under the present zoning for industry, there would be no more than approximately 25,000 jobs to be developed. Therefore, even allowing for a margin of error and almost double to the number of jobs per acre to five, there would be no more than the 40,000 jobs projected under the ultimate population of the Township. Therefore, it is submitted that the industrial zoning is not excessive.

The plaintiffs argue that 60% of the residentially zoned land is located in A-5 and A-3 Zones. The Township of South Brunswick submits that this zoning is necessary for ecological reasons and it has been substantiated by the testimony of Carl Hintz, the State Geologist, and Gene Amron, the Township Engineer who testified on behalf of South Brunswick that the aquifers and the protection of the

aquifers is a real and substantial danger and that they would be to allow large scale development upon the land over the aquifers would endanger the water supply not only of South Brunswick Township but the surrounding communities as well. Carl Hintz also testified that Pigeon Swamp, a State Park that the State has begun to acquire parcels of land for, is located within the A-5 and A-3 Zones, therefore indicating the environmentally sensitive nature of this area.

A-5 and A-3 Zones are contiguous with the areas of the aquifer and therefore the Township submits the A-3 and A-5 Zoning is valid, has a specific ecological reason behind the designation and is not excessive, then considering the fact that approximately 40% of the Township as shown on page 13 of the Master Plan are in poor drainage areas, it is submitted that the plan which establishes high density villages surrounded by greenbelts in the areas of the R-1 and R-2 serve a justifiable reason for maintaining those greenbelts around the villages. In addition, the greenbelts serve to prevent an asphalt jungle from preparing and in and of itself it justifies for the reduced densities between the villages.

It was contemplated that these R-1 and R-2 areas would be used for holding zones for future PRD's which would permit the Township to retain the sufficient open spaces to maintain

the greenbelts at the same time providing adequate housing for all income groups and in particular low and moderate income families. As pointed out in exhibit DSB-16, South Brunswick Township has a total aquifer recharge area within its Township of 7,842.33 acres. In addition to that, there is flood plain designated by the flood plain ordinance in the amount of 758.99 acres and swampland of 1,338.99 acres. The Township has another 135.98 acres of surface water and 9,676.45 acres of woodland. Last but not least, it has prime agricultural land of 21,748.03 acres with 9,806.81 acres of that prime farmland receiving the farmland assessment at the present time.

While it might be easy to make a blanket ascertainment that there is too much emphasis on environmental factors in South Brunswick, it certainly, when the Township has been thoroughly analyzed, is very obvious that South Brunswick has unique environmental considerations which should be analyzed in depth before any judgment is made as to the amount of land that is necessary for development.

CONCLUSION

South Brunswick Township stands ready to assume its fair share of low and moderate income housing. South Brunswick Township believes that it can accomodate its fair share of low and moderate income housing under its present Zoning Ordinance and its existing Master Plan. We do not believe that it would be beneficial to either the present residents or the future residents of South Brunswick be they high, moderate, or low income families to destroy the integrity of the South Brunswick Zoning Ordinance nor to destroy the environmentally sound judgments that have been made in establishing the present Zoning Ordinance and Master Plan.

Therefore, we respectfully ask for a dismissal against that portion of the Urban League case that attacks the present South Brunswick Zoning Ordinance with the understanding that it is ready and willing to accomodate its fair share of low and moderate income housing based upon the region which it is finally determined to be located within.

Respectfully submitted,

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By: _____

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