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Memorandum of law on Behalf of the Borough  
South Plainfield

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CA002145D

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PLAINFIELD

*Plaintiff*

URBAN LEAGUE OF GREATER NEW BRUNSWICK,  
ETC., ET ALS,

*vs.*

*Defendant*

MAYOR AND COUNCIL OF THE BOROUGH OF  
CARTERET, ET ALS,

SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY

*Docket No.* C 4122-73

**CIVIL ACTION**

MEMORANDUM OF LAW ON BEHALF OF THE BOROUGH OF SOUTH PLAINFIELD

CA002145D

PRELIMINARY STATEMENT

IN ORDER TO EXPEDITE MATTERS AND IN ORDER TO SAVE THE COURT ADDITIONAL TIME AND ENERGIES BY WAY OF REVIEWING VOLUMINOUS BRIEFS AND MEMORANDUMS OF LAW, THE BOROUGH OF SOUTH PLAINFIELD HAS JOINED WITH THE TOWNSHIP OF PISCATAWAY, AND HAS FILED A JOINT MEMORANDUM OF LAW PERTAINING TO THE ISSUES COMMON TO ALL MUNICIPALITIES. TO THE EXTENT THAT THE ISSUES ARE COMMON TO BOTH THE DEFENDANT, TOWNSHIP OF PISCATAWAY AND THE BOROUGH OF SOUTH PLAINFIELD, JOINT RELIANCE WILL BE PLACED UPON THE BRIEF TO BE SUBMITTED BY THE COUNSEL FOR THE TOWNSHIP OF PISCATAWAY, IN WHICH THE BOROUGH OF SOUTH PLAINFIELD JOINS.

TO THE EXTENT THAT IT BECOMES NECESSARY TO PROVIDE THE COURT WITH THE POSITION OF THE BOROUGH OF SOUTH PLAINFIELD WHICH IS SOLELY UNIQUE TO IT, THE COURT IS HEREWITH BEING PROVIDED WITH A SUPPLEMENTAL BRIEF TO BE UTILIZED IN CONJUNCTION WITH THE JOINT BRIEF PREVIOUSLY REFERRED TO.

## ARGUMENT

TO THE EXTENT THAT THE STATEMENT OF FACTS PERTAINING TO THE COMPLAINT BROUGHT BY THE VARIOUS PLAINTIFFS ARE CONTAINED IN THE JOINT BRIEFS SUBMITTED, THE SAME ARE HEREBY ADOPTED BY REFERENCE.

BY WAY OF A SUPPLEMENTAL FACTUAL RECITATION AND ARGUMENT THE DEFENDANT, BOROUGH OF SOUTH PLAINFIELD, WOULD CALL THE COURT'S ATTENTION TO THE FOLLOWING.

THE MAIN THRUST OF THE CASE AS PRESENTED BY THE PLAINTIFFS PERTAINING TO THE ALLEGED DEFECTIVE ZONING ORDINANCE OF THE BOROUGH OF SOUTH PLAINFIELD, IS PARTICULARLY OUTLINED IN THE SUMMARY OF THE ZONING ORDINANCE PROVISIONS SUBMITTED INTO EVIDENCE. THE INFORMATION CONTAINED IN THIS EXHIBIT WAS OBTAINED FROM THE DEPARTMENT OF COMMUNITY AFFAIRS WHICH COMMENCED ITS WORK IN THE YEAR 1968 AND COMPLETED IT IN THE YEAR 1970. QUITE OBVIOUSLY THIS RESEARCH AND REPORT IS NOT CURRENT AND DOES NOT EQUATE WITH A REPORT AND TESTIMONY PERTAINING TO THE YEAR 1975 WHICH THIS COURT HEARD DURING THE CONDUCT OF THE TRIAL.

HOWEVER, FROM A REVIEW OF THE TESTIMONY PRESENTED BY THE PLAINTIFF IT WOULD APPEAR THAT THERE WAS, AS OF 1970, APPROXIMATELY 154 ACRES IN THE R-20 ZONE AND THAT THERE WAS APPROXIMATELY 179 ACRES IN THE R-10 ZONE. INSOFAR AS OTHER RESIDENTIAL ZONES ARE CONCERNED THERE WAS NO AVAILABLE VACANT LAND AREA. FURTHER, IN

THE BUSINESS ZONES THERE WAS A COMPOSIT AMOUNTING TO APPROXIMATELY 63 ACRES, WHILE IN THE MANUFACTURING AND INDUSTRIAL ZONE THERE APPEARS TO BE 1,146 ACRES. ADDING ALL OF THESE FIGURES TOGETHER THERE WOULD SEEM TO BE APPROXIMATELY 1,542 ACRES IN TOTAL FOR VACANT LAND AREA IF WE ACCEPT THE ACCURACY OF THE REPORT BY THE DEPARTMENT OF COMMUNITY AFFAIRS EFFECTIVE AS OF 1970.

PLAINTIFFS DID NOT EVEN ATTEMPT TO PROVE THE CHANGE IN THE FIGURES PERTAINING TO VACANT LAND AREA, WHETHER RESIDENTIAL, BUSINESS OR INDUSTRIAL, AND THE COURT HAS BEEN LEFT IN THE DARK ON THIS ASPECT OF THE MAIN CASE.

THE CASE AS PRESENTED BY THE PLAINTIFFS DID NOT TAKE INTO ACCOUNT AN EXAMINATION OF THE ACTUAL USE OF THE LAND IN QUESTION NOR THE AVAILABILITY OF THE REMAINING LAND FOR USE IN ANY CATEGORY. THIS INFORMATION WAS ONLY GIVEN WHEN THE DEFENDANT PRESENTED ITS CASE AND NO INFORMATION WAS PRODUCED BY THE PLAINTIFF TO REFUTE THE TESTIMONY OF THE DEFENDANT'S WITNESSES AND THE COURT SHOULD BE BOUND BY SUCH PROOFS.

FURTHER, NO TESTIMONY WAS ADDUCED BY THE PLAINTIFF TO ESTABLISH THE PHYSICAL CHARACTERISTICS OF THE BOROUGH OF SOUTH PLAINFIELD NOR ATTEMPT TO ESTABLISH WHETHER OR NOT SOUTH PLAINFIELD PROPERLY FORMS AN INTEGRAL PART OF THE OTHER COMMUNITIES IN MIDDLESEX COUNTY IN ORDER TO COMPRISE A REGION. EXCEPT FOR THE STIPULATION GIVEN BY ATTORNEY FOR THE BOROUGH OF SOUTH PLAINFIELD CONCERNING THE FINANCIAL CONTACTS BETWEEN THE BOROUGH AND MIDDLESEX COUNTY,

THE PLAINTIFFS PRESENTED THE COURT WITH NO ASSISTANCE.

THE ONLY JUSTIFICATION THAT THE COUNTY OF MIDDLESEX, PER SE, CONSTITUTES AN ACCEPTABLE REGION WAS THAT THE AREA WAS ALREADY DEFINED BY VIRTUE OF COUNTY LINES. THE EXPERT WITNESS FOR THE PLAINTIFF TESTIFIED THAT HE WOULD ACCEPT THE COUNTY LINES AS DIS- POSITIVE OF THE REGION BECAUSE IT WAS MOST CONVENIENT FOR HIM TO DO IT THAT WAY. TO ACCEPT ANY OTHER WAY WOULD BE TOO CUMBERSOME. NO INVESTIGATION WAS MADE BY THE EXPERTS FOR THE PLAINTIFFS TO DETERMINE THE COMMON CHARACTERISTICS OR NEED AS BETWEEN THIS MUNICIPALITY AND THE COUNTY OF MIDDLESEX AS A WHOLE. THE ONLY TESTIMONY GIVEN TO THE COURT IN THIS AREA WAS PRESENTED BY THE DEFENDANT'S WITNESSES. EVEN THE WITNESSES OF THE PLAINTIFF TES- TIFIED THAT THE FIXING OF COUNTY LINES WAS AN ARCHAIC ARRANGEMENT AND HAD NO REAL PURPOSE AT THE PRESENT TIME.

THIS POSITION IS IN CONFLICT WITH THE "MT. LAUREL" OPINION AS EVIDENCED BY THE FOLLOWING LANGUAGE:

PG. 189: "CONFINEMENT TO OR WITHIN A CERTAIN COUNTY APPEARS NOT TO BE REALISTIC, BUT RE- STRICTION WITHIN THE BOUNDRIES OF THE STATE SEEMS PRACTICAL AND ADVISABLE."

SEE ALSO OAKWOOD AT MADISON V. TP. OF MADISON, 128 N.J. SUPER. 438 (SUP. CT. 1974) WHERE THIS COURT SAID AT PAGE 441

"THE REGION, THE HOUSING NEEDS OF WHICH MUST BE REASONABLY PROVIDED FOR BY MADISON TOWNSHIP IS, IN THE VIEW OF THIS COURT, NOT COEXTENSIVE WITH MIDDLESEX COUNTY. RATHER, IT IS IN THE AREA FROM WHICH, IN VIEW OF AVAILABLE EMPLOYMENT AND TRANSPORTATION, THE POPULATION OF THE TOWNSHIP WOULD BE DRAWN, ABSENT INVALIDLY EXCLUSIONARY ZONING."

ON THE OTHER HAND, THE WITNESSES FOR THE DEFENDANT PRESENTED THE FOLLOWING TESTIMONY:

1. GEOGRAPHICALLY, THE BOROUGH OF SOUTH PLAINFIELD IS LOCATED IN THE NORTHERN PORTION OF THE COUNTY AND PRIMARILY ABUTS THE CITY OF PLAINFIELD. THE MAJOR ARTERIES WHICH SERVICE THE CITY OF PLAINFIELD RUN INTO AND ALSO SERVE THE BOROUGH OF SOUTH PLAINFIELD. ONE OF THE WITNESSES FOR THE DEFENDANT TESTIFIED THAT MAKING A TRANSITION FROM THE CITY OF PLAINFIELD TO THE BOROUGH OF SOUTH PLAINFIELD WAS IMPERCEPTIBLE.

2. DEFENDANT'S EXPERT TESTIFIED THAT THE MEDIAN INCOME FOR THE CITY OF PLAINFIELD WAS \$12,621.00 WHILE THE MEDIAN INCOME FOR THE BOROUGH OF SOUTH PLAINFIELD WAS \$12,800.00. EFFECTIVELY, WHAT THE EXPERT WAS SAYING WAS THAT ONE HALF OF THE RESIDENTS OF THE CITY OF PLAINFIELD WERE EARNING UP TO \$12,621.00 PER FAMILY WHILE LESS THAN ONE HALF OF THE RESIDENTS OF THE BOROUGH OF SOUTH PLAINFIELD WAS EARNING \$12,800.00. THESE FAMILY INCOME FIGURES ACCURATELY EQUATE WITH THE DEFINITION OF LOW AND MODERATE INCOME FAMILIES. INFERENTIALLY, THE COURT CAN DEDUCE THAT AT LEAST ONE HALF OF THE FAMILIES IN THE BOROUGH OF SOUTH PLAINFIELD FALL WITHIN THE JOINT CATEGORIES OF LOW AND MODERATE INCOME FAMILIES. OBVIOUSLY, THESE FAMILIES HAVE ALREADY BEEN SERVICED AND HOUSED IN THE BOROUGH AND CREDIT SHOULD BE GIVEN FOR SUCH NUMBER.

3. THE TESTIMONY ALSO REVEALS THAT AS OF 1970 THERE EXISTED APPROXIMATELY 2,000 INDUSTRIAL ACRES WITHIN THE BOROUGH OF

SOUTH PLAINFIELD. REFERENCE TO THE REPORT AND CHART COMPILED BY THE DEPARTMENT OF COMMUNITY AFFAIRS INDICATES, AS OF THAT POINT IN TIME, 1,333 ACRES FOR LAND ZONED FOR INDUSTRIAL USE. SINCE 1970 THE TESTIMONY REVEALED THAT 1,000 ACRES OF THE 2,000 AVAILABLE ACRES HAVE ALREADY BEEN ABSORBED BY NEW INDUSTRIAL GROWTH. THIS EQUATES WITH THE EXPANSION IN THE INDUSTRIAL AREA AT THE RATE OF APPROXIMATELY 200 ACRES PER YEAR. OUT OF THE REMAINING 1,000 ACRES **345** ACRES IS OWNED BY THE MUNICIPALITY AND NOT AVAILABLE FOR USE; **97** ACRES IS OWNED BY THE UNITED STATES GOVERNMENT WHERE A NIKE SITE HAS BEEN PRESERVED IN CONJUNCTION WITH WHICH THERE EXISTS A LINE OF SIGHT EASEMENT RESTRICTING BUILDINGS IN THE IMMEDIATE AREA OF THE NIKE SITE TO NO GREATER THAN 35 FEET; THAT TEXAS EASTERN GASIFICATION COMPANY OWNS **45** ACRES COMPRISED OF A GAS LINE INSTALLATION EASEMENT RUNNING THE ENTIRE LENGTH OF THE OPEN AND VACANT INDUSTRIAL AREA WITHIN THE BOROUGH. UNDER FEDERAL POWER COMMISSION REGULATIONS THERE CAN BE NO CONSTRUCTION PERMITTED, WITHIN 200 FEET EITHER SIDE OF THIS EASEMENT MAKING A STRIP OF LAND RUNNING DOWN THE ENTIRE LENGTH OF THE INDUSTRIAL AREA 40 FEET WIDE UNAVAILABLE AND UNUSABLE. DEDUCTING FROM THE 1,000 AVAILABLE INDUSTRIAL ACRES THE AMOUNT WHICH IS INCAPABLE OF BEING USED THERE REMAINS SOMETHING BETWEEN 400 AND 500 ACRES. CONSIDERING THE PAST HISTORY OF THE DEVELOPMENT AND INDUSTRIAL GROWTH OF THE MUNICIPALITY AT THE RATE OF 200 INDUSTRIAL ACRES PER YEAR THIS MEANS THAT WITHIN THE NEXT 2 YEARS OR POSSIBLY 3 YEARS THE BOROUGH OF SOUTH



PLAINFIELD WILL HAVE ABSORBED AND USED ALL OF ITS PRESENTLY AVAILABLE ACREAGE.

THIS GROWTH FACTOR WAS GIVEN DUE CONSIDERATION IN "MT. LAUREL" AT PG. 185:

"WE HAVE PREVIOUSLY HELD THAT A DEVELOPING MUNICIPALITY MAY PROPERLY ZONE FOR AND SEEK INDUSTRIAL RATABLES TO CREATE A BETTER ECONOMIC BALANCE FOR THE COMMUNITY VIS-A-VIS EDUCATIONAL AND GOVERNMENTAL COSTS ENGENDERED BY RESIDENTIAL DEVELOPMENT, PROVIDED THAT SUCH WAS....DONE REASONABLY AS PART OF AND IN FURTHERANCE OF A LEGITIMATE COMPREHENSIVE PLAN FOR THE ZONING OF THE ENTIRE MUNICIPALITY."

AND AGAIN AT PAGE 187:

"....THE AMOUNT OF LAND REMOVED FROM RESIDENTIAL USE BY ALLOCATION TO INDUSTRIAL AND COMMERCIAL PURPOSES MUST BE REASONABLY RELATED TO THE PRESENT AND FUTURE POTENTIAL FOR SUCH PURPOSES." (UNDERLINING SUPPLIED).

4. THE TESTIMONY OF THE BOROUGH'S BUILDING INSPECTOR REVEALED THAT THE VAST MAJORITY OF BUILDING LOTS WITHIN THE BOROUGH ARE LESS THAN 60 FEET IN WIDTH. WHEN ALL AVAILABLE LOTS HAVING A FRONTAGE UP TO 100 FEET ARE TABULATED TOGETHER THEY REPRESENT APPROXIMATELY 80% OF THE BUILDING LOTS WITHIN THE BOROUGH. THE TESTIMONY OF THE PLAINTIFFS' EXPERT INDICATES THAT HE WOULD ACCEPT BUILDING LOTS BETWEEN 75 AND 100 FEET BUT NOT BEYOND 100 FEET. IF HIS TESTIMONY IS ACCEPTED THEN THE BOROUGH OF SOUTH PLAINFIELD HAS UTILIZED APPROXIMATELY 80% OF ITS TOTAL LAND ACREAGE FOR RESIDENTIAL USE WITH LOTS LESS THAN 100 FEET IN FRONTAGE.

5. REFERRING TO THE CHART PROVIDED BY THE DEPARTMENT OF

COMMUNITY AFFAIRS IT WOULD APPEAR THAT A TOTAL OF 333 ACRES REMAINS AVAILABLE FOR RESIDENTIAL DEVELOPMENT AS OF 1970. ONCE AGAIN, THE PLAINTIFFS DID NOT PROVIDE THE COURT WITH SUFFICIENT INFORMATION TO UPDATE THIS CHART. HOWEVER, IF WE ACCEPT THE 333 ACRES OF AVAILABLE RESIDENTIAL LAND AS OF 1970 AND EQUATE IT WITH THE AMOUNT OF EXISTING AVAILABLE INDUSTRIAL LAND WE FIND THAT THEY ARE FAIRLY WELL IN BALANCE. FURTHER, THE TESTIMONY OF THE BUILDING INSPECTOR AND BOROUGH ENGINEER INDICATED THAT ONE LARGE AREA OF THE VACANT LAND ZONED RESIDENTIALLY WHICH EXISTED IN THE WESTERLY PORTION OF THE MUNICIPALITY WAS NOT SUITABLE FOR DEVELOPMENT WITHOUT A TOTAL RESEWERING OF THAT ENTIRE AREA. THIS PARTICULAR PORTION OF THE RESIDENTIAL LAND WAS COVERED BY SHALE AND DID NOT PERMIT THE USE OF THE LAND WITH SEPTIC TANKS. THERE WAS ANOTHER AREA IN THE SOUTHEASTERN PORTION OF THE MUNICIPALITY REFERRED TO AS THE ABOMINABLE SWAMP AREA WHICH COULD NOT BE DEVELOPED AT ALL WITHOUT THE PRIOR CONSENT OF THE ARMY CORP. OF ENGINEERS. THIS CONSENT HAS NEVER BEEN FORTHCOMING.

6. THE BOROUGH ENGINEER EXHIBITED AN OVERLAY CHART OR MAP WHICH DELINEATED THE VARIOUS AREA OF FLOOD ZONE OR FLOOD PLAIN. HE ALSO TESTIFIED THAT HE HAD RECENTLY COMPLETED A STUDY FOR THE RESEWERING OF THE BOROUGH IN ORDER TO HANDLE THE AMOUNTS OF FLOOD WATERS EXPERIENCED BY THE MUNICIPALITY. HE TESTIFIED FURTHER THAT IN ORDER TO MAKE THE PORTION OF THE RESIDENTIAL LAND COVERED WITH SHALE AVAILABLE FOR USE IT WOULD REQUIRE SEWERING TO

THE EXTENT OF \$2,000,000.00 FOR THAT SECTION ALONE AND THAT HE WOULD ALSO HAVE TO TIE IN TO THE EXISTING SEWER SYSTEM IN THE FLOOD PLAIN AND COULD NOT DO SO WITHOUT OBTAINING THE CONSENT OF THE WATER POLICY COMMISSION OF THE STATE OF NEW JERSEY. HE FURTHER TESTIFIED THAT THE OVERALL COSTS OF THE RESEWERING WOULD APPROXIMATELY \$10,000,000.00 TO \$12,000,000.00. WITHOUT THIS RESEWERING PROJECT THE LAND IN THE WESTERLY PORTION OF THE MUNICIPALITY ZONED RESIDENTIALLY CANNOT BE USED FOR RESIDENTIAL PURPOSES TO ANY GREAT EXTENT. IT SURELY COULD NOT BE USED FOR HIGH DENSITY RESIDENTIAL DEVELOPMENT.

## CONCLUSION

A REVIEW OF ALL OF THE DOCUMENTARY EVIDENCE, THE HISTORY OF THE BOROUGH OF SOUTH PLAINFIELD, AND ALL OF THE ORAL TESTIMONY OBTAINED, IT APPEARS THAT THE FOLLOWING CONCLUSIONS SHOULD PROPERLY RESULT FROM THIS COURT'S DETERMINATION.

1. THE BOROUGH OF SOUTH PLAINFIELD, BECAUSE OF ITS GEOGRAPHICAL LOCATION AND TIES WITH MUNICIPALITIES IN UNION AND SOMERSET COUNTIES IS MORE SUITABLY LOCATED IN ANY REGION INCORPORATING THOSE TWO COUNTIES. IT DOES NOT FORM AN INTEGRAL PART OF MIDDLESEX COUNTY.

2. THE CREATION OF THE GEOGRAPHIC BOUNDARY LINES OF MIDDLESEX COUNTY IS NOT SUFFICIENT JUSTIFICATION TO ACCEPT THE COUNTY AS A VIABLE REGION. IT IS WELL ACCEPTED THAT COUNTY LINES ARE ARCHAIC AND HAVE NO DIRECT RELATION TO A PROPER REGION OR ZONE.

3. THE PAST HISTORY OF THE BOROUGH OF SOUTH PLAINFIELD INDICATES THAT IT IS CONSUMING APPROXIMATELY 200 INDUSTRIAL ACRES PER YEAR. THIS PATTERN OF GROWTH IS A PROPER CONSIDERATION FOR THIS COURT TO DETERMINE. THAT THE REMAINING 500 ACRES OF AVAILABLE INDUSTRIAL LAND IS NOT INORDINATE NOR OUT OF KEEPING WITH PROPER ZONING PRACTICES. IT HAS NEVER BEEN THE INTENT OF THE SUPREME COURT TO DETERMINE THAT A MUNICIPALITY SHOULD NOT PROPERLY HAVE AVAILABLE VACANT INDUSTRIAL LAND PROVIDED IT IS IN KEEPING WITH PAST PRACTICES AND FUTURE GROWTH PATTERNS.

4. THE REMAINING AVAILABLE RESIDENTIAL LAND IS NOT CA-

PABLE OF BEING USED FOR HIGH DENSITY RESIDENTIAL USE. INDEPENDENT SINGLE FAMILY HOMES MAY BE USED PROVIDED THAT THE LAND IS CAPABLE OF ACCEPTING SEWER DISCHARGE THROUGH THE USE OF SEPTIC TANKS. ONE AREA REMAINING IS IN SWAMP LAND AND THE OTHER AREA REMAINING IS COVERED WITH SHALE. IN ORDER TO MAKE THESE PARCELS AVAILABLE FOR HIGH DENSITY USE, IT WOULD REQUIRE THE EXPENDITURES OF APPROXIMATELY \$5,000,000.00 WHICH THE MUNICIPALITY, AT THIS TIME, IS WHOLLY INCAPABLE OF SUPPORTING FINANCIALLY. TO IMPOSE SUCH AN OBLIGATION ON THE MUNICIPALITY WOULD LITERALLY BANKRUPT THE TOWN.

5. THE BURDEN OF ESTABLISHING THE PROPER AREA OR ZONE FOR COURT CONSIDERATION REMAINS THE BURDEN OF THE PLAINTIFF. THE ONLY FOUNDATION FOR THE ESTABLISHMENT OF MIDDLESEX COUNTY AS A ZONE IS ONE OF CONVENIENCE. BOTH THE SUPREME COURT AND THIS COURT HAVE ALREADY DETERMINED THAT THE BOUNDRIES OF THE COUNTY ARE NOT ACCEPTABLE, PER SE.

RESPECTFULLY SUBMITTED,

CHERNIN & FREEMAN  
ATTORNEYS FOR DEFT., BOROUGH  
OF SOUTH PLAINFIELD

BY

  
SANFORD E. CHERNIN