

CA - Old Bridge

22 - Dec - 83

- Notice of Motion to Modify and Enforce Judgment against townships of North Brunswick and Old Bridge

- Affidavit

pp. 59

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FRANK ASKIN, ESQ.  
ERIC NEISSER, ESQ.  
JOHN PAYNE, ESQ.  
Constitutional Litigation Clinic  
Rutgers Law School  
15 Washington Street  
Newark, New Jersey 07102  
201/648-5687

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*Dr. Louis Pambriick*  
Clerk

BRUCE S. GELBER, ESQ.  
JANET LABELLA, ESQ.  
National Committee Against Discrimination in Housing  
1425 H Street, NW  
Washington, D.C. 20005

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-MIDDLESEX  
COUNTY

-----X  
URBAN LEAGUE OF GREATER NEW :  
BRUNSWICK, et al., :  
 :  
 Plaintiffs, :  
 :  
 vs. :  
 :  
 THE MAYOR AND COUNCIL OF THE :  
BOROUGH OF CARTERET, et al., :  
 :  
 Defendants. :  
 :  
-----X

Docket No. C-4122-73

Civil Action

NOTICE OF MOTION TO MODIFY AND  
ENFORCE JUDGMENT AGAINST  
TOWNSHIPS OF NORTH BRUNSWICK  
AND OLD BRIDGE


TO: JUDGE EUGENE D. SERPENTELLI  
Court House  
Toms River, New Jersey

CLERK OF COURT  
Hughes Justice Complex  
Trenton, New Jersey

ALL COUNSEL:  
Bruce S. Gelber, Esq.  
William C. Moran, Jr., Esq.  
Bertram Busch, Esq.  
Joseph L. Stonacker, Esq.  
Joseph Benedict, Esq.  
Philip Lewis Paley, Esq.  
Patrick Diegnan, Esq.  
Thomas R. Farino, Jr., Esq.  
Carl S. Bisgaier, Esq.  
Richard Schatzman, Esq.  
Peter A. Buchsbaum, Esq.  
Lawrence Litwin, Esq.

PLEASE TAKE NOTICE that on Friday, January 6, 1984 at 10:30 A.M. or as soon thereafter as counsel can be heard, plaintiffs in this action will move for an order modifying and enforcing the Judgment entered on July 9, 1976 in this action against the Townships of North Brunswick and Old Bridge. In support of this motion, plaintiffs submit the attached affidavit of Eric Neisser, a Memorandum of Law in Support, and a Proposed Order. Plaintiffs seek oral argument on the motion.

Dated: December 21, 1983

  
\_\_\_\_\_  
FRANK ASKIN

  
\_\_\_\_\_  
ERIC NEISSER  
Counsel for Plaintiffs

FRANK ASKIN, ESQ.  
ERIC NEISSER, ESQ.  
JOHN PAYNE, ESQ.  
Constitutional Litigation Clinic  
Rutgers Law School  
15 Washington St., Newark, New Jersey 07102  
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URBAN LEAGUE OF GREATER NEW	X	
BRUNSWICK, et al.,	:	Docket No. C-4122-73
	:	Civil Action
Plaintiffs,	:	
	:	<u>AFFIDAVIT</u>
vs.	:	
	:	
THE MAYOR AND COUNCIL OF THE	:	
BOROUGH OF CARTERET, et al.,	:	
	:	
Defendants.	:	
	:	
-----X		

STATE OF NEW JERSEY)  
                                  )s.:  
COUNTY OF ESSEX      )

ERIC NEISSER, being duly sworn, deposes and says:

1. I am one of the attorneys representing the plaintiffs in this action.
2. I submit this Affidavit in support of plaintiffs' Motion to Modify and Enforce the Judgment Against the Townships of North Brunswick and Old Bridge.
3. As set forth below in greater detail, this Motion is based on the Judgment entered on July 9, 1976 by Judge Furman

against the Townships of North Brunswick and Old Bridge (as well as nine other defendant Townships ) holding their zoning ordinances unconstitutional under the New Jersey Constitution and requiring them to take affirmative measures, including substantial revision of their zoning ordinances, in order to provide their fair share of the low and moderate income housing needs of the region. The defendant Townships of North Brunswick and Old Bridge did not appeal the Judgment, did not obtain an order of compliance with the Judgment, and have not yet enacted zoning ordinance amendment that would satisfy this Judgment. Because Judge Furman's fair share allocation plan was vacated on appeal, it will be necessary to modify the Judgment against North Brunswick and Old Bridge to insure a fair share allocation for those two towns consistent with that used for the other seven defendants and for the region generally. Once their fair share is determined and the judgment modified accordingly, a compliance hearing will be necessary to enforce the modified Judgment. Plaintiffs request that the fair share determination for the Townships of North Brunswick and Old Bridge be undertaken at the same time as for the other seven defendants, namely at the joint trial on joint issues scheduled for March 19, 1984. Separate compliance hearings for North Brunswick and Old Bridge can then take place after completion of the compliance hearings for the seven other towns.

4. This action was originally filed on July 23, 1974 against 23 townships in Middlesex County, including North Brunswick and Old Bridge. Those two townships have been defendants in this action since that date.

5. In November 1974, 19 of the defendants, including North Brunswick, moved to sever the action against the various municipalities. After hearing evidence, Judge Furman denied the motion for severance, determining that, because plaintiffs alleged that all defendants were collectively responsible for the region-wide exclusion of lower income residents, the proof would require joint presence of all defendants. The judge also concluded that a total severance would unduly burden plaintiffs and impair the court's ability to design individual municipal remedies for a regional problem. The Court concluded, however, that proof regarding the specific provisions of each ordinance being attacked and the individual justifications each town might offer for failure to provide lower income housing might require individual proof. The court therefore ordered a bifurcated trial. See South Burlington County NAACP v. Township of Mount Laurel, et al., 92 N.J. 158, 342-43, 456 A.2d 390, 485-86 (1983) (Mount Laurel II). No subsequent motion to sever has been made by any town and thus all the defendants, including North Brunswick and Old Bridge, remain consolidated.

6. On May 4, 1976, after a two-month trial involving all 23 defendants, including North Brunswick and Old Bridge, Judge Furman issued a written opinion. He unconditionally dismissed Dunellen as a "developed" community, conditionally dismissed the claims against 11 other communities based on their agreement to undertake certain changes in their zoning ordinances, and found the zoning ordinances of the remaining 11 municipalities, including North Brunswick and Old Bridge, to be in violation of the New Jersey Constitution. Urban League v. Carteret, 142 N.J. Super. 11, 359 A.2d 526 (Ch. Div. 1976).

7. Pursuant to this opinion, Judge Furman, on July 9, 1976, entered a Judgment in this action, which, in Paragraph 15, ordered defendant "Township of Madison (Old Bridge) ...to enact or adopt new zoning ordinances to accommodate their respective fair share allocation of low and moderate income housing" and ordered that defendant "Township of North Brunswick...shall, alternatively, enact or adopt new zoning ordinances to accommodate their respective fair share allocation of low and moderate income housing... or, shall rezone all of their remaining vacant land suitable for housing in order to permit or allow low and moderate income housing on a ratio of 15% low and 19% moderate income housing units." Paragraph 15 also specified the townships' specific fair share allocation. Further, in paragraph 21, the Court ordered that "In implementing this judgment the 11 municipalities charged with fair share allocations must do more than rezone not to exclude the possibility of low and moderate income housing in the allocated amounts. Approvals of multi-family projects.. should

impose mandatory minimums of low and moderate income units. Density incentives may be set. Mobile homes offer a realistic alternative...The 11 municipalities should pursue and cooperate in available Federal and State subsidy programs for new housing and rehabilitation of substandard housing..." Finally, the Court ordered in paragraph 16 that "All of the various defendants shall cause the enactment or adoption of their respective zoning ordinance amendments to be completed within ninety (90) days of the entry of this Judgment," in paragraph 17 that "This Court retains jurisdiction over the pending litigation for the purpose of supervising the full compliance with the terms and conditions of this Judgment," and in paragraph 18 that "Applications for special relief from the terms and conditions of this judgment may be entertained by this Court." For the Court's convenience, a complete copy of the July 9, 1976 Judgment is attached hereto as Exhibit A.

8. The docket sheet and files of this Court confirm that defendant Townships of North Brunswick and Old Bridge did not appeal this Judgment, have not obtained an order of dismissal or of compliance with this Judgment, and have not obtained any special relief from the terms and conditions of this Judgment. Plaintiffs' expert is prepared to testify that they also have not enacted or adopted zoning ordinance amendments that would satisfy this Judgment.



9. In contrast to defendant Townships of North Brunswick and Old Bridge, two Townships (Sayerville and Edison) did obtain Orders of Dismissal or Compliance from Judge Furman subsequent to the entry of the Judgment of July 9, 1976. Plaintiffs therefore are not seeking any further proceedings against the Townships of Sayerville and Edison.

10. On appeal, the Appellate Division reversed Judge Furman's Judgment as to the seven appealing Townships in toto and dismissed the action against them. Urban League v. Carteret, 170 N.J. Super. 461, 406 A.2d 1322 (1979). On plaintiffs' petition for certification, the New Jersey Supreme Court reversed the Appellate Division's judgment as to those seven townships, affirmed the determination of unconstitutionality, and remanded for a fair share hearing and appropriate revision of zoning ordinances to meet the fair share obligation. Mount Laurel II, supra. The Court found that the Appellate Division erred in not separating the determination of unconstitutionality, which was sound, from Judge Furman's fair share allocation plan and remedy, which was held to be unsound in certain respects. 92 N.J. at 344 n.76, 348-50, 458 A.2d at 486n. 76, 488-89.

11. Old Bridge never made any application to Judge Furman for an order of dismissal or compliance. In contrast, the Township of North Brunswick moved for an Order of Dismissal on February 23, 1977. On May 20, 1977, after extensive review

of additional materials, plaintiffs submitted a 7-page letter to Judge Furman setting forth plaintiffs' reasons for opposing dismissal of North Brunswick. Judge Furman never ruled on the town's motion. The last matter in plaintiffs' file concerning that motion is a letter from plaintiffs' counsel to North Brunswick's counsel, dated March 14, 1979, asking the latter to schedule a date for the motion. Attached as Exhibits B and C are the plaintiffs' May 20, 1977 and March 14, 1979 letters. Apparently North Brunswick took no further steps because the Appellate Division reversed Judge Furman's order in September 1979.

