

Civic League v. Edison

6/13

1988

Complaint In Lieu of... (11);

Exhibit A: Resolution (2P); order To Show Cause (7);

Cert. of Alan Mallaeh (6);

Cert. John Payne (3);

Letter Brief In Support of order To Show Cause (7)

Pgs 62

PI # 5204

ML000045C

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY/OCEAN COUNTY
DOCKET NO. L- 6837688

CIVIC LEAGUE OF GREATER NEW BRUNSWICK,

Plaintiff

-vs-

EDISON TOWNSHIP, a municipal
corporation of the State of New
Jersey, located in Middlesex
County, New Jersey,

and

THE PLANNING BOARD OF EDISON
TOWNSHIP,

Defendants

CIVIL ACTION

(MOUNT LAUREL)

COMPLAINT IN LIEU OF
PREROGATIVE WRIT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs, by way of their complaint against the
defendants, state that:

FIRST COUNT

BACKGROUND

1. This is a "Mount Laurel" action, see Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), brought by plaintiff, a public interest organization representing the interests of poor and minority urban households in need of affordable housing, as an action in lieu of prerogative writ seeking declaratory and injunctive relief pursuant to the Constitution of the State of New Jersey and the state and federal Fair Housing Acts. By this action, plaintiff seeks to bring defendant Edison Township into compliance with its constitutional obligation to provide a realistic opportunity for production of its fair share of the regional need for low and moderate income housing.

2. More than a decade ago, Edison Township's then-existing land use ordinances were declared invalid by this court in Urban League of Greater New Brunswick v. Mayor and Council of the Borough of Carteret, 142 N.J. Super. 11 (Ch.Div., 1976). On January 13, 1977, having made changes in its ordinance satisfactory to the Court in accordance with then-prevailing Mount Laurel standards, Edison Township received a judgment of compliance from the Court. After the decision of the Supreme Court in Mount Laurel II, however, Edison Township failed to make significant additional revisions in its ordinances to encourage production of low

and moderate income housing in accordance with that decision, despite the fact that it permitted a substantial amount of non-residential and higher income residential construction. The six-year period of repose granted pursuant to Mount Laurel II, not strictly applicable because this is a pre-Mount Laurel II case, has long since expired in any event.

3. On March 25, 1987, the Edison Planning Board filed with the Council on Affordable Housing ("COAH") a "Housing Element and Affordable Housing Plan for the Township of Edison," in accordance with the Fair Housing Act of 1985, N.J.Stat. Ann. 52:27D-309. A copy of this Housing Element is attached to this Complaint as Exhibit A and made a part hereof. In this Housing Element (pp.1, 8), Edison concedes that it has a fair share obligation under the Act and COAH Regulations of 1,111 affordable housing units, but it erroneously claims a credit for a large portion of this obligation as a result of affordable housing units constructed prior to 1988.

4. Edison has not moved for substantive certification of its Housing Element in accordance with §313 of the Fair Housing Act, thus evading review of its inadequate Housing Element.

5. On June 2, 1988, the News-Tribune reported the June 1 meeting of the Edison Planning Board, which held a public hearing on the so-called "Rivertown" development, a 978-acre mixed-use project to be developed over a twenty-year period on a por-

tion of the former Raritan Arsenal site and to include almost 4,000 residential units. A copy of the News-Tribune article is attached to this Complaint. The Planning Board is scheduled to meet on June 15, 1988 and it is anticipated that the Board will vote on general development approval for the Rivertown development.

6. The Edison Housing Element (p.6) concedes that there is a "limited developable land area suited for residential use" in Edison Township. The Rivertown development therefore provides a particularly significant opportunity to meet the town's affordable housing obligations.

7. Edison's land use regulations fail to comply either with the requirements of the New Jersey Constitution as interpreted in Mount Laurel II or with the provisions of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. By this complaint, plaintiffs seek to trigger review of Edison's Housing Element by the Council on Affordable Housing. If substantive certification is not granted by COAH in accordance with §314 of the Fair Housing Act, plaintiffs then seek adjudication by this Court of the constitutional and statutory validity of Edison's existing land use regulations. By Order to Show Cause filed with this Complaint, plaintiffs also seek an order preventing the Edison Planning Board and any other municipal agencies or officials from selling municipal land or approving significant development pro-

jects, including Rivertown, without reserving Mount Laurel compliance opportunities, until COAH has an opportunity to determine whether further restraints are necessary.

PLAINTIFFS

8. Plaintiff CIVIC LEAGUE OF GREATER NEW BRUNSWICK is a not-for-profit charitable corporation of the State of New Jersey, located at 47-49 Throop Avenue, New Brunswick, New Jersey 08901. One of its principal goals is to facilitate provision of non-discriminatory access to affordable housing throughout Middlesex County. Among other activities, it was plaintiff in Urban League of Greater New Brunswick v. Borough of Carteret, Docket No. C-4122-73, filed July 24, 1974, which ultimately resulted in orders or settlements after 1983 providing almost 10,000 units of affordable housing in nine Middlesex County communities.

DEFENDANTS

9. The TOWNSHIP OF EDISON is a municipal corporation chartered under the Constitution and laws of the State of New Jersey. It is authorized to exercise, on behalf of the State and for the general welfare of all the citizens thereof, the delegated powers of local government over a portion of Middlesex County located north of the Raritan River.

10. The PLANNING BOARD OF EDISON TOWNSHIP is an agency created by defendant Edison Township pursuant to the Municipal

Land Use Law, N.J.S.A. 40:55D-25, to exercise land use regulatory powers in Edison Township pursuant to law and subject to the authority of the governing body of the Township. Reference herein to "Defendant" or "Defendant Township" refers both to the Township of Edison and the Planning Board of Edison Township unless specified to the contrary.

FACTUAL ALLEGATIONS

11. At all times relevant hereto, the Township of Edison has elected to exercise those powers, derived from the Constitution of the State of New Jersey and delegated to it by the Legislature, relating to the control over the use of land contained within the Township through its Township Committee, Planning Board and/or Zoning Board of Adjustment, and such other local public agencies, officials, employees and agents authorized by law to effectuate said delegated functions.

12. Pursuant to those delegated powers, the Township has adopted a Master Plan and a Zoning Ordinance.

13. The Township, pursuant to its delegated powers, has imposed constraints over the use of land within its borders which include, but are not limited to, ordinances relating to zoning (designating exclusive land use classifications for areas of the Township and which, collectively, encompass all of the lands governed by the Defendant), site plan review, and land sub-

division. This system of land use constraints is administered in part by the Planning Board and in part by other agencies and officers of the Township.

14. As a direct result of those actions taken pursuant to its delegated land use functions and more specifically set forth above, with the exception of non-conforming uses which may have predated such actions, the defendant has exercised complete regulatory control over the existing and permitted uses of the land within its borders.

15. Edison Township's only regulatory response to the decision in Mount Laurel II was to adopt, in 1987, a provision requiring a 10% senior citizen set aside in certain multi-family developments. This provision does not meet the minimum 20% set aside specified in Mount Laurel II, nor does it provide for non-senior citizen affordable housing.

16. Edison Township has a fair share affordable housing obligation of 1,111 units to be provided through 1992, as determined by the Council on Affordable Housing pursuant to the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. This obligation consists of an indigenous need of 216 units and a combined reallocated present need and prospective need of 895 units.

17. Defendants' Housing Element relies on rehabilitation of substandard units occupied by low and moderate income households to meet its entire indigenous need obligation of 216

unit. This part of its Housing Element is deficient because the upper limit of the dollar amount it will contribute to rehabilitation is below the minimum amount recognized by COAH as adequate to gain credit for rehabilitating a unit. In addition, the Housing Element fails to identify the units to be rehabilitated, the method of financing the rehabilitation, the scope of the work intended to be done, or the methods for enforcing eligibility and affordability controls. As a result, defendants are not entitled to credit for past rehabilitations (100 units) and have not presented a valid plan for achieving compliance as to the 116 units which it concedes must still be provided.

18. Defendant's Housing Element is also deficient as to its plan to meet the need for 895 units of reallocated present need and prospective need. It relies solely on credits for affordable housing claimed to have been first occupied after 1980 to do so. This plan is deficient in at least the following ways:

a. The Housing Element contains insufficient detail to demonstrate occupancy after April 1, 1980 by, and presently affordable to, low and moderate income households, as required by N.J.A.C. 5:92-6.1.

b. Defendants claim of a credit of 1.33 units for each rental unit produced is not valid because N.J.A.C. 5:92-14.4 allows such credit only for rental units produced after the Housing Element is certified.

c. Defendants claim an excessive credit for senior citizen housing, in violation of N.J.A.C. 5:92-14.3.

d. Defendants improperly claim a credit for rehabilitation of pre-existing public housing. See N.J.A.C. 5:92-6.1(2)(i).

e. Defendants improperly claim a credit for hospital beds "occupied" by medicaid and medicare individuals.

19. As a result of deficiencies in its Housing Element, it is unlikely that Edison Township will receive credit for more than a small portion at best of the units for which it claims credit. The Housing Element does not propose any other mechanism for meeting its fair share and therefore it is insufficient to receive substantive certification pursuant to §314 of the Fair Housing Act.

20. Edison Township's present land use regulations do not provide a realistic opportunity for the provision of its fair share of the regional need for low and moderate income housing, as required by Article I of the New Jersey Constitution and Mount Laurel II.

21. Defendants seek to maintain the status quo in Edison Township by refusing to amend their land use regulations to provide a realistic opportunity for achieving its fair share. It is obvious that proposed developments such as Rivertown provide an opportunity for doing so by use of inclusionary zoning tech-

niques specifically required by Mount Laurel II in the absence of other means of achieving the fair share.

22. Defendants actively prevent the likelihood of achieving the township's fair share by failing to move for substantive certification before COAH while at the same time entertaining development applications without imposing inclusionary requirements on such developments.

SECOND COUNT

23. The allegations of Count One are incorporated here by reference.

24. The impact of defendants' exclusionary housing policies bears disproportionately on minority households who are denied the opportunity to find affordable housing in Edison Township. Edison, by permitting and encouraging substantial development in recent years, including multi-family development for households at median income and above, has demonstrated that there are no valid municipal interests which would preclude development of housing affordable to low and moderate income households, including minority households.

25. Edison's land use regulations violate Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq.

WHEREFORE, Plaintiffs demand judgment:

1. Declaring the defendants land use regulations invalid and unconstitutional in their entirety and/or in relevant part;

2. Appointing a special master to recommend the revision of said regulations and effectuation of municipal action in compliance with the Constitution of this State and the State and Federal Fair Housing Acts.

3. Requiring Edison to revise its land use regulations and to take all necessary steps to provide a realistic opportunity for provision of its fair share of the regional need for low and moderate income housing.

4. Ordering the Defendants to pay counsel fees and costs; and

5. Granting Plaintiff such other relief as the Court deems just and equitable.

JOHN M. PAYNE
Attorney for Plaintiffs,
On behalf of the American Civil
Liberties Union of New Jersey

Dated: June 13, 1988

EXHIBIT "A"

RESOLUTION
EDISON TOWNSHIP PLANNING BOARD

WHEREAS, the Township of Edison Planning Board has given public notice for the public hearing held February 18, 1987 for the consideration and adoption of a Housing Element drawn in accordance with the Substantive Rules of the New Jersey Council on Affordable Housing. Said public notice given in accordance with the New Jersey Municipal Land Use Law 40:55D-13, and

WHEREAS, the Planning Board has heard comments of the public and considered same, and

WHEREAS, the Housing Element demonstrates the Township of Edison has fully complied and provided for its fair share housing obligation based upon crediting documentation as calculated by the New Jersey Council on Affordable Housing, and

NOW, THEREFORE, be it resolved that the Township Planning Board does hereby adopt the Housing Element dated January, 1987 and directs a certified copy to be filed with the Middlesex County Planning Board and with the New Jersey Council on Affordable Housing.

ROSE ANNE M. QUINN, Secretary
Edison Planning Board

RECEIVED

MAR 25 1987

AFFORDABLE HOUSING

HOUSING ELEMENT AND AFFORDABLE HOUSING PLAN
FOR THE TOWNSHIP OF EDISON, MIDDLESEX COUNTY, NEW JERSEY

Prepared for the

EDISON TOWNSHIP

by

E. EUGENE CROSS ASSOCIATES

PROFESSIONAL PLANNERS,

LANDSCAPE ARCHITECTS

and

PROFESSIONAL ENGINEERS

JANUARY 1987
Revised 3/23/87

INTRODUCTION:

The New Jersey Council on Affordable Housing (hereinafter referred to COAH) has published its estimate of the 1987-1993 low and moderate income housing need for all municipalities in the state of New Jersey. The estimates are set forth in report of COAH, dated 5/21/86. The raw estimate for Edison Township, Middlesex County and published by COAH is 1,111 dwelling units.

The methodology and computation of the pre-credited and unadjusted need has been reviewed by the Township. The Township accepts the estimate subject to credits established hereinafter.

The housing element and affordable housing plan set forth herein shall constitute a sub-plan element of the adopted Comprehensive Plan of Edison Township. All policies, objectives and recommendations set forth in the 1978 Comprehensive Plan and succeeding amendments remain in full force and effect except as inconsistent and revised by this sub-plan element.

EDISON TOWNSHIP-PROFILE

Edison Township is located in Middlesex County. The New Jersey State Development Guide Plan shows that all lands in the Township are located within a designated growth area.

Edison has continuously monitored and studied development patterns within the Township as well as within its region. The original master plan of the Township was adopted in 1959. The most recent Land Use Plan amendment was adopted in 1984. A comprehensive review and reexamination of the Master Plan is underway.

The Township of Edison has a land mass of approximately 19,616 acres. This community extends from the Raritan River north to the Union County boundary.

Numerous State and federal highways cross through the central and easterly areas of the community. The Township has featured considerable residential and economic development over the past decade.

The Raritan River generally defines the southerly boundary of the Township. Substantial floodplain and wetland areas are associated with the River.

The Township's 1980 population as estimated by the U.S. Census was 70,193 persons. The latest population projection prepared by the Middlesex County Planning Board for the year 1990 is 82,190, and for the year 2000 is 82,668.

COAH (Council of Affordable Housing) estimates a total of 30,286 occupied dwelling units will exist in the Township as of May,

1987. U.S. Census of Housing estimated the 1980 total number of occupied dwellings was 23,427 units.

The 1990 population projection by Middlesex County equates to a total 10 year housing production of 4000 to 4800 new dwelling units (depending on family size). The Township residential development since January, 1980 through July, 1986 was 6,695 units.

TABLE I

RESIDENTIAL CONSTRUCTION
EDISON TOWNSHIP, MIDDLESEX COUNTY
1980 - 7/1985

<u>Year</u>	<u>No. of Bldg. Permits Issued</u>
1980	264
1981	167
1982	1,023
1983	1,087
1984	1,993
1985	1,700
to 7/1986	<u>461</u>

Total 6,695

Source: N.J. Department of Labor & Industry Annual Reports.

EDISON TOWNSHIP HOUSING STOCK

Based upon U.S. Census of Housing 1980, 8.6% of all occupied dwelling units were constructed prior to 1940. This percentage equates to 2,013 dwellings. Since 1980 a total of 6,695 new dwellings have been constructed and occupied within the Township (source NJ Department of Labor and Industry Division of Planning and Township Building Department). The majority of all new dwellings constructed and occupied since 1980 are multi-family structures.

U.S. Census of Housing also publishes information related to housing cost within a community. The census indicates that the median value of a owner occupied, non-condominium dwelling in Edison Township as of 1980 was \$68,700.

COAH has published data indicating the percentage of low and moderate income households by sub-region of the housing regions

established by COAH. In Edison Township 34.0% of all house-holds fall within the definition of low and moderate income households based upon COAH's May, 1986 report. HUD (Newark area office) estimates 38.9 percent of 1980 resident population were low and moderate income household.

The Pre-Credited Need Estimate by COAH (May 21, 1986) indicated an adjusted indigenous need of 216 units. COAH's base data housing calculations show a municipale single index need of 590. Indigenous need is defined by COAH as substandard dwellings occupied by a low and moderate income families.

Housing stock has expanded. The rate of construction of new dwellings over the past three year and one-half year period (1983 through 7/1986) was 1,087 units in 1983; 1,993 units in 1984; and 1,700 units in 1985 and 461 units in the first 6 months of 1986.

The substantial number of dwellings constructed in the community since 1980 has produced a substantial number of new units affordable to low and moderate income households, as well as other income groups. Detailed description of each project, it's location and the number of units affordable to low and moderate income households is provided under subsequent section (Edison Township Fair Share Obligation).

The Township of Edison currently manages a housing rehabilitation program funded through grant monies made available through the Community Block Grant program (HUD). The Township is an entitlement community. The program is limited to participation

by low and moderate income families owning and occupying dwellings within the Township. The program provides for a grant up to \$4,499 per household. One hundred (100) homes occupied by low or moderate income families have been rehabilitated as a result of grant awards from January, 1980 to present.

Edison Township Housing Authority has administered Urban Renewal programs since the mid-1950's. The programs resulted in the rehabilitation of income qualified/affordable units and construction of new income qualified affordable units occupied by low and moderate income families.

PROJECTION OF HOUSING STOCK

A total of 6,695 dwelling units have been constructed in the Township since January of 1980 through July of 1986. This number of dwellings equals an annual average production of 1,030 dwelling units per year. Because of the limited developable land area suited to residential use, this rate of construction will not continue at the same level for the next six year period.

Because of limited available land and available suited for residential development, the average annual production of housing over the next 6 year period is expected to decrease significantly.

POPULATION CHARACTERISTICS:

The Township's population characteristics are set forth in the 1980 Census of Population. The Township's average household size

is 2.94 persons per household. Median income for all households in 1979 was \$25,206.

Exhibit I indicates 1980 Census of Population - Characteristic's of Persons for Edison Township area. The table was prepared by the U.S. Bureau of Census.

EXISTING AND FUTURE EMPLOYMENT CHARACTERISTICS:

The Township had a total of 45,415 jobs in 1980. By 1985 total job opportunities had increased to 51,081. The employment data are based upon New Jersey Department of Labor and Industry covered Employment Trend Reports.

COAH has published a projection of employment growth within each municipality of the state of New Jersey as a result of the adoption of formula determining fair share housing obligations of the community. The factor for employment projection determining prospective housing need is based upon historical trend of development within a municipality.

COAH indicates that the Township's existing percent of regional employment (region 3-West Central Region consisting of Hunterdon, Middlesex, Middlesex, and Warren Counties) is 14% of total employment within the region. COAH also estimates that the Township's share of total future employment will be 8.7% of employment growth within that same region.

Employment projections are based upon a great number of factors and conditions. A wide variety of uses exist and are probable

within this community. The Township does not, however, claim an adjustment factor to COAH estimate.

EDISON TOWNSHIP FAIR SHARE OBLIGATIONS:

The "Raw Estimate" fair share housing obligation for Edison Township prepared by COAH and published in report dated May, 1986 is 1,111 units. The Township claims credit adjustment and revision as follows:

Indigenous Need:

COAH's estimate of Edison Township's adjusted indigenous need is 216 units. Based upon rehabilitation efforts described hereinabove the Township has determined that 100 of the 216 units occupied by low and moderate income households have been rehabilitated since 1980. The remaining indigenous need based upon COAH's methodology and calculation is 116 units.

Credit to Present and Prospective Need:

COAH unadjusted estimate of present and prospective housing need for Edison Township is 895 dwellings. The Township has fully provided for its Fair Share housing need.

The credit claim listed below are founded within the Substantive Rules of COAH. Crediting documentation forms are contained within the Appendix of this report.

1. Inman Grove Senior Citizen Housing: HUD 236 project with 100 percent Section 8 RAP: 240 rental units. Credit claim $(240 \times 1.3) - \underline{312}$ units.

2. Greenwood and Colonial Square Apartment: HUD 236 rental project of 332 units with income and affordability controls (HUD Section 8 income limits): Credit claim (332 x 1.3) - 431.
3. Public Housing Modernization: 160 units. 1.5 million dollars have been expended from January, 1980 to present for rehabilitation and modernization.
Credit claim (160 x 1.3) - 208.

The total credits claimed toward the Township's present and prospective Fair Share housing obligation (Item 1 through 3 above) is 951 units. The credits exceed obligation.

In addition to the above credits, the Township believes that two health-care facilities within the Township qualify for credit since both provide for living space for the poor and infirmed. The facilities are as follows:

1. Roosevelt Hospital: 250 beds. This facility is operated by Middlesex County. The facility is a part of the Roosevelt Hospital complex on Parsonage Road in the Menlo Park section of Edison. All beds are occupied by medicare and medicaid persons. These individuals are low income by definition.
2. J.F.K. Heath Care Facility: 180 beds. This facility is being constructed for occupancy by medicare and medicaid persons. J.F.K. Hospital Inc. owns existing facilities of a similar nature. Occupancy of existing facilities

by medicare and medicaid persons is anticipated to be 60 percent of all beds based upon experience of the operator. Medicare and medicaid recipients are low income by definition.

Affirmative Housing Policy and Program:

The Township of Edison has long encouraged and provided housing to be constructed for occupancy for low and moderate income families. The successful completion of the North Edison renewal plan (North Edison Public Housing, Inman Grove Senior Citizen, Greenwood and Colonial Square Apartments are demonstration of this fact.

The Township intends to address remaining indigenous need as calculated by COAH (116 units) through continuation of local housing rehabilitation programs. The Township sponsored housing rehabilitation program is ongoing and is limited to participation by low and moderate income homeowners. The Township is an CDBG entitlement community. The current grant program possesses no affordability controls nor recapture provisions controlling the sale or rent of rehabilitated units. The Township will establish such controls in this current block grant program year.

The Township's housing program fully addresses its Fair Share housing obligation as calculated by COAH and as described and documented hereinabove. Notwithstanding, the Township has determined substantial need exists for additional affordable housing units for elderly and handicapped households within the com-

munity. In this context, the Township intends to require 10 per cent set-aside for affordable units of total number of new units developed in multi-family projects in the future.

The Township of Edison, in context with the above, has taken action to provide for additional affordable senior-citizen housing units within the community. The projects are as follows:

1. Clara Barton School Conversion: The Township sold at public auction Clara Barton School with the provision that 50 affordable senior-citizen units were to be provided at the site. The successful bidder has met on several occasions with New Jersey Department of Community Affairs for purposes of preparing grant application to assist in the provision of affordable units within the overall development.
2. The Township of Edison Planning Board has granted approval to a development known as Tyler Estates. As part of the conditions of approval, the Board has stipulated that 100 units shall be made available and affordable to senior citizens.

The word "affordable, " in context with the projects briefly described above, is stipulated within conditions of sale and resolution of approval as the case may be to mean and encompass all rules adopted by the Council on Affordable Housing.

The Township has not presented claim nor documentation for adjustment to its fair share housing obligation pursuant to

NJAC5:92-8.3 (Provision for Adequate Recreation, Conservation and Open Space). Should determination by COAH result in substantial and significant reduction of credit and adjustment as set forth and described above, the Township shall submit documentation demonstrating adjustment of its fair share obligation pursuant to adjustment rules cited above.

Income Eligibility and Affordability Controls

The Township of Edison has in place administrative personnel and agencies ie. Edison Housing Authority, which shall be designated as affordable housing contribution.

APPENDIX

Census Data

Crediting Documentation Forms

1980 CENSUS OF POPULATION - CHARACTERISTICS OF PERSONS

ELISON TOWNSHIP

GEOGRAPHY: STATE: 34 SMSA: 5460 COUNTY: 023 MCD: 025 PLACE:
 TRACT: BLOCK: ED: UA: CD:

1. PERSONS BY URBAN AND RURAL RESIDENCE		2. FAMILIES		3. HOUSEHOLDS (1)	
TOTAL	70193		18735		23427
INSIDE URBANIZED AREAS	70193	4. PERSONS BY SEX		5. MEDIAN AGE OF PERSONS BY SEX	
OTHER URBAN		MALE	34444	TOTAL	31.3
RURAL		FEMALE	35749	MALE	30.5
				FEMALE	32.1
3A. PERSONS PER HOUSEHOLD (7)		7. PERSONS BY SPANISH ORIGIN		8. PERSONS BY SEX BY AGE	
	2.94	NOT OF SPANISH ORIGIN		TOTAL FEMALE	
6. PERSONS BY RACE		MEXICAN		*****	
WHITE	6287	68496		*****	
BLACK	122	45		UNDER 1 YEAR	
AMERICAN INDIAN	52	PUERTO RICAN		1 AND 2 YEARS	
ESKIMO	2	CUBAN		3 AND 4 YEARS	
ALEUT		OTHER SPANISH		5 YEARS	
JAPANESE	92			6 YEARS	
CHINESE	485	9. PERSONS OF SPANISH ORIGIN BY RACE		7 TO 9 YEARS	
FILIPINO	482	TOTAL		10 TO 13 YEARS	
KOREAN	208	WHITE		14 YEARS	
ASIAN INDIAN	906	BLACK		15 YEARS	
VIETNAMESE	68	AMERICAN INDIAN, ESKIMO, ALEUT, AND		16 YEARS	
HAWAIIAN	4	ASIAN AND PACIFIC ISLANDER (4)		17 YEARS	
GUAMANIAN		OTHER (3)		18 YEARS	
SAMOAN				19 YEARS	
OTHER (3)	474			20 YEARS	
10. PERSONS BY AGE BY RACE				21 YEARS	
		UNDER	5 TO 17	18 TO 64	65 YEARS
		5 YEARS	YEARS	YEARS	AND OVER
		*****	*****	*****	*****
TOTAL		3954	14218	46305	5716
WHITE		3445	13165	43184	5493
BLACK		149	426	1409	149
AMERICAN INDIAN, ESKIMO AND ALEUT		3	9	38	4
ASIAN AND PACIFIC ISLANDER (4)		302	502	1381	60
11. PERSONS OF SPANISH ORIGIN BY AGE BY RACE				60 AND 61 YEARS	
		UNDER	5 TO 17	18 TO 64	65 YEARS
		5 YEARS	YEARS	YEARS	AND OVER
		*****	*****	*****	*****
TOTAL		154	436	1033	74
WHITE		121	376	836	67
BLACK		3	3	20	2
12. PERSONS 15 YEARS AND OVER BY SEX BY MARITAL STATUS				62 TO 64 YEARS	
				65 TO 74 YEARS	
				75 TO 84 YEARS	
				85 YEARS AND OVER	
		MALE	FEMALE		
		*****	*****		
		SINGLE	8189	6865	
		MARRIED, EX SEPARATED	16850	16775	
		SEPARATED	531	662	
		WIDOWED	700	2998	
		DIVORCED	966	1489	

NOTES: A. NUMBERS IN PARENTHESES ARE FOOTNOTE NUMBERS. SEE FOOTNOTE PAGE.
 B. BLANK CELLS INDICATE EITHER THAT THE NUMBER IS "0" OR THE DATA ARE SUPPRESSED.

LDISON TOWNSHIP

GEOGRAPHY: STATE: 34 SMSA: 5460 COUNTY: 023 MCD: 025 PLACE: TRACT: BLOCK: ED: UA: CD:

1. TOTAL PERSONS		70193	2. TOTAL FAMILIES		18735	3. TOTAL HOUSEHOLDS (1)		23427
4. PERSONS 15 YEARS AND OVER BY SEX BY MARITAL STATUS								
			MALE	FEMALE			5. PERSONS BY AGE BY HOUSEHOLD TYPE	
			*****	*****			TOTAL	65 YEARS AND OVER
SINGLE			8189	6865			*****	*****
NOW MARRIED, EXCEPT SEPARATED			16850	16775			FAMILY HOUSEHOLDS:	
SEPARATED			531	662			HOUSEHOLDER	18735 1794
WIDOWED			700	2998			SPOUSE	16205 989
DIVORCED			966	1489			OTHER RELATIVES (5)	27649 1036
							NONRELATIVE (6)	441 20
							NONFAMILY HOUSEHOLDS:	
6. HOUSEHOLDS BY PERSONS IN HOUSEHOLD AND HOUSEHOLD TYPE (7)							MALE HOUSEHOLDER	2254 209
1 PERSON:							FEMALE HOUSEHOLDER	2438 728
MALE HOUSEHOLDER		1691					NONRELATIVE (6)	1138 39
FEMALE HOUSEHOLDER		2088					IN GROUP QUARTERS:	
2 OR MORE PERSONS:							INMATE OF INSTITUTION	1139 886
MARRIED-COUPLE FAMILY		16205					OTHER	194 15
OTHER FAMILY:							8. RELATED CHILDREN BY AGE (8)	
MALE HOUSEHOLDER, NO WIFE		542					UNDER 5 YEARS	3929
FEMALE HOUSEHOLDER, NO HUSBAND		1988					5 TO 17 YEARS	14105
NONFAMILY HOUSEHOLD:							11. HOUSEHOLDS WITH ONE OR MORE NONRELATIVES PRESENT	
MALE HOUSEHOLDER		563						
FEMALE HOUSEHOLDER		350					12. OCCUPIED HOUSING UNITS BY TENURE BY RACE OF HOUSEHOLDER	
9. HOUSEHOLDS WITH ONE OR MORE PERSONS UNDER 18 YEARS BY HOUSEHOLD TYPE								RENTER
MARRIED-COUPLE FAMILY		8436					TOTAL	OCCUPIED
OTHER FAMILY:							*****	*****
MALE HOUSEHOLDER, NO WIFE		185					WHITE	21969 7021
FEMALE HOUSEHOLDER, NO HUSBAND		1172					BLACK	682 468
NONFAMILY HOUSEHOLD		49					AMERICAN INDIAN, ESKIMO AND ALEUT	16 11
							ASIAN AND PACIFIC ISLANDER (4)	624 241
							OTHER (3)	136 84
13. SPANISH ORIGIN HOUSEHOLDS BY TENURE BY RACE OF HOUSEHOLDER							15. PERSONS IN HOUSEHOLDS BY TENURE (10)	
							TOTAL	68860
							RENTER OCCUPIED	16650
							18. OCCUPIED HOUSING UNITS BY TENURE BY PERSONS PER ROOM	
								RENTER
							TOTAL	OCCUPIED
							*****	*****
							1.00 OR LESS	22981 7616
							1.01 TO 1.50	365 156
							1.51 OR MORE	81 51
16. OCCUPIED HOUSING UNITS WITH ONE OR MORE PERSONS 65 YEARS AND OVER BY TENURE BY AGE OF HOUSEHOLDER							17. MEAN NUMBER OF PERSONS PER OCCUPIED HOUSING UNIT (7)	
								2.94
							17. MEAN NUMBER OF PERSONS PER OCCUPIED HOUSING UNIT (7)	
								2.94

NOTES: A. NUMBERS IN PARENTHESES ARE FOOTNOTE NUMBERS. SEE FOOTNOTE PAGE.
 B. BLANK CELLS INDICATE EITHER THAT THE NUMBER IS "0" OR THE DATA ARE SUPPRESSED.

1. TOTAL PERSONS 70193		2. HOUSING UNITS (INCLUDING SEASONAL AND MIGRATORY UNITS) BY URBAN AND RURAL (2) TOTAL 24313 INSIDE URBANIZED AREAS 24313 RURAL		3. YEAR-ROUND HOUSING UNITS BY OCCUPANCY STATUS (1) TOTAL 24311 OCCUPIED 23427 VACANT 884																
4. YEAR-ROUND HOUSING UNITS BY ROOMS 1 ROOM 114 2 ROOMS 486 3 ROOMS 2792 4 ROOMS 4403 5 ROOMS 4150 6 OR MORE ROOMS 12366 MEDIAN ROOMS 5.6		5. YEAR-ROUND HOUSING UNITS BY UNITS AT ADDRESS 1 18984 2 TO 9 2173 10 OR MORE 2900 MOBILE HOME OR TRAILER 254		6. AGGREGATE NUMBER OF ROOMS IN YEAR-ROUND HOUSING UNITS BY TENURE AND VACANCY STATUS (10) TOTAL 138258 RENTER OCCUPIED 31005 VACANT FOR SALE ONLY 664 VACANT FOR RENT 1194 OTHER VACANT (9) 1607																
7. OCCUPIED HOUSING UNITS BY TENURE TOTAL 23427 RENTER OCCUPIED 23427		9. SPECIFIED OWNER-OCCUPIED NONCONDOMINIUM HOUSING UNITS BY VALUE (11) LESS THAN \$10,000 4 \$10,000 TO \$14,999 12 \$15,000 TO \$19,999 38 \$20,000 TO \$24,999 108 \$25,000 TO \$29,999 219 \$30,000 TO \$34,999 288 \$35,000 TO \$39,999 478 \$40,000 TO \$49,999 1870 \$50,000 TO \$79,999 6582 \$80,000 TO \$99,999 2341 \$100,000 TO \$149,999 2012 \$150,000 TO \$199,999 206 \$200,000 OR MORE 72 MEDIAN VALUE \$ 68700		10. SPECIFIED RENTER-OCCUPIED HOUSING UNITS BY CONTRACT RENT (12) WITH CASH RENT: LESS THAN \$50 43 \$50 TO \$99 73 \$100 TO \$119 48 \$120 TO \$139 32 \$140 TO \$149 15 \$150 TO \$159 52 \$160 TO \$169 46 \$170 TO \$199 223 \$200 TO \$249 982 \$250 TO \$299 2470 \$300 TO \$399 2880 \$400 TO \$499 470 \$500 OR MORE 92 MEDIAN CONTRACT RENT \$ 295 NO CASH RENT 172																
8. VACANT YEAR-ROUND HOUSING UNITS BY VACANCY STATUS FOR SALE ONLY 111 FOR RENT 330 HELD FOR OCCASIONAL USE 16 OTHER VACANT (9) 427		11. YEAR-ROUND CONDOMINIUM HOUSING UNITS BY TENURE AND VACANCY STATUS TOTAL 34 RENTER OCCUPIED 15 VACANT FOR SALE ONLY OTHER VACANT (9) 6		13. YEAR-ROUND HOUSING UNITS BY TENURE AND OCCUPANCY STATUS BY PLUMBING FACILITIES <table border="1"> <thead> <tr> <th></th> <th>TOTAL</th> <th>RENTER OCCUPIED</th> <th>TOTAL OCCUPIED</th> </tr> </thead> <tbody> <tr> <td>COMPLETE PLUMBING FOR EXCLUSIVE USE</td> <td>24167</td> <td>23288</td> <td>7719</td> </tr> <tr> <td>LACKING COMPLETE PLUMBING FOR EXCLUSIVE USE</td> <td>144</td> <td>139</td> <td>104</td> </tr> </tbody> </table>			TOTAL	RENTER OCCUPIED	TOTAL OCCUPIED	COMPLETE PLUMBING FOR EXCLUSIVE USE	24167	23288	7719	LACKING COMPLETE PLUMBING FOR EXCLUSIVE USE	144	139	104			
	TOTAL	RENTER OCCUPIED	TOTAL OCCUPIED																	
COMPLETE PLUMBING FOR EXCLUSIVE USE	24167	23288	7719																	
LACKING COMPLETE PLUMBING FOR EXCLUSIVE USE	144	139	104																	
12. SPECIFIED OWNER-OCCUPIED AND VACANT-FOR-SALE ONLY HOUSING UNITS BY OCCUPANCY STATUS BY CONDOMINIUM STATUS(11) OWNER VACANT FOR OCCUPIED SALE ONLY *****		15. OCCUPIED HOUSING UNITS WITH 1.01 OR MORE PERSONS PER ROOM BY TENURE, PERSONS, AND PLUMBING FACILITIES(13) <table border="1"> <thead> <tr> <th></th> <th>RENTER</th> <th>TOTAL OCCUPIED</th> </tr> </thead> <tbody> <tr> <td>UNITS LACKING COMPLETE PLUMBING FOR EXCLUSIVE USE</td> <td>9</td> <td>8</td> </tr> <tr> <td>PERSONS IN UNITS WITH COMPLETE PLUMBING</td> <td>2670</td> <td>1068</td> </tr> <tr> <td>LACKING COMPLETE PLUMBING</td> <td>2624</td> <td>N/A</td> </tr> <tr> <td></td> <td>46</td> <td>N/A</td> </tr> </tbody> </table>			RENTER	TOTAL OCCUPIED	UNITS LACKING COMPLETE PLUMBING FOR EXCLUSIVE USE	9	8	PERSONS IN UNITS WITH COMPLETE PLUMBING	2670	1068	LACKING COMPLETE PLUMBING	2624	N/A		46	N/A	16. PERSONS IN OCCUPIED HOUSING UNITS LACKING COMPLETE PLUMBING FACILITIES FOR EXCLUSIVE USE (13) 327	
	RENTER	TOTAL OCCUPIED																		
UNITS LACKING COMPLETE PLUMBING FOR EXCLUSIVE USE	9	8																		
PERSONS IN UNITS WITH COMPLETE PLUMBING	2670	1068																		
LACKING COMPLETE PLUMBING	2624	N/A																		
	46	N/A																		
14. SPECIFIED RENTER-OCCUPIED PAYING CASH RENT AND VACANT-FOR-RENT HOUSING UNITS BY OCCUPANCY STATUS <table border="1"> <thead> <tr> <th></th> <th>RENTER OCCUPIED</th> <th>VACANT FOR RENT</th> </tr> </thead> <tbody> <tr> <td>TOTAL</td> <td>7426</td> <td>326</td> </tr> <tr> <td>MEAN CONTRACT RENT</td> <td>\$ 299</td> <td>\$ 367</td> </tr> </tbody> </table>			RENTER OCCUPIED	VACANT FOR RENT	TOTAL	7426	326	MEAN CONTRACT RENT	\$ 299	\$ 367	17. VACANT UNITS YEAR-ROUND WHICH ARE BOARDED UP FOR RENT, WHICH HAVE BEEN VACANT FOR 2 OR MORE MONTHS 9 FOR SALE ONLY WHICH HAVE BEEN VACANT FOR 6 OR MORE MONTHS 30									
	RENTER OCCUPIED	VACANT FOR RENT																		
TOTAL	7426	326																		
MEAN CONTRACT RENT	\$ 299	\$ 367																		
NONCONDOMINIUM: TOTAL 14230 106 MEAN VALUE \$ 73474 \$ 76179		CONDOMINIUM: TOTAL 13 MEAN VALUE \$ 136538 \$																		

NOTES: A. NUMBERS IN PARENTHESES ARE FOOTNOTE NUMBERS. SEE FOOTNOTE PAGE.
 B. BLANK CELLS INDICATE THAT THE NUMBER IS "0" OR THE DATA ARE SUPPRESSED.

HOUSING CREDIT LOCATION

TOWNSHIP OF EDISON
MIDDLESEX COUNTY N.J.

Location of Housing Credit

1. Inman Grove - 240 units.
2. Greenwood & Colonial Square - 431 equivalent units.
3. Public Housing - 160.

Other:

Townshipwide rehabilitation - 100 units.

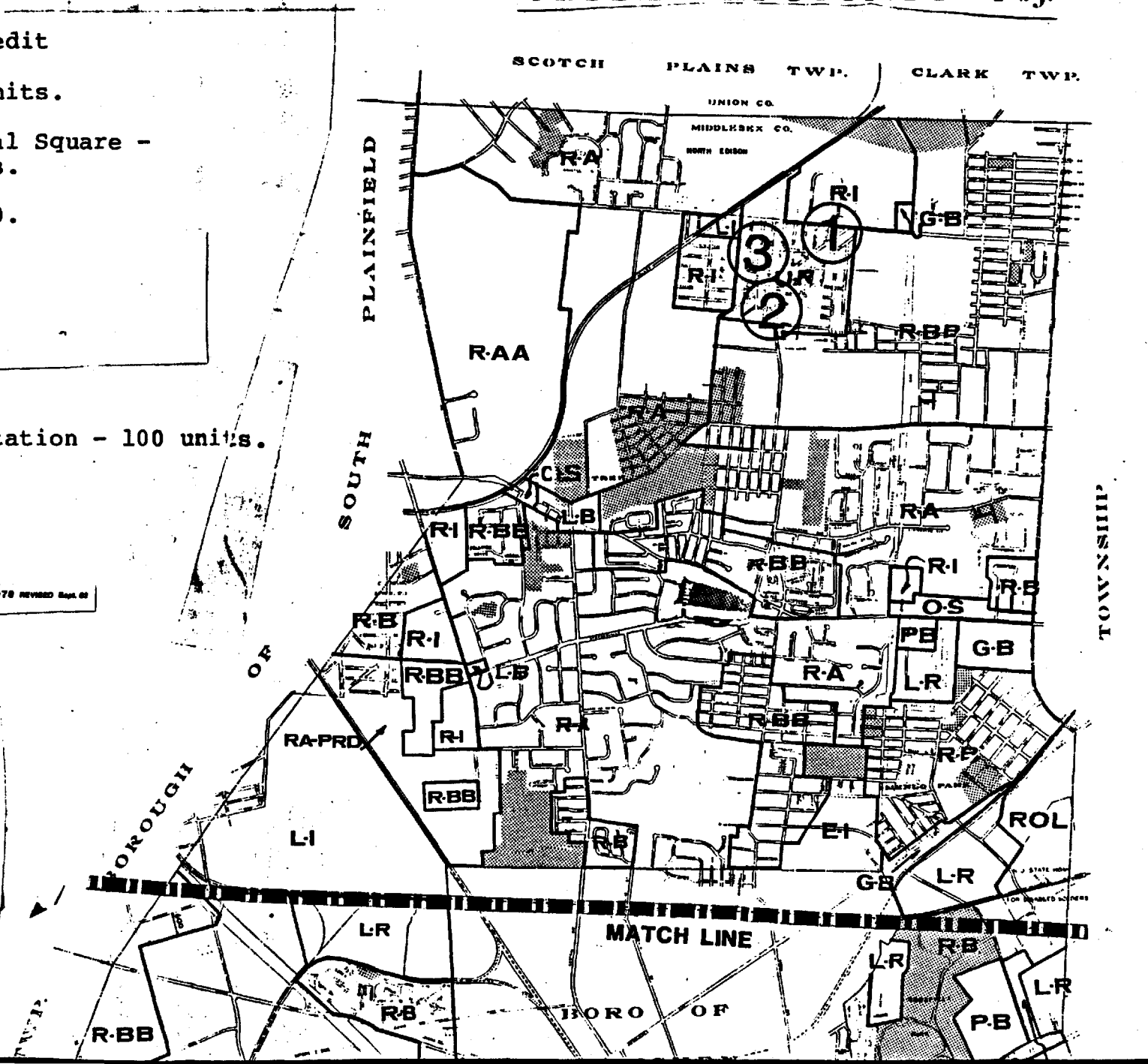
ZONING DISTRICTS

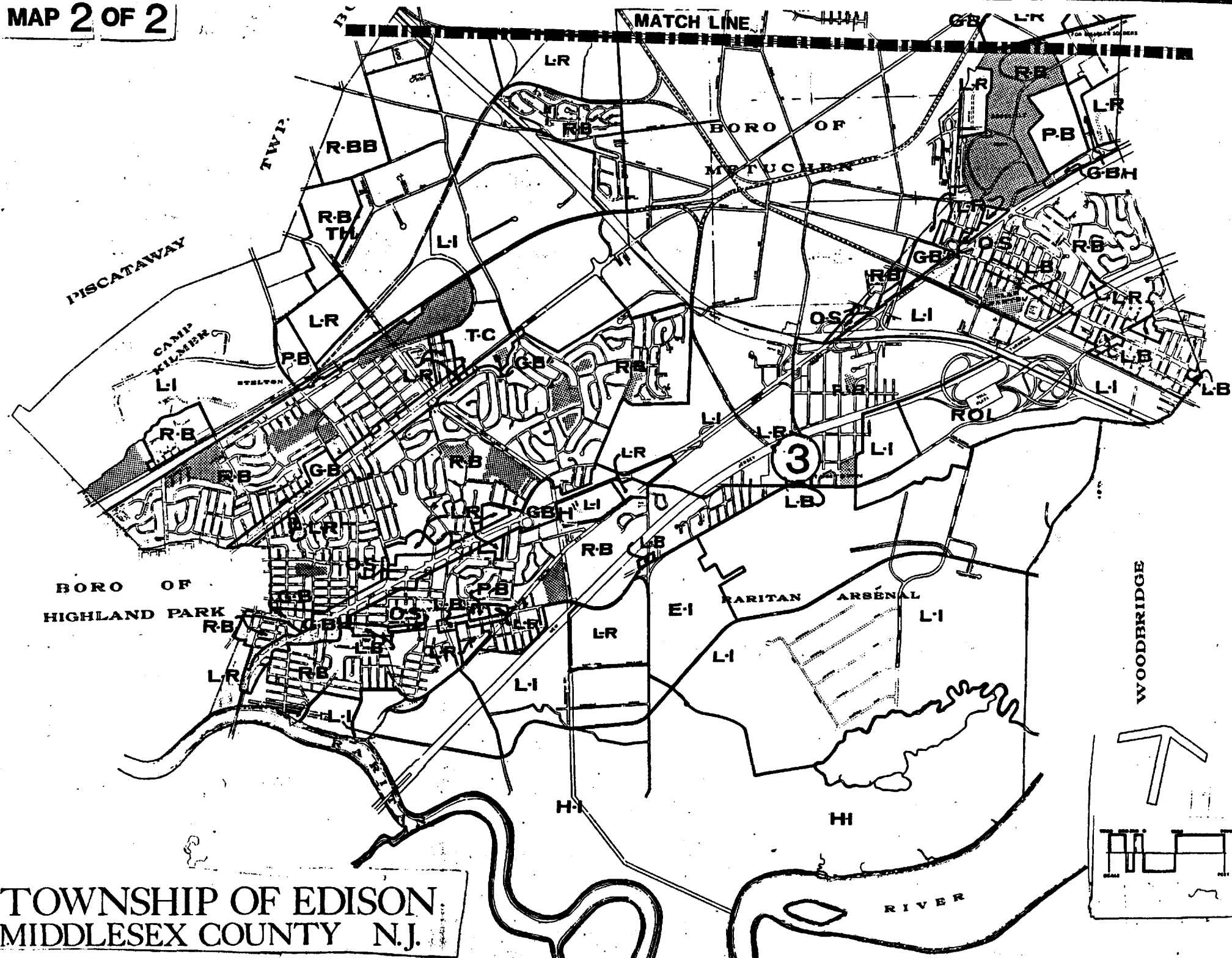
- DECEMBER 20, 1978 REVISED MAP 01
- R-AA RESIDENTIAL
 - RA RESIDENTIAL RA(PRD)
 - R-BB RESIDENTIAL
 - RB RESIDENTIAL
 - PB-TH RESIDENTIAL TOWNHOUSE
 - L-R MULTI FAMILY RESIDENTIAL
 - L-B LOCAL BUSINESS
 - GB GENERAL BUSINESS
 - GB-H GENERAL BUSINESS HIGHWAY
 - PB PLANNED BUSINESS
 - OS OFFICE SERVICE
 - RI RESTRICTED INDUSTRY
 - LI LIGHT INDUSTRY
 - HI HEAVY INDUSTRY
 - EI EDUCATIONAL INSTITUTIONAL
 - TC TOWNSHIP CENTER
 - UR URBAN RENFWAL
 - ROL RESEARCH OFFICE LAB

NOTE: ALL ZONE LINES COINCIDE WITH LOT LINES OR THE CENTER LINE OF STREETS AND STREAMWAYS UNLESS OTHERWISE SPECIFIED

GENERAL BOUNDARIES OF EXISTING MAJOR PUBLIC FACILITIES (FOR INFORMATION PURPOSES ONLY)

NOTE: THIS INFORMATIONAL ZONING MAP IS NOT THE OFFICIAL ZONING PLAN OF EDISON TWP. THE OFFICIAL ZONING PLAN IS ON FILE WITH THE TOWNSHIP OF EDISON ENGINEERING DEPT. THE OFFICIAL ZONING PLAN CONSISTS OF FITNESS, LEGAL BOUNDARY DELINEATIONS ALL SHOWN THEREON.

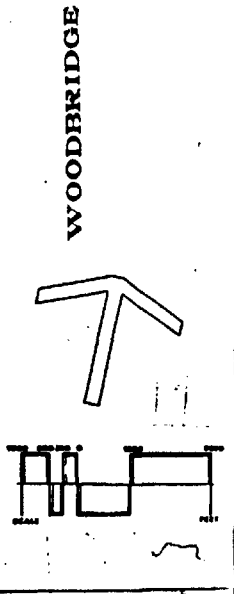




BORO OF
HIGHLAND PARK

BORO OF
MADISON

TOWNSHIP OF EDISON
MIDDLESEX COUNTY N.J.



MUNICIPALITY: Edison Township

Middlesex County

COUNTY:

A. NAME OF PROJECT	ADDRESS OF PROJECT OR UNIT	UNITS	GOVERNMENT FUNDING SOURCE	DATE OF INITIAL OCCUPANCY
Inman Grove	Inman Avenue Edison	312 equivalent units (240 rental)	HUD 236 program w/100% Rental Assistance	1982

B. Brief description of 20 year affordability control:
(kindly attach sample lien if non-government constructed)

HUD 236 rental housing program. 40 year control of affordability.

C. Statement that all of the above occupants/households met either low or moderate income eligibility criteria.

Occupance limited to Low & Moderate income households.

Certified by:

Chief Elected Municipal Official

EDITING DOCUMENTATION RENTER-OCCUPIED REHABILITATION:

MUNICIPALITY: Edison Township
COUNTY: Middlesex County

<u>ADDRESS OF UNIT</u>	<u># UNITS</u>	<u>COST OF RENOV</u>	<u>DATE OF FINAL INSPECTION</u>
Graham Ave. & Avenue C.	208 equivalent units (160 rental units)	\$1,500,000 (public hsg. modernization grant)	Ongoing

Brief description of ten year affordability control:
(kindly attach sample lien)

HUD Section 8 income limits

Statement that all of the above units were below code standard
and raised to code standard after rehabilitation.

Both projects (No. Edison apartments & Julius Engle apartments)
were determined to be deteriorated to a degree warranting and
eligible for public housing modernization grant funds totalling
\$1,500,000 from April 1980 to spring of 1986.

Statement that all of the above renter-households met either low
or moderate income eligibility criteria.

All occupants are low income persons.

Prepared by:

Reviewed by:

CREDITING DOCUMENTATION OWNER-OCCUPIED REHABILITATION:

MUNICIPALITY: Edison Township

COUNTY: Middlesex County

A. ADDRESS OF UNIT	# UNITS	COST OF REHAB	DATE OF FINAL INSPECTION
Townshipwide	100	over \$4400/ dwelling	Ongoing. All