12. Because the Townships of North Brunswick and Old Bridge never appealed the Judgment against them, never obtained a modification of the Judgment, and never obtained an order of dismissal or compliance with the Judgment, the only remaining question is whether they have in fact complied with the Judgment since its entry. Both Townships have in fact amended their ordinances since the Judgment. However, in the opinion of plaintiffs and their expert witness, Alan Mallach, the Land Use Ordinance of the Township of North Brunswick as amended through September 19, 1983, and the Land Development Ordinance adopted on April 21, 1983 by the Township of Old Bridge, fail in many significant respects to comply with Judge Furman's Judgment and the Supreme Court's decision. A copy of Alan Mallach's preliminary analysis of the ordinances of North Brunswick and Old Bridge is

attached as Exhibit D. In final form, this analysis will be submitted as a Supplement to Mr. Mallach's Report, previously filed with the Court.

13. In light of change of law set forth in <sup>the/</sup> the Supreme Court's opinion and the failure of the Townships of North Brunswick and Old Bridge to comply with the Judgment, two further steps are needed. First, plaintiffs respectfully submit that in fairness to all parties, the Court should modify the fair share allocation for the two Townships in the Judgment of July 9, 1976 to reflect an appropriate determination of region, regional need, and fair share. Second, defendant townships must be ordered to revise their ordinances to meet their modified obligations. As with the other seven townships, this will require first a trial on the regional need and fair share issues and, after the Court's ruling on those issues, a hearing on compliance and, if necessary, appointment of a master to assist the towns in making the necessary zoning ordinance revisions, including the affirmative measures required by the Judgment.

14. Plaintiffs submit that the fairest and most efficient method for redetermining the fair share obligations of North Brunswick and Old Bridge in a manner consistent with that applied to the other seven defendants, is to have a joint trial on the common issues of region, regional need, and fair share allocation. As Judge Furman pointed out in denying the motion for severance 9 years ago, plaintiffs contend that defendants are collectively responsible for the failure to meet the regional need for lower

income housing. The issues involved are closely interrelated. All parties that have made submissions to the Court to date agree that whatever the region is for the seven defendants will be the region for North Brunswick and Old Bridge. Whatever definition of need is used will affect all towns similarly and whatever allocation factors are selected will bear on the fair share of all towns involved. A joint trial of these common issues is fairest to all parties and most efficient for the court. If the Townships of North Brunswick and Old Bridge do not try these issues jointly with the seven other defendants, they risk having this Court enter a presumptively valid determination of region and regional need after the trial involving the other defendants. If the Court ultimately decides to hear additional cases before giving presumptive validity to a judgment, there would be little point in its hearing plaintiffs repeat essentially the same trial presentation on region and regional need, yet plaintiffs would be burdened with the substantial expenses of a second trial proceeding.

15. A joint trial with the seven other defendants will not prejudice North Brunswick and Old Bridge. On November 29, 1983, I wrote the township attorneys informing them that plaintiffs believed that they had failed to comply with Judge Furman's Judgment, that the trial on remedy for the other seven defendants would commence on March 19, 1984, and serving them with a copy of the interrogatories, the court-appointed expert's report and the Court's July 25 scheduling letter-order. Only 11 days earlier

the Court informed the various new Cranbury plaintiffs that they would be participating in the joint trial on March 19 on common issues of region, regional need, and fair share. The report of the plaintiffs' expert has now also been distributed to all counsel, including North Brunswick and Old Bridge, and we understand that the Sternlieb report prepared for the League of Municipalities is also now published. We recognize that the Townships of North Brunswick and Old Bridge will need more time than the other seven defendants to answer the interrogatories, both because the interrogatories were served on them four weeks after service on the seven other towns and because they must digest more documents in this case. In addition, we acknowledge that North Brunswick and Old Bridge must have more time to submit any expert report they wish to rely on. Nevertheless, we believe that sufficient time is available for them, as for the Cranbury plaintiffs, to complete the preliminary matters in time to participate in the joint trial on common issues.

16. In recognition of the time burdens that would be imposed on North Brunswick and Old Bridge by participation in the joint trial on common issues, plaintiffs request that their individual compliance hearings be held last, after the seven other towns' hearings, including Cranbury's consolidated hearing. In addition, plaintiffs would have no objection to a slight delay between the last compliance hearing of the other seven towns and the compliance hearings for these two towns.

17. I submit that a prompt joint trial on the common issues and a delayed compliance hearing on the individual towns would meet the desire of the plaintiff class for relief against two townships with unconstitutionally exclusionary zoning ordinances which failed to comply with a final Judgment for over 7 years, while equitably accommodating the needs of the Townships' attorneys to prepare adequately for the compliance hearings on their towns.

  
ERIC NEISSER

Sworn to before me this  
22 day of December 1983

  
Attorney at Law, State of New Jersey

CHERNIN & FREEMAN,  
A PROFESSIONAL CORPORATION

VILLAGE PLAZA SHOPPING CENTER  
1075 EASTON AVENUE,  
SOMERSET NEW JERSEY 08873  
(201) 828-7400

ATTORNEY FOR DEFENDANT, MAYOR AND COUNCIL OF THE BOROUGH OF  
SOUTH PLAINFIELD

*Plaintiff*

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, ET AL,

vs.

*Defendant*

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

SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY

Docket No. C 4122-73

CIVIL ACTION

JUDGMENT

THE ABOVE ENTITLED MATTER HAVING BEEN TRIED BEFORE THIS  
COURT COMMENCING FEBRUARY 3, 1976 AND THE COURT HAVING HEARD AND  
CONSIDERED THE TESTIMONY AND EVIDENCE ADDUCED DURING THE TRIAL AS  
RESULT OF WHICH THIS COURT HAS RENDERED ITS OPINION DATED MAY 4,  
1976;

IT IS, THEREFORE, ON THIS 9<sup>th</sup> DAY OF July, 1976,  
O R D E R E D AND A D J U D G E D AS FOLLOWS:

1. JUDGMENT BE AND IS HEREBY ENTERED IN FAVOR OF THE  
DEFENDANT, BOROUGH OF DUNELLEN, AND AGAINST THE PLAINTIFF BASED  
UPON THE RELIEF DEMANDED IN THE COMPLAINT.

Exhibit A

2. THE DEFENDANTS, BOROUGH OF CARTERET, BOROUGH OF HELMETTA, BOROUGH OF HIGHLAND PARK, BOROUGH OF JAMESBURG, BOROUGH OF METUCHEN, BOROUGH OF MIDDLESEX, BOROUGH OF MILLTOWN, CITY OF SOUTH AMBOY, BOROUGH OF SOUTH RIVER, BOROUGH OF SPOTSWOOD, AND TOWNSHIP OF WOODBRIDGE, HAVING AMICABLY ADJUSTED THEIR DIFFERENCES, BE AND ARE HEREBY DISMISSED UPON THE CONDITION THAT THEY COMPLY WITH THE TERMS OF THEIR RESPECTIVE SETTLEMENTS WITH THE PLAINTIFF TO THE EXTENT <sup>applicably</sup> THAT THEY SHALL CAUSE THEIR RESPECTIVE ZONING ORDINANCES TO BE AMENDED TO CAUSE (A) DELETION OF LIMITATIONS ON THE NUMBER OF BEDROOMS OR ROOMS IN MULTI-FAMILY HOUSING; (B) DELETION OF SPECIAL EXCEPTION PROCEDURES FOR MULTI-FAMILY HOUSING AND PROVISIONS FOR IT AS AN ALLOWABLE USE; (C) REDUCTION OF EXCESSIVE PARKING SPACE REQUIREMENTS IN MULTI-FAMILY HOUSING; (D) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE FAMILY HOUSING OR BOTH; (E) REDUCTION OF EXCESSIVE MINIMUM LOT SIZES FOR MULTI-FAMILY OR SINGLE FAMILY HOUSING OR BOTH; (F) INCREASE IN MAXIMUM DENSITY OF MULTI-FAMILY HOUSING TO 15 UNITS PER ACRE; (G) INCREASE OF MAXIMUM HEIGHT OF MULTI-FAMILY HOUSING TO 2-1/2 STORIES OR HIGHER; (H) DELETION OF A MULTI-FAMILY HOUSING CEILING OF 15% OF TOTAL HOUSING UNITS WITHIN A MUNICIPALITY; (I) A REZONING FROM INDUSTRY TO MULTI-FAMILY RESIDENTIAL AND FROM SINGLE FAMILY TO MULTI-FAMILY RESIDENTIAL.

3. THE DEFENDANT, BOROUGH OF CARTERET, AS CONDITION TO



SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

*To be submitted separately*

4. THE DEFENDANT, BOROUGH OF HELMETIA, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

"RE-ZONING OF A STRIP APPROXIMATELY 225 FEET BY 1800 FEET ALONG THE NORTHERLY SIDE OF MAPLE STREET FOR TOWNHOUSES."

5. THE DEFENDANT, BOROUGH OF HIGHLAND PARK, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) DENSITY OF UNITS PER ACRE ARE 16 UNITS PER ACRE ON PARCELS OF LAND GREATER THAN ONE ACRE, 12 UNITS PER ACRE ON PARCELS LESS THAN ONE ACRE,

12 UNITS PER ACRE ON PARCELS LESS THAN ONE ACRE, THERE NO LONGER BEING A MINIMUM REQUIREMENT OF ACREAGE (2½) FOR MULTI-FAMILY DWELLINGS.

(B) THAT THE DISTRIBUTION OF APARTMENTS INTO A RATIO OF ONE AND THREE BEDROOM UNITS BE DELETED ENTIRELY.

(C) THAT THE PROHIBITION OF RENOVATION AND/OR CONSTRUCTION OF HOMES TO MORE THAN 3 BEDROOMS IN THE RESIDENCE ZONE BE DELETED FROM THE ZONING ORDINANCE.

6. THE DEFENDANT, BOROUGH OF JAMESBURG, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) DELETION OF SPECIAL EXCEPTION PROCEDURES FOR MULTI-FAMILY HOUSING AND PROVISION FOR IT AS AN ALLOWABLE USE.

(B) REDUCTION OF EXCESSIVE PARKING SPACE REQUIREMENTS IN MULTI-FAMILY HOUSING.

(C) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE-FAMILY HOUSING OR BOTH.

7. THE DEFENDANT, BOROUGH OF METUCHEN, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

"ELIMINATION OF THE REQUIRED MINIMUM LIVING AREA OF 1,400 SQUARE FEET IN THE R-1 ZONE."

8. THE DEFENDANT, BOROUGH OF MIDDLESEX, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS

12 UNITS PER ACRE ON PARCELS LESS THAN ONE ACRE, THERE NO LONGER BEING A MINIMUM REQUIREMENT OF ACREAGE (2½) FOR MULTI-FAMILY DWELLINGS.

(B) THAT THE DISTRIBUTION OF APARTMENTS INTO A RATIO OF ONE AND THREE BEDROOM UNITS BE DELETED ENTIRELY.

(C) THAT THE PROHIBITION OF RENOVATION AND/OR CONSTRUCTION OF HOMES TO MORE THAN 3 BEDROOMS IN THE RESIDENCE ZONE BE DELETED FROM THE ZONING ORDINANCE.

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(B) REDUCTION OF EXCESSIVE PARKING SPACE REQUIREMENTS IN MULTI-FAMILY HOUSING.

(C) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE-FAMILY HOUSING OR BOTH.

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"ELIMINATION OF THE REQUIRED MINIMUM LIVING AREA OF 1,400 SQUARE FEET IN THE R-1 ZONE."

8. THE DEFENDANT, BOROUGH OF MIDDLESEX, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS

**ZONING ORDINANCE AS FOLLOWS:**

(A) THE ACREAGE REQUIREMENT FOR MULTIPLE-FAMILY DWELLINGS BE REDUCED FROM 4 ACRES TO 2 ACRES.

(B) THE BEDROOM LIMITATIONS CONTAINED IN THE GARDEN APARTMENT ORDINANCE AND THE HIGH-RISE ORDINANCE BE DELETED.

(C) PROVISION SHOULD BE MADE FOR SOME ADDITIONAL LAND IN THE BOROUGH TO BE ZONED FOR MULTIPLE-FAMILY DWELLINGS.

(D) THE PLANNING BOARD RATHER THAN THE ZONING BOARD OR MAYOR AND COUNCIL SHALL BE DESIGNATED AS THE REVIEWING AGENCY IN THE ORDINANCE TO ASCERTAIN WHETHER AN APPLICANT WISHING TO BUILD GARDEN APARTMENTS AND/OR HIGH-RISE APARTMENTS HAS COMPLIED WITH THE TERMS AND CONDITIONS OF THE ZONING ORDINANCE.

9. THE DEFENDANT, BOROUGH OF MILLTOWN, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) AMEND CHAPTER 20-4.4 TO REDUCE MINIMUM FLOOR AREA OF DWELLING TO 950 SQ. FT.

(B) AMEND CHAPTER 20-4.4 TO REDUCE MINIMUM LOT FRONTAGE TO 30 FT.

(C) AMEND CHAPTER 20-7.1 A(2) AND 7.1 B(1) TO PERMIT MULTI-FAMILY DWELLINGS WITHOUT "SPECIAL PERMIT".

(D) AMEND CHAPTER 20-9.4 C(7) TO REDUCE GARDEN APARTMENT AVERAGE MINIMUM FLOOR AREA PER DWELLING UNIT FOR ENTIRE DEVELOPMENT TO 650 SQ. FT. AND ABSOLUTE MINIMUM FLOOR AREA PER DWELLING UNIT TO 500 SQ. FT.

(E) AMEND CHAPTER 20-9.4 C(8) TO INCREASE MAXIMUM NUMBER OF GARDEN APARTMENT DWELLING UNITS PER ACRE TO 15.

10. THE DEFENDANT, CITY OF SOUTH AMBOY, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

MULTI-FAMILY

(A) REMOVE BEDROOM RESTRICTIONS IN THEIR ENTIRETY.

(B) PROVIDE THAT APPLICATIONS FOR MULTI-FAMILY DWELLINGS BE MADE TO THE PLANNING BOARD INSTEAD OF THE ZONING BOARD OF ADJUSTMENT.

(C) OPEN SPACE WILL BE 10% OF THE ENTIRE PLOT, PLUS A PLAYGROUND FOR CHILDREN TO BE DETERMINED BY THE MARKETPLACE.

(D) REMOVE THE TWO STORY LIMIT.

(E) THE MINIMUM FLOOR AREA IN THREE OR FOUR BEDROOM APARTMENTS WILL BE IN ACCORDANCE WITH FHA REQUIREMENTS.

GARDEN APARTMENTS

(A) ZONING ORDINANCE TO BE CHANGED TO PROVIDE FOR 16 UNITS PER ACRE.

(B) ELIMINATE TWO-STORY HEIGHT REQUIREMENT.

(C) OPEN AREAS SAME AS MULTI-FAMILY.

IN ADDITION TO THE ABOVE, SOUTH AMBOY HAS AGREED TO REZONE 55 ACRES OF INDUSTRIAL LAND FOR MULTI-FAMILY USE.

11. THE DEFENDANT, BOROUGH OF SOUTH RIVER, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) MULTI-FAMILY RESIDENTIAL USE IS PERMITTED AS OF-RIGHT RATHER THAN BY SPECIAL EXCEPTION.

(B) THE MINIMUM SIZE LOT FOR DEVELOPMENT OF MULTI-FAMILY RESIDENTIAL USE SHALL BE NOT LESS THAN TWO (2) ACRES.

(C) ROOM RESTRICTIONS IN ANY MULTI-FAMILY UNIT SHALL BE ELIMINATED ENTIRELY.

(D) THERE SHALL BE ELIMINATED ANY PERCENTAGE OR OTHER TYPE OF CEILING ON THE NUMBER OF MULTI-FAMILY UNITS PERMITTED IN DEFENDANT BOROUGH.

(E) MAXIMUM HEIGHT FOR MULTI-FAMILY UNITS SHALL BE NO MORE THAN THREE (3) STORIES.

(F) THIRTY-FIVE (35) ACRES OF EXISTING RESIDENTIALLY ZONED LAND WITHIN DEFENDANT BOROUGH SHALL BE ZONED FOR 7500 SQUARE FOOT LOTS WITH MINIMUM HABITABLE FLOOR AREA EXCLUSIVE OF BASEMENT AREA, OF NOT LESS THAN 900 SQUARE FEET.

12. THE DEFENDANT, BOROUGH OF SPOTSWOOD, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) DELETION OF LIMITATIONS ON THE NUMBER OF BEDROOMS OR ROOMS IN MULTI-FAMILY HOUSING.

(B) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE-FAMILY HOUSING, OR BOTH.

(C) REDUCTION OF EXCESSIVE MINIMUM LOT SIZES FOR SINGLE-FAMILY HOUSING.

(D) REZONING FROM INDUSTRY TO MULTI-FAMILY RESIDENTIAL OR SINGLE-FAMILY HOUSING ON REDUCED LOT SIZES.

13. THE DEFENDANT, TOWNSHIP OF WOODBRIDGE, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS

**ZONING ORDINANCE AS FOLLOWS:**

**ARTICLE VI - SCHEDULE OF AREA, YARD, AND BUILDING REQUIREMENTS ZONING ORDINANCE OF THE TOWNSHIP OF WOODBRIDGE, NEW JERSEY.**

**SECTION 1. ARTICLE VI, SCHEDULE OF AREA, YARD, AND BUILDING REQUIREMENTS ZONING ORDINANCE OF THE TOWNSHIP OF WOODBRIDGE, NEW JERSEY. THIS ARTICLE SHALL BE AMENDED BY DELETING ALL REFERENCE TO FOOTNOTE NO. (1) IN THE COLUMN TITLED MINIMUM GROSS FLOOR AREA/FAMILY (IN SQUARE FEET) FOR THE R-5 RESIDENCE ZONE.**

**SECTION 2. FOOTNOTE NO. (1) SHALL BE AMENDED TO READ AS FOLLOWS: FOR GARDEN APARTMENTS, THE MINIMUM HABITABLE FLOOR AREA IS 650 SQUARE FEET.**

**ARTICLE XII - R-6A RESIDENCE ZONE, SECTION 1. PERMITTED USES**

**SECTION 1. ARTICLE XII, SECTION 1. PERMITTED USES IS AMENDED BY ADDING PARAGRAPH C. AS FOLLOWS:**

**C. GARDEN APARTMENT DEVELOPMENTS**

**ARTICLE XII - SECTION 3. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT**

**SECTION 1. ARTICLE XII, SECTION 3.A. AND B. ARE AMENDED TO READ AS FOLLOWS:**

- A. SAME AS SPECIFIED IN THE R-5 RESIDENCE ZONE, EXCEPT THAT PUBLIC AND QUASI-PUBLIC SWIM CLUBS ARE PROHIBITED.**
- B. BOARDING AND ROOMING HOUSES, BUT NOT MOTELS, HOTELS, OR TOURIST HOMES AND CABINS, SUBJECT TO THE STANDARDS AND CONDITIONS SET FORTH IN ARTICLE XX, SECTION 2. OF THIS ORDINANCE.**

**ARTICLE XII - SECTION 4. AREA, YARD, AND BUILDING REQUIREMENTS**

**SECTION 1. ARTICLE XII, SECTION 4. PARAGRAPH B. IS ADDED TO READ AS FOLLOWS:**

- B. FOR GARDEN APARTMENT DEVELOPMENTS AS PERMITTED IN**

**THIS ARTICLE:**

MINIMUM LOT SIZE - 2 ACRES  
MINIMUM LOT WIDTH - 200 FEET  
MINIMUM LOT DEPTH - 300 FEET  
MINIMUM YARD REQUIREMENTS - 25 FEET ON ALL SIDES  
MINIMUM FLOOR AREA PER DWELLING UNIT - 650 SQUARE  
FEET  
MINIMUM OFF-STREET PARKING SPACES PER DWELLING  
UNIT 1-1/2  
MAXIMUM BUILDING COVERAGE - 20 PER CENT  
MAXIMUM BUILDING HEIGHT - 35 FEET  
MAXIMUM NUMBER OF DWELLING UNITS PER ACRE - 18

THE AREAS SHALL BE ATTRACTIVELY LANDSCAPED AND SEEDED.

ADEQUATE RECREATION AREA AND FACILITIES TO SERVE THE NEEDS OF THE ANTICIPATED POPULATION SHALL BE PROVIDED AND SHALL CONSIST OF AT LEAST THE FOLLOWING: A FENCED OFF PLAY-LOT INCLUDING PLAY EQUIPMENT SUCH AS SWINGS, SEESAWS, ETC., SHALL BE PROVIDED. THERE SHALL BE FIFTEEN (15) SQUARE FEET OF PLAY-LOT FOR EVERY DWELLING UNIT WITH A MINIMUM SIZE AREA OF ONE THOUSAND (1,000) SQUARE FEET.

THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO GARDEN APARTMENTS PREVIOUSLY CONSTRUCTED OR TO APPLICATIONS FINALLY APPROVED AS OF THE DATE OF THE ADOPTION OF THIS AMENDMENT.

**ARTICLE XIV - B-1 NEIGHBORHOOD BUSINESS ZONE, SECTION 1.  
PERMITTED USES**

SECTION 1. ARTICLE XIV B-1 NEIGHBORHOOD BUSINESS ZONE, SECTION 1. PERMITTED USES IS AMENDED BY ADDING PARAGRAPH C. TO READ AS FOLLOWS:

**C. GARDEN APARTMENT DEVELOPMENTS.**

**ARTICLE XIV - SECTION 4.C. OTHER USES PERMITTED UPON  
APPLICATION TO THE ZONING BOARD FOR A  
SPECIAL PERMIT**

SECTION 1. ARTICLE XIV, SECTION 4.C. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT IS DELETED IN ITS ENTIRETY.

**ARTICLE XIV - SECTION 5., AREA, YARD, AND BUILDING  
REQUIREMENTS**



SECTION 1. ARTICLE XIV, SECTION 5., AREA, YARD AND BUILDING REQUIREMENTS IS AMENDED BY ADDING PARAGRAPH C. AS FOLLOWS:

C. AS TO GARDEN APARTMENT DEVELOPMENT, AS SPECIFIED IN ARTICLE XII, SECTION 4.B., OF THIS ORDINANCE.

ARTICLE XV - B-2 CENTRAL BUSINESS ZONE, SECTION 1., PERMITTED USES

SECTION 1. ARTICLE XV, B-2 CENTRAL BUSINESS ZONE, SECTION 1. PERMITTED USES IS AMENDED BY ADDING PARAGRAPH I. TO READ AS FOLLOWS:

I. GARDEN APARTMENT DEVELOPMENTS.

ARTICLE XV - B-2 CENTRAL BUSINESS ZONE, SECTION 3. D. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT.

SECTION 1. ARTICLE XV, B-2 CENTRAL BUSINESS ZONE, SECTION 3. D. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT IS DELETED IN ITS ENTIRETY.

ARTICLE XV - B-2 CENTRAL BUSINESS ZONE, SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS.

SECTION 1. ARTICLE XV, B-2 CENTRAL BUSINESS ZONE, SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS IS AMENDED BY ADDING PARAGRAPH C. TO READ AS FOLLOWS:

C. AS TO GARDEN APARTMENT DEVELOPMENTS, AS SPECIFIED IN ARTICLE XII, SECTION 4.B., OF THIS ORDINANCE.

ARTICLE XVI - B-3 HIGHWAY BUSINESS ZONE, SECTION 1.C. PERMITTED USES.

SECTION 1. ARTICLE XVI, B-3 HIGHWAY BUSINESS ZONE, SECTION 1. C. PERMITTED USES IS AMENDED BY ADDING SUBSECTION (8) TO READ AS FOLLOWS:

(8) GARDEN APARTMENT DEVELOPMENTS.

ARTICLE XVI - B-3 HIGHWAY BUSINESS ZONE, SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS.

SECTION 1. ARTICLE XVI, B-3 HIGHWAY BUSINESS ZONE, SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS IS AMENDED BY

ADDING PARAGRAPH C. TO READ AS FOLLOWS:

C. AS TO GARDEN APARTMENT DEVELOPMENTS, AS SPECIFIED IN ARTICLE XII, SECTION 4.8., OF THIS ORDINANCE.

ARTICLE XVII - M-1 LIGHT INDUSTRY ZONE, SECTION 5.E. (3)  
OTHER PROVISIONS AND REQUIREMENTS.

SECTION 1. ARTICLE XVII, M-1 LIGHT INDUSTRY ZONE, SECTION 5. E. (3) OTHER PROVISIONS AND REQUIREMENTS IS AMENDED TO READ AS FOLLOWS:

(3) RESIDENTIAL DWELLINGS EXCEPT GARDEN APARTMENTS AS PROVIDED FOR IN THIS ORDINANCE.

ARTICLE XX - SECTION 2. E. SPECIAL EXCEPTIONS (GARDEN APARTMENT DEVELOPMENTS)

SECTION 1. ARTICLE XX, SECTION 2. E. SPECIAL EXCEPTIONS (GARDEN APARTMENT DEVELOPMENTS) IS DELETED IN ITS ENTIRETY AND AMENDED TO READ AS FOLLOWS:

E. GARDEN APARTMENT DEVELOPMENTS MAY BE PERMITTED IN THE M-1 LIGHT INDUSTRY ZONE PROVIDED THAT THE FOLLOWING DESIGN STANDARDS AND APPLICATION PROCEDURES ARE COMPLIED WITH:

(1) DESIGN STANDARDS:

MINIMUM LOT SIZE - 2 ACRES  
MINIMUM LOT WIDTH - 200 FEET  
MINIMUM LOT DEPTH - 300 FEET  
MINIMUM YARD REQUIREMENTS - 25 FEET ON ALL SIDES  
MINIMUM FLOOR AREA PER DWELLING UNIT - 650 SQUARE FEET  
MINIMUM OFF-STREET PARKING SPACES PER DWELLING UNIT 1-1/2  
MAXIMUM BUILDING COVERAGE - 20 PER CENT  
MAXIMUM BUILDING HEIGHT - 35 FEET  
MAXIMUM NUMBER OF DWELLING UNITS PER ACRE - 18

THE AREA SHALL BE ATTRACTIVELY LANDSCAPED AND SEEDED.

ADEQUATE RECREATION AREA AND FACILITIES TO SERVE THE NEEDS OF THE ANTICIPATED POPULATION SHALL BE PROVIDED AND SHALL CONSIST OF AT LEAST THE FOLLOWING: A FENCED OFF PLAY-LOT INCLUDING PLAY EQUIPMENT SUCH AS SWINGS,

SEESAWS, ETC., SHALL BE PROVIDED. THERE SHALL BE FIFTEEN (15) SQUARE FEET OF PLAY-LOT FOR EVERY DWELLING UNIT WITH A MINIMUM SIZE AREA OF ONE THOUSAND (1,000) SQUARE FEET.

THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO GARDEN APARTMENTS PREVIOUSLY CONSTRUCTED OR TO APPLICATIONS FINALLY APPROVED AS OF THE DATE OF THE ADOPTION OF THIS AMENDMENT.

**(2) APPLICATION PROCEDURES:**

- (A) APPLICANT SHALL CONFORM TO THE REQUIREMENTS OF ARTICLE V, GENERAL REGULATIONS, SECTION 23. OF THIS ORDINANCE.**
- (B) APPLICATION FOR A PERMIT TOGETHER WITH THREE (3) COPIES OF THE APPROPRIATE PLANS, SPECIFICATIONS AND SIX (6) PLOT PLANS SHALL BE MADE TO THE BUILDING INSPECTOR, WHO SHALL GATHER ALL INFORMATION ON THE ABOVE REQUIREMENTS AND REFER THE MATTER TO THE ZONING BOARD.**
- (C) THE ZONING BOARD SHALL REFER THE MATTER TO THE PLANNING BOARD FOR REPORT THEREON AS TO IT EFFECT ON THE COMPREHENSIVE PLANNING OF THE TOWNSHIP. NO ACTION SHALL BE TAKEN UNTIL SUCH REPORT SHALL HAVE BEEN RECEIVED FROM THE PLANNING BOARD, WHICH BOARD SHALL MAKE ITS REPORT THEREON WITHIN FORTY-FIVE (45) DAYS. AFTER RECEIPT OF SUCH REPORT, THE ZONING BOARD SHALL HEAR THE APPLICATION IN THE SAME MANNER AND UNDER THE SAME PROCEDURE AS IT IS EMPOWERED BY LAW AND ORDINANCE TO HEAR CASES AND MAKE EXCEPTIONS TO THE PROVISIONS OF THE ZONING ORDINANCE.**
- (D) THE ZONING BOARD SHALL THEREAFTER REFER THE APPLICATION WITH ITS RECOMMENDATION AND THE RECOMMENDATION OF THE PLANNING BOARD TO THE MUNICIPAL COUNCIL. THE MUNICIPAL COUNCIL SHALL EITHER DENY OR GRANT THE APPLICATION, AND SHALL GIVE THE REASONS THEREFORE. IN APPROVING ANY SUCH APPLICATION, THE MUNICIPAL COUNCIL MAY IMPOSE ANY CONDITIONS THAT IT DEEMS NECESSARY TO ACCOMPLISH THE REASONABLE APPLICATION OF THE ABOVE STANDARDS, AND TO ENSURE CARRYING OUT OF THE GENERAL PURPOSES OF THE ZONING ORDINANCE.**

(E) IF THE APPLICATION IS GRANTED, THE BUILDING INSPECTOR SHALL ISSUE A BUILDING PERMIT, BUT ONLY UPON THE CONDITIONS, IF ANY, IMPOSED BY THE MUNICIPAL COUNCIL.

14. UPON FULL AND COMPLETE COMPLIANCE WITH THE TERMS OF THE SETTLEMENT BY THE DEFENDANTS, BOROUGH OF CARTERET, BOROUGH OF HELMETTA, BOROUGH OF HIGHLAND PARK, BOROUGH OF JAMESBURG, BOROUGH OF METUCHEN, BOROUGH OF MIDDLESEX, BOROUGH OF MILLTOWN, CITY OF SOUTH AMBOY, BOROUGH OF SOUTH RIVER, BOROUGH OF SPOTSWOOD AND TOWNSHIP OF WOODBRIDGE, THE COMPLAINT IN THE ABOVE MATTER SHALL BE DISMISSED.

15. THE DEFENDANTS, TOWNSHIP OF MADISON (OLD BRIDGE), TOWNSHIP OF MONROE, AND TOWNSHIP OF SOUTH BRUNSWICK BE AND ARE HEREBY ORDERED AND DIRECTED TO ENACT OR ADOPT NEW ZONING ORDINANCES TO ACCOMMODATE THEIR RESPECTIVE FAIR SHARE ALLOCATION OF LOW AND MODERATE INCOME HOUSING AS SPECIFICALLY OUTLINED IN THE COURT'S WRITTEN OPINION DATED MAY 4, 1976 AT PAGE 32 THEREOF, PLUS AN ADDITIONAL FAIR SHARE ALLOCATION OF 1,333 UNITS FOR EACH SUCH MUNICIPALITY.

THE DEFENDANTS, TOWNSHIP OF CRANBURY, TOWNSHIP OF EAST BRUNSWICK, TOWNSHIP OF EDISON, TOWNSHIP OF NORTH BRUNSWICK, TOWNSHIP OF PISCATAWAY, TOWNSHIP OF PLAINSBORO, BOROUGH OF SAYREVILLE AND THE BOROUGH OF SOUTH PLAINFIELD, SHALL, ALTERNATIVELY, ENACT OR ADOPT NEW ZONING ORDINANCES TO ACCOMMODATE THEIR RESPECTIVE FAIR SHARE ALLOCATION OF LOW AND MODERATE INCOME HOUSING AS SPECIFICALLY OUTLINED IN THE COURT'S WRITTEN OPINION

dated May 4, 1976 at page 32 thereof, plus an additional fair share allocation of 1,333 units for each such municipality; or, shall rezone all of their remaining vacant land suitable for housing in order to permit or allow low and moderate income housing on a ratio of 15% low and 19% moderate income housing units as specifically outlined in this Court's written opinion at pages 33 and 34.

16. All of the various defendants shall cause the enactment or adoption of their respective zoning ordinance amendments to be completed within ninety (90) days of the entry of this Judgment.

17. This Court retains jurisdiction over the pending litigation for the purpose of supervising the full compliance with the terms and conditions of this Judgment.

18. Applications for special relief from the terms and conditions of this Judgment may be entertained by this Court.

19. It is the Judgment of this Court that the plaintiffs have an interest in this litigation which entitles them to standing to represent a class of low and moderate income people.

20. All allegations as to alleged violations of the Federal Civil Rights Act, in such case made and provided, be and are hereby dismissed.

21. Each of the defendants, Township of Cranbury, Township of East Brunswick, Township of Edison, Township of Madison (Old Bridge), Township of Monroe, Township of North

Brunswick, Township of Piscataway, Township of Plainsboro, Borough of Sayreville, Township of South Brunswick and the Borough of South Plainfield, are hereby ordered and directed to make good faith efforts by way of participation in existing or proposed Federal and State subsidy programs for new housing and rehabilitation of existing substandard housing. In implementing this judgment the 11 municipalities charged with fair share allocations must do more than rezone not to exclude the possibility of low and moderate income housing in the allocated amounts. Approvals of multi-family projects, including Planned Unit Developments, should impose mandatory minimums of low and moderate income units. Density incentives may be set. Mobile homes offer a realistic alternative within the reach of moderate and even low income households. Whether single-family housing is attainable for moderate income households may hinge upon land and construction costs. The 11 municipalities should pursue and cooperate in available Federal and State subsidy programs for new housing and rehabilitation of substandard housing, although it is beyond the issues in this litigation to order the expenditure of municipal funds or the allowance of tax abatements.

22. The Third Party Defendants, City of New Brunswick and City of Perth Amboy, be and are hereby dismissed and judgment entered accordingly.

23. With regard to the 11 municipalities referred to in

Paragraph 2 above, separate orders of dismissal shall be submitted to the Court under Rule 4:42-1(b) upon enactment of ordinances in full compliance with this judgment.

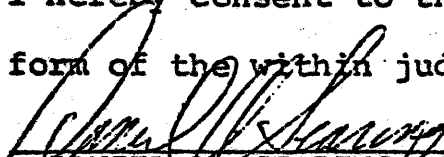
24. Plaintiff's application for counsel fees is denied; however plaintiffs may apply for costs by separate motions.

It is further ORDERED that a copy of this judgment be forwarded to the respective attorneys within seven (7) days of the date hereof.

*David D. Furman, J.S.C.*

DAVID D. FURMAN J.S.C.

I hereby consent to the form of the within judgment.

  
DANIEL M. SEARING, Esq.  
Attorney for Plaintiff

RECEIVED

MAY 25 1977

May 20, 1977

Honorable David D. Furman  
Judge of the Superior Court  
Middlesex County Courthouse  
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick, et al.  
v. Mayor and Council of the Borough of Cartaret, et al.

Dear Judge Furman:

On February 23, 1977 the Township of North Brunswick submitted a proposed Order for Dismissal on the basis of its amended zoning ordinance. On March 8, 1977 Roger Rosenthal, staff attorney, NCDH, requested additional information from Mr. Burns, which information was received March 25th.

All of these materials have been reviewed and analyzed by plaintiffs' expert, Mr. Alan Mallach.

As set forth more fully below, plaintiffs strenuously oppose dismissal of defendant North Brunswick Township because the zoning ordinance as amended by Township officials (1) fails to remove exclusionary provisions; (2) fails to meaningfully rezone available acreage; and (3) fails to meet housing needs for low and moderate income households. Additionally, defendant North Brunswick fails to indicate what actions it will take to assure realization of its fair share allocation.

Before expanding on these objections, we wish to summarize the actions taken by North Brunswick in what appears to be a random amendment of some features of its ordinance. The sum total of changes to existing ordinance provisions are:

(a) the requirement that private garages be provided in each home has been deleted in the R-2, R-3, and R-4 zones, and made optional. This has also been done with regard to single family homes in the R-6 zone.

Exhibit B



(b) minimum floor requirements have been reduced as follows: in the R-2 zone, from 1400 sq. ft. to 1200 sq. ft.; in the R-3 zone from 1200 to 1000; and in the R-4 zone from 1000 to 900.

(c) in the R-5 garden apartment zone the provision of air conditioning has been deleted as a mandatory requirement. Similarly, the provision of swimming pools has been made optional.

(d) minimum off-street parking requirements have been set at 1.5 spaces per dwelling unit for all zones and housing types, with the exception of garden apartments which remain 2 spaces per dwelling unit.

It is clearly established under Mt. Laurel and under this court's judgments that the first step incumbent on a municipality found exclusionary is the removal of all existing zoning provisions of an exclusionary character. Plaintiffs are constrained to point out that notwithstanding the changes noted above, defendant North Brunswick has failed to take this first step.

**I. Exclusionary Zoning Provisions Have Not Been Removed.**

The North Brunswick ordinance still contains the following exclusionary provisions, among others:

(a) excessive lot size requirements in R-1, R-2, R-6 and possibly R-3 zones; excessive frontage (width) requirements in R-1, R-2, R-3, and R-6 zones.

(b) extensive exclusionary provisions governing garden apartments in the R-5 and R-6 (ERD) zones; e. g. .

1. an 80:20 1 bedroom 2 bedroom regulations, and a prohibition on units larger than 2 bedrooms.
2. a requirement that 2 parking spaces be provided per dwelling unit.

3. a requirement that 420 cubic ft. of storage space and 450 sq. ft. of playground space be required per dwelling unit.
4. numerous other requirements, including a 'zigzag' provision on ostensibly aesthetic grounds, and a requirement that one parking space per dwelling, in developments over 10 acres, be in a carport or garage.

(c) exclusionary provisions in the PUD zone, including elaborate percentage requirements regarding unit types, an 80:20 regulation affecting garden apartments, and provisions for townhouses including (1) no more than 50% 3 bedroom units, and (2) no units with more than 3 bedrooms.

Certainly North Brunswick Township has a minimal obligation to remove these unequivocally exclusionary ordinance provisions before representing itself as in compliance with this Court's judgment.

## II. The Amended Ordinance Fails to Meaningfully Rezone.

Before detailing plaintiffs' second and third objections, it is necessary to set out our analysis of the rezoning which has been approved by North Brunswick officials. Two new zones have been created under the amended ordinance. They are:

A. The R-T-D zone, which permits duplex homes and townhouses under what are generally reasonable provisions. The only significant exception is that a density of 7 dwelling units per acre is low with regard to townhouse development, and should be higher. It is unclear why garden apartments have not been permitted in this zone, inasmuch as they are wholly compatible uses with those permitted.

There are, according to information provided by Mr. Burns, approximately 20 vacant acres zoned R-T-D in the Township, which can accommodate under the ordinance approximately 140 dwelling units, either duplex houses or townhouses.

Honorable David D. Furman  
Judge, Superior Court of New Jersey

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B. The R-M zone which provides for mobile home parks in the designated part of the Township. The provisions regarding mobile homes are not unreasonable, with the following exceptions:

1. Although the prohibition on mobile homes has been deleted from the ordinance, mobile homes are still prohibited outside the mobile home park; i. e., they cannot be used elsewhere in the Township as an alternative to conventional housing.
2. A minimum of 25% of the units in a mobile home park must be occupied by individuals aged over 55 (or a couple, one of whom is over 55).
3. The requirement that interior streets be 36 or more feet in width is excessive.

There are, according to Mr. Burns, 112.14 acres in the R-M zone after the utility right of way is subtracted. This is capable of accommodating just under 900 mobile homes under the ordinance provisions.

With modest revisions, the provisions of the R-T-D and R-M zones are not inappropriate for their purpose. This, however, is not the central issue.

Plaintiffs' first objection to these rezoning amendments is that they do not represent a good faith effort to meaningfully rezone available, developable land in the Township. According to the Township, there are 2717 acres of vacant and undeveloped land in North Brunswick, exclusive of agricultural uses, water, and watershed land. DCA, in their housing allocation report, cite a figure of 2537 acres of vacant and developable land. Although the Township has not provided plaintiffs with information on vacant land by zone, a review of the zoning map makes clear that the majority of vacant land is in non-residential zones (I2, I1, ERR, and SPD) and the majority of residential land is in R-1, R-2, R-6 and PUD zones. There appears to be no noticeable amount of vacant land in the R-4 zone, the only zone prior to the recent amendments that can be considered non-exclusionary.

The Township has now zoned a total of 5% of the available vacant land for ostensibly meeting their fair share. The remaining 95% of the land is zoned either for non-residential purposes, or for exclusionary residential purposes. This is not responsive either to the general thrust of this Court's opinion, nor to the specific language in which you stated that "The Township is overzoned for industry by nearly 1,000 acres and 200%" 143 N.J. Super at 31. From a purely numerical standpoint, the rezoning that North Brunswick has carried out is a blatantly inadequate response to the decision.\*

**III. The Amended Ordinance Fails to Meet Housing Needs for Low and Moderate Income Groups.**

Additionally, plaintiffs object to the inadequacy of the rezoning to meet the housing needs in North Brunswick.

Assuming arguendo that all the units theoretically possible are constructed in the two "fair share" zones described above, a total of roughly 1,040 units will ensue, of which 900, or 86.5%, would be mobile homes. Although we will readily accept that mobile homes can meet some part of low and moderate income housing need, plaintiffs argue that it is a small part of such needs, and should be only a small part of the total program to meet the municipality's fair share.

The rationale for such a position is clear. Under currently available programs for low income housing needs, particularly Section 8, it is nearly impossible to participate in these programs through mobile home development. Section 8 housing, particularly for senior citizens, is multifamily housing.

Section 515 housing (assuming one can build under Farmers Home Administration in North Brunswick, which we are not certain of) is multifamily housing. Indeed, a program to meet low income housing needs must provide extensive land area in which it is possible to build (a) garden apartments and town houses with no exclusionary constraints; and (b) mid-rise apartments for senior citizens. The Township has provided a token amount of land for townhouses, and no land for either garden or mid-rise apartments on a non-exclusionary basis. The Township has provided no land for modest single family homes (either conventionally constructed or individual mobile homes) on small lots.

\* If a township zoned "15% for low income and 19% for moderate income on the basis of 100% zoning for housing" (142 NJSuper at 38), this would yield, by Mr. Mallach's calculation, a rezoning of 924 acres for North Brunswick's initial fair share allocation.

Furthermore, even if the number of units were theoretically feasible to build, there is no assurance that they will be built. As Justice Conford recognized in his Madison opinion (and as housing experts have long recognized), if you want to make possible construction of X number of low and moderate income units, you must rezone far more land than the acreage on which Z units can theoretically fit.

Applying that axiom to the newly created zones, it is important to note, first, that the language of the R-M zone does not limit that zone to mobile homes, it merely permits mobile homes in the zone, along with other uses. Since this zone is surrounded by industrial uses and industrially zoned land, and backs onto the railroad line, it is not unreasonable to expect some landowners to utilize that land for industrial purposes. Secondly, even if all land in both zones were developed as per the zoning ordinance, there is no assurance that the units would be available for low or for moderate income families. The proposed R-D-T zone, for example, might be developed for luxury housing similar to other developments nearby along State Highway 27.

IV. The Township Fails to Show How It Will Assure Realization of Its Fair Share Allocation.

In addition to the problems presented by their underzoning for effecting realization of their fair share allocation, Township officials have failed to indicate in any way how they intend to comply with this Court's requirement that "in implementing this judgment the 11 municipalities charged with fair share allocations must do more than rezone not to exclude the possibility of low and moderate income housing . . ." 142 N.J. Super at 38.

In summary, plaintiffs oppose dismissal at this time. For all the reasons set forth above, it would be premature to dismiss North Brunswick until or unless the Township will:

- (a) remove exclusionary provisions affecting all residential zones in the Township;
- (b) rezone significantly more acreage for uses appropriate to meeting fair share low and moderate income housing needs;

Honorable David D. Furman  
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- (c) rezone substantial amounts of that acreage for
- (1) garden apartments at densities of at least 15 DU/acre;
  - (2) mid-rise apartments up to six stories in height; and
  - (3) small houses on small lots (preferably allowing mobile homes as well as conventional structures); and
- (d) undertake responsible and appropriate action to facilitate development of low and moderate income housing consistent with the language of the Urban League decision and Order.

Respectfully submitted,

Marilyn J. Morheuser  
Attorney for Plaintiffs

MJM/lm

cc: Joseph H. Burns, Esq.  
bcc: Roger Rosenthal  
Martin Sloane  
David Ben-Asher  
Alan Mallach

N.B

March 14, 1979

Joseph Burns, Esq.  
109 Bayard Street  
New Brunswick, New Jersey 08901

Re: Urban League of Greater New Brunswick, et al. v.  
Mayor and Council of the Borough of Carteret, et al.

Dear Mr. Burns:

I am in receipt of the materials which you have sent us pursuant to our request of January 5, 1979. It would appear that these materials are sufficient for our purposes at this time. Therefore, plaintiffs renew their request that you ask Judge Furman to schedule your motion for a hearing. I would appreciate being advised in advance of the hearing date which you will request from Judge Furman.

Sincerely,

Roger C. Rosenthal  
Attorneys for Plaintiffs

bcc: Marilyn Morheuser  
Alan Mallach

Exhibit C

Alan Mallach  
15 Pine Drive  
Roosevelt NJ 08555

NORTH BRUNSWICK TOWNSHIP

Our review of the North Brunswick Township Land Use Ordinance provides no indication that any effort is being made by the Township to meet its Mt. Laurel obligations, nor is there any indication that the Township complied with the judgement of the trial court in Urban League of Greater New Brunswick v. Borough of Carteret et al handed down in 1976. North Brunswick does, however, provide for a number of different multifamily uses in various zones. With a single solitary exception, the R-7 zone for nonprofit development of senior citizens housing (which is now fully developed) none of these multifamily zones provide any realistic opportunity for the meeting of low and moderate income housing needs as required in the Mt. Laurel II decision. As will be described below, not only does the ordinance contain no provisions for a mandatory setaside, or any incentives for low and moderate income housing development (with the sole exception of senior citizens housing), but it continues to contain egregiously exclusionary provisions such as floor area minimum requirements, and bedroom mix requirements, which have long since been found illegal. The ordinance patently fails to satisfy the standards outlined in my October 1983 expert report concerning municipal compliance with Mt. Laurel II.

A. Mandatory Set-Aside

North Brunswick Township's ordinance does not contain a mandatory set-aside, which, under current conditions, is necessary to provide a "realistic opportunity" for the development of low and moderate income housing, nor do they provide any other means of achieving the Township's fair share obligation. North Brunswick's ordinance clearly



## NORTH BRUNSWICK (2)

fails to comply with the constitutional obligation set forth in Mt. Laurel II.

### B. Land Subject to Inclusionary Ordinance

There is no vacant land within the Township which is zoned under inclusionary provisions, either a mandatory set-aside, a voluntary density bonus, or other incentive to provide low or moderate income housing. The only land that can be considered to have been so zoned was a single site for senior citizen housing, now developed.

### C. Cost Generating Requirements and Exclusionary Provisions

As noted above, the North Brunswick ordinance remains rife with exclusionary and cost-generating provisions, many of a type rarely seen in New Jersey municipal zoning ordinances today. We will attempt to present here only a selective list of such provisions, as they apply to each of the multifamily zones. In addition, there are a number of general exclusionary provisions, including

- (1) A definition of 'family' that excludes more than three nonrelated individuals from being considered a 'family', in violation of State law (145-7)
- (2) Prohibition on mobile homes in all zones with the sole exception of the R-M mobile home park zone (145-40(c))
- (3) Egregious exclusionary provisions in all residential zones, including minimum floor area standards unrelated to occupancy and/or health and safety, in violation of State law.

The following discussion will be presented for each multifamily zone.

As noted, it is not meant to be exhaustive, but representative.

#### (1) With regard to the R-5 Garden Apartment zone:

- a) excessive minimum lot requirement (145-56(A)1)
- b) excessive setback requirements((A)4 and 5)
- c) inadequate maximum coverage standard ((A)6)
- d) inadequate density of 10 DU/acre ((A)8)
- e) limitation on number of dwelling units per building (145-56(B)1)
- f) 'zigzag' or variation in facade setback requirement ((B)3)

NORTH BRUNSWICK (3)

- g) requirement for brick or stone construction ((B)4)
- h) requirement that each unit have two means of access and egress (145-56(C)1)
- i) requirement that at least 80% of the units be one bedroom or efficiency units((C)6)
- j) minimum floor area requirements of 750 SF for 1 bedroom and 1000 SF for 2 bedroom units, both in excess of health and safety requirements ((C)7)
- k) requirement of average 150 SF per bedroom, unrelated to health and safety requirements ((C)8)
- l) prohibition on units of 3 or more bedrooms ((C)9)
- m) height limit of two stories ((C)10)
- n) excessive requirement of two parking spaces per unit (145-56(E)1)
- o) requirement that internal streets have 36' wide paved roadway ((E)12)
- p) requirement that units have 100' buffer zone (145-56(F)1)
- q) requirement that full-time superintendant be provided (F)10)

(2) With regard to the ERD zone:

- a) 25% of all units must be single family houses under clearly exclusionary provisions, including 30,000 SF lot and 1600 SF floor area (145-59(A)1 and 9)
- b) Balance of units may be garden apartments subject to all R-5 standards (see (1) above) except for open space (145-60(D)2)

(3) As noted, the R-7 senior citizen housing zone was a single site, which is now developed.

(4) With regard to the PUD zone:

- a) A minimum of 10% of the area of a PUD must be developed for nonresidential uses (145-86(B))
- b) Inadequate gross density of 7 DU/acre and net density of 10 DU/acre (145-87(A))
- c) Prohibition of townhouse units larger than 3 bedrooms (B)
- d) requirement that no more than 50% of townhouses may contain 3 bedrooms (same)
- e) requirement that 80% of any garden apartment units be one bedroom or efficiency units (C)
- f) 100' setback requirement (145-87(G)3)
- g) discretionary buffer requirement ((G)8)

(5) With regard to the R-T-D townhouse/duplex zone:

- a) Inadequate gross density for duplex units of 7 DU/acre (145-92.3(A)2)
- b) excessive setback requirement for duplex units ((A)3)
- c) inadequate coverage standard for duplex units ((A)7)

NORTH BRUNSWICK (4)

- d) minimum 800 SF floor area requirement for duplex units ((A)8)
- e) buffering requirement for duplex units (145-92.3(B)1)
- f) inadequate gross density for townhouses of 7 DU/acre (145-92.4(A)2)
- g) excessive setback for townhouses ((A)3)
- h) inadequate coverage for townhouses ((A)4)
- i) 20' minimum width requirement for townhouses ((A)5)
- j) 800 SF minimum floor area requirement for townhouses ((A)6)
- k) limit of 8 DU per townhouse structure ((A)8)
- l) buffering requirement (145-92.4(B)1)

(6) With regard to the R-M mobile home park zone, which has an acceptable gross density standard.

- a) inappropriate requirement that 25% of occupants be senior citizens (145-92.7(D))
- b) requirement for 36' wide roadways (H)
- c) excessive setback requirements (E)3 and 4
- d) excessive sidewalk construction requirement (I)
- e) excessive parking requirement of two spaces per unit (J)

Incentives in Support of Development of Low and Moderate Income Housing

From the materials available to plaintiffs, there is no evidence that North Brunswick has undertaken any efforts to provide support or incentives for development of low and moderate income housing, with the sole exception of a senior citizen housing development, completed some years ago. It appears, in contrast, that the objectives of the Township lie more in the area of maximizing rateables, through extensive zoning of industrial and related areas, and the imposition of fiscally-related conditions on residential development.

## OLD BRIDGE TOWNSHIP

Our review of the Old Bridge Township Land Development Ordinance provides no indication that any effort is being made by the Township to meet its Mt. Laurel obligations. A density bonus provision, as will be discussed below, is patently inconsistent with both the letter and spirit of Mt. Laurel II. Furthermore, there is no indication that the Township has complied with the judgement of the trial court in Urban League of Greater New Brunswick v. Borough of Carteret et al. handed down in 1976. Multifamily development is permitted in a number of zones within the Township, including the following:

- A-F Multifamily housing (termed 'multiplex' in the ordinance) apparently largely or fully developed
- A-R multifamily housing for senior citizen occupancy
- TH townhouse development
- TCD town center, in which one section permits a variety of multifamily uses
- PD I duplex, triplex, quadruplex and townhouse, as well as single family housing
- PD II all types of multifamily and single family housing (except mid- or highrise)

The density bonus provision applies only within the two PD zones, and is, in our judgement, utterly inadequate to achieve low and moderate income housing objectives. A variety of cost-generating provisions as well as other standards inimical to achievement of fair share objectives are present. This ordinance fails to satisfy the standards outlined in my October 1983 expert report concerning municipal compliance with Mt. Laurel II.

### A. Mandatory Set-Aside

Old Bridge Township's ordinance does not contain a mandatory set-aside, which, under current conditions, is necessary to provide

OLD BRIDGE (2)

a 'realistic opportunity' for the development of low and moderate income housing. The ordinance does provide, in the PUD zones, a density bonus for 'affordable' housing (Sec.9-5:2.1.3) which enables a developer to obtain a density increase of 0.2 DU/acre if 10% of the units in the PD are provided through some combination of:

a) construction of units whose annual carrying cost will not exceed 30% of the annual income of a family earning 120% of the median income in the New Brunswick-Perth Amboy-Sayreville SMSA for a family of four; or

b) conveying land to nonprofit or limited-dividend sponsors for development of housing meeting the criterion of (a) above 1/

This is inadequate, for a number of reasons:

- (1) The standard of affordability is totally inconsistent with that set forth in Mt. Laurel II, and allows units to be affordable to families earning over \$40,000;
- (2) No provisions are made for occupancy, resale, or rental controls;
- (3) the 'bonus' is so limited as to raise questions regarding the intent of the municipality.

The table below indicates the effect of the 'bonus' on a developer building on the minimum acreage in the PD II zone (300 acres). As can be seen, the use of the 'bonus' results in a loss of 48 conventional units. In view of these considerations, this provision

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EFFECTIVE OF DENSITY "BONUS" ON PD II DEVELOPMENT

	ACREAGE	DENSITY	UNITS		
			TOTAL	CONVENTIONAL	AFFORDABLE
BY RIGHT	300 A	3.4	1020	1020	0
WITH BONUS	300 A	3.6	1080	972	108

-----

cannot be considered a legitimate means of meeting fair share goals, and it is apparent that the ordinance clearly fails to comply with the constitutional obligation set forth in Mt. Laurel II.

## OLD BRIDGE (3)

### B. Land Subject to Inclusionary Ordinance

It is our understanding that substantial acreage is zoned under the PD category, which contains the density 'bonus' for affordable housing discussed above. This is not considered, however, a bona fide inclusionary ordinance in the usage of Mt. Laurel II.

### C. Cost Generating Requirements

There are a variety of cost-generating requirements or exclusionary requirements unrelated to health and safety which hinder development of low and moderate income housing in multi-family zones in Old Bridge Township. In view of the complexity and level of detail of the ordinance, the review below will be limited to areas of major concern, as they affect the various multifamily zones.

(1) All residential densities are lower than is appropriate, including 6 DU/acre gross density for townhouses and multiplex units in the Town Center, and 6 DU/acre for the townhouse zone (Sec. 4-4:1.3.2 and 4-4:4.1). Gross densities (without bonus) in PD I is 2.2 units/acre and PD II 3.4 DU/acre (Sec. 9-5:1).

(2) The PD application procedure includes an unnecessary 'third stage' application, which is inconsistent with the Land Use Law, and is unnecessarily cost-generating (Sec. 7-7:L)

(3) The Mobile Home Park district is subject to a variety of exclusionary standards, including (Sec. 4-4:11):

- a) maximum density of 5 DU/acre
- b) minimum tract size of 20 acres
- c) excessive minimum lot size of 4000 square feet
- d) excessive setback requirements
- e) requirement for 300 SF patio on all units
- f) excessive sidewalk requirement

(4) An extensive Environmental Impact Assessment is required for all subdivision and site plan applications (Sec. 7-3:6)

(5) Townhouse and maisonette (back-to-back townhouses) developments are subject to excessive standards, including

## OLD BRIDGE (4)

- a) excessive minimum width requirements
- b) maximum number of units per structure
- c) 'zigzag' or facade setback variation requirement  
Sec. 9-7)

(6) Parking requirements for multifamily housing are excessive (Sec. 12-3)

(7) A variety of exclusionary or cost-generating provisions affect development in the PD zones, including (in addition to those governing multifamily development or application procedure noted above)

- a) excessive minimum tract sizes, being 25 acres for PD I and 300 acres for PD II (Sec.9-4).
- b) no multiplex or maisonette units, or development at net densities higher than 6 DU/acre in PD I
- c) required mix of housing types including required percentage of single family units in both PD I and PD II (Sec.9-6:1)
- d) Broadly discretionary 'aesthetic' provisions (Sec. 9-6:1.1 and 9-7:9.1)
- e) minimum requirement of 10% nonresidential development (office, industrial or commercial) in PD II (may be higher under certain circumstances) (Sec. 9-4:2 and 9-6:2.2)
- f) nonresidential development must be phased in prior to most residential development (Sec.9-10:2)
- g) Buffering requirement (Sec. 9-7:7)
- h) Requirement for construction of arterial highways in PD developments ((-9:1)

With regard to the PD zones, it should be noted that the density bonus for 'affordable' housing is further undermined by the offer of density bonuses for groundwater recharge augmentation, energy conservation (insulation), and in PD I, provision of nonresidential development. This last, for which a substantial bonus is offered, is indicative of the priorities of the Township. The ordinance is further replete with provisions of a largely 'aesthetic' nature, including an extended section (Sec.14) dealing with landscaping of developments.

### Incentives in Support of Development of Low and Moderate Income Housing

From the materials available to plaintiffs, there is no indication that Old Bridge has undertaken any efforts whatsoever to

provide support or incentives for development of low and moderate income housing, as discussed in the expert report. What is notable, rather, is that the ordinance under review is dated April 21, 1983 and was apparently not formally adopted until May 16, 1983, nearly four months after the date of the Mt. Laurel II decision. A question arises whether the Township and its legal and professional advisors were unaware of the implications of that decision, failed to understand them, or chose to disregard them.

<sup>1/</sup>It may appear on the surface that option (b) might provide a simple means for a developer to obtain this bonus. This is not the case, because the provision for simultaneous phasing of the 'affordable' and conventional units clearly places the onus on the developer of the PD, as is appropriate.



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URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, et al.,

Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF THE  
BOROUGH OF CARTERET, et al.,

Defendants.  
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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-MIDDLESEX  
COUNTY

Docket No. C-4122-73

Civil Action

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
MOTION TO MODIFY AND ENFORCE JUDGMENT AGAINST  
NORTH BRUNSWICK AND OLD BRIDGE

---

FRANK ASKIN, ESQ.  
ERIC NEISSER, ESQ.  
JOHN PAYNE, ESQ.  
Constitutional Litigation Clinic  
Rutgers Law School  
Newark, New Jersey 07102

BRUCE S. GELBER, ESQ.  
JANET LABELLA, ESQ.  
National Committee Against  
Discrimination in Housing  
1425 H Street, NW  
Washington, D.C. 20005

ATTORNEYS FOR PLAINTIFFS

FRANK ASKIN, ESQ.  
 ERIC NEISSER, ESQ.  
 JOHN PAYNE, ESQ.  
 Constitutional Litigation Clinic  
 Rutgers Law School  
 15 Washington St., Newark, New Jersey 07102  
 201/648-5687

BRUCE S. GELBER, ESQ.  
 JANET LABELLA, ESQ.  
 National Committee Against Discrimination in Housing  
 1425 H Street, NW  
 Washington, D.C. 20005

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION-MIDDLESEX  
 COUNTY

-----X		
URBAN LEAGUE OF GREATER NEW	X	
BRUNSWICK, et al.,	:	Docket No. C-4122-73
Plaintiffs,	:	Civil Action
vs.	:	MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO MODIFY AND ENFORCE JUDGMENT AGAINST NORTH <u>BRUNSWICK AND OLD BRIDGE</u>
THE MAYOR AND COUNCIL OF THE	:	
BOROUGH OF CARTERET, et al.,	:	
Defendants.	:	
-----X	:	

Plaintiffs submit this memorandum in support of their motion to modify and enforce the Judgment entered on July 9, 1976 against the Townships of North Brunswick and Old Bridge.

The motion seeks to modify the Judgment's fair share allocation to those two townships in light of the Supreme Court's disapproval in part of Judge Furman's allocation methodology and then to enforce the Judgment as appropriately modified. To accomplish these goals, plaintiffs request that these two townships participate in the joint trial on the common issues of region, regional need, and fair share allocation with the seven

other defendants and that a separate compliance hearing be held thereafter to determine what revisions in the townships' zoning ordinances are necessary to satisfy its constitutional obligation as embodied in the modified Judgment.

On May 4, 1976, Judge Furman, after the first trial in this action, declared the zoning ordinances of North Brunswick and Old Bridge to be unconstitutional. Urban League v. Carteret, 142 N.J. Super 11, 31-32/(1976). On July 9, 1976, he entered a Judgment in accordance with that opinion requiring the defendant towns to amend their ordinances and take affirmative steps to meet their fair share of the regional housing need for lower income families. Neither North Brunswick nor Old Bridge appealed that Judgment as did seven other townships, nor did they obtain an order of dismissal or compliance, as did two other townships that did not appeal (Sayreville and Edison). They/did not seek relief from the Judgment. Under ordinary circumstances the only issue would be enforcement of the Judgment. But this is no ordinary case.

In the appeal taken by the seven other defendants, the New Jersey Supreme Court clearly affirmed Judge Furman's holding that the zoning ordinances were unconstitutional. However, the Court found fault with certain aspects of his approach to the fair share allocation of housing need. South Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158, 349-350, 456 A.2d 390, 489 (1983). In light of this, plaintiffs submit that it would be unfair to both plaintiffs and the two defendant townships and perhaps an error of law blindly to enforce the Judgment's original fair share allocation to these two townships.

Plaintiffs therefore request that the Court initially modify the fair share allocation in the Judgment.

The Court's power to make such a modification is beyond question. As the Supreme Court has said

"Quite apart from the rule [now R. 4:50-1], a court of equity has inherent jurisdiction to vacate or modify an injunction when by reason of a subsequent alteration in the rights and interests of the parties or a change in circumstances, the continued enforcement of the injunctive process would be inequitable, oppressive or unjust, or in contravention of the policy of the law. ... Even without a reservation of power to modify the decree for an injunction, 'power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.'

Johnson & Johnson v. Weissbard,  
11 N.J. 552, 555-56, 95A.2d 403, 405 (1953),  
quoting United States v. Swift & Co.,  
286 U.S. 106 (1931).

But quite apart from this inherent power, this Court expressly "retain[ed] jurisdiction over the pending litigation for the purpose of supervising the full compliance with the terms and conditions of this Judgment," in paragraph 17 of its Judgment.

The modification of the fair share allocation of North Brunswick and Old Bridge should be made in a manner consistent with that applied to the other seven defendants. Plaintiffs submit that the fairest and most efficient method of doing so is to have the townships participate with the other seven defendants in the joint trial on the common issues of region, regional need, and fair share which is set for March 19, 1984.

Although there is no explicit Rule of Court addressing the question of joint trial for multiple defendants in the same lawsuit, relevant authority is drawn from the analogous rules for consolidation of different actions and for separate trials of different issues in a single action--Rules 4:38-1 and 4:38-2. A leading case in the area sets forth the relevant considerations:

The test under the rule is whether these actions involve common questions of law or fact arising out of the same transaction or series of transactions. The plain purpose of the rule was to eliminate multiplicity of litigation and to enable the courts so to arrange pending cases that the same facts and transactions would not undergo the inconvenience of double litigation."

Judson v. Peoples Bank & Trust Co.,  
17 N.J. Super. 143,144, 85 A.2d 545, 546  
(Ch. Div. 1951).

See also Flanagan v. Foster, 182 N.J. Super. 282, 287-88, 440 A.2d 1147, 1149-50 (App. Div. 1981); Quaglioto v. Bodner, 115 N.J. Super. 133, 278 A.2d 500 (App. Div. 1971); Kernbach v. Kernbach, 174 N.J. Super. 544, 417 A.2d 70 (Ch. Div. 1980).

"A practical test for the existence of an adequate common question is whether the same witnesses, evidence, exhibits or experts would have to be paraded again before the court at separate trials." 2 Schnitzer & Wildstein, N.J. Rules Service A IV-1500 (1967).

Clearly this case meets that practical test. If the Townships of North Brunswick and Old Bridge are not compelled to participate in the joint trial on common issues, and this Court does not give presumptive validity to its initial

determinations of region and regional need, then

"the court will find itself in a position where it will hear two lengthy and protracted trials in which the same witnesses, the same facts and the same testimony will be adduced.

Judson, supra, 17 N.J. Super. at 145,  
85 A.2d at 546.

This would be both highly inefficient for the Court and, we submit, very unfair to plaintiffs, who are represented by public interest attorneys with limited resources. On the other hand, if North Brunswick and Old Bridge do not participate in the joint trial, and the Court does give presumptive effect to its ruling on the trial of the other seven defendants, the result might be unfair to the townships. The law provides a clear and simple solution to this problem--a joint trial.

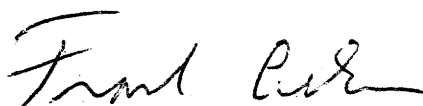
Participation in the joint trial scheduled for March 19 would not be unfair to the two townships. Like the Cranbury plaintiffs, they were aware at least as of the latter part of November that they might have to participate. They have received the reports of the court-appointed expert and the plaintiff's expert. Although they will clearly need some additional time to file answers to interrogatories and to submit any expert report they plan to rely upon, plaintiffs submit that, as with the Cranbury plaintiffs, sufficient time remains for them to complete these preliminary matters in time to participate in the joint trial. In any case, defendants which have neither appealed the Judgment, sought orders of

compliance with the Judgment, nor sought relief from the  
for  
Judgment, options available to them/over seven years, should  
not be heard to complain that they now are under some  
pressure to comply with a Judgment that their law is un-  
constitutional.

In any case, the townships need not be rushed  
into preparing for the individual compliance hearings  
on revision of their ordinances. Plaintiffs understand  
that preparation of individualized defenses takes longer  
than preparation of a general position on region and regional  
need. We therefore have no objection to having the compliance  
hearings on North Brunswick and Old Bridge held last and to  
having a slight delay between the last of the first seven  
compliance hearings (including the consolidated hearing on  
Cranbury) and the commencement of the compliance hearings  
for these two towns.

We believe that a prompt joint trial and slightly delayed individual compliance hearings will fairly and efficiently accommodate the competing needs and interests of the parties and the Court.

Respectfully submitted



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FRANK ASKIN, ESQ.  
ERIC NEISSER, ESQ.  
JOHN PAYNE, ESQ.  
BRUCE GELBER, ESQ.  
JANET LABELLA, ESQ.

ATTORNEYS FOR PLAINTIFFS

Dated: December 21, 1983



FRANK ASKIN, ESQ.  
ERIC NEISSER, ESQ.  
JOHN PAYNE, ESQ.  
Constitutional Litigation Clinic  
Rutgers Law School  
15 Washington Street  
Newark, New Jersey 07102  
201/648-5687

BRUCE S. GELBER, ESQ.  
JANET LABELLA, ESQ.  
National Committee Against Discrimination in Housing  
1425 H Street, NW  
Washington, D.C. 20005

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-MIDDLESEX  
COUNTY

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URBAN LEAGUE OF GREATER NEW	X	
BRUNSWICK, et al.,	:	Docket No. C-4122-73
Plaintiffs,	:	Civil Action
vs.	:	<u>ORDER</u>
THE MAYOR AND COUNCIL OF THE	:	
BOROUGH OF CARTERET, et al.,	:	
Defendants.	:	
-----X		

Plaintiffs having moved for an order modifying and enforcing the Judgment entered on July 9, 1976 in this action against the Townships and Old Bridge of North Brunswick, /and the parties having responded, and the Court having heard argument of all counsel, it is hereby

ORDERED this                      day of January 1984:

a) That the defendant Townships of North Brunswick and Old Bridge shall participate in the joint trial on the issues of region, regional need, and fair share allocation, involving the other seven defendant Townships in this litigation, which is to commence on March 19, 1984;

b) That the defendant Townships of North Brunswick and Old Bridge shall have until \_\_\_\_\_, 1984 to answer the interrogatories served upon them on November 29, 1983, and to provide plaintiffs with a copy of any expert report upon which they intend to rely;

c) That consistent with the Court's determination of region, regional need, and fair share allocation after the joint trial, the Court shall modify the fair share allocation for the defendant Townships of North Brunswick and Old Bridge set forth in the Judgment of July 9, 1976; and

d) That the Court shall hold a compliance hearing concerning the modifications in the zoning ordinances of North Brunswick and Old Bridge needed to assure compliance with the Judgment as modified, after the compliance hearings for the other seven townships, starting on \_\_\_\_\_, 1984, or such later date as determined by further order of this Court;

Dated \_\_\_\_\_

\_\_\_\_\_  
EUGENE D. SERPENTELLI, J.S.C.

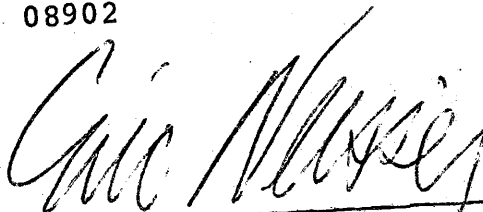
CERTIFICATE OF SERVICE

I, Eric Neisser, hereby certify that on Thursday, December 22, 1983, I personally placed copies of the Notice of Motion to Modify and Enforce Judgment against the Townships of North Brunswick and Old Bridge, Affidavit of Eric Neisser, Memorandum of Law in Support of Motion, and proposed Order, with first class postage prepaid, properly addressed, in a U.S. Postal Service depository, to all counsel and

Richard Plechner, Esq.  
1 Old Bridge Plaza  
Old Bridge, N.J. 08857

and

Leslie Lefkowitz, Esq.  
P.O.Box 3049  
North Brunswick, N.J. 08902

  
ERIC NEISSER

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**  
Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic  
S.I. Newhouse Center For Law and Justice  
15 Washington Street • Newark • New Jersey 07102 • 201/648-5687

December 21, 1983

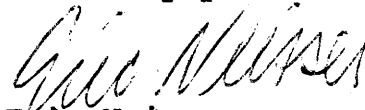
W. Lewis Bambrick  
Clerk  
Superior Court of New Jersey  
Richard J. Hughes Justice Complex  
Trenton, New Jersey 08625

Re: Urban League v. Carteret et al.  
Docket No. C4122-73  
Chancery Division-Middlesex County

Dear Sir:

Enclosed herewith please find the original and one copy of a Notice of Motion to Modify and Enforce Judgment against Townships of North Brunswick and Old Bridge, an Affidavit in support, Memorandum of Law in support, and proposed Order. Please file stamp the copy and return the same to my office in the enclosed, self-addressed stamped envelope.

Sincerely yours,



Eric Neisser  
Attorney for Plaintiffs

cc: Judge Eugene D. Serpentelli  
All Counsel

EN:jb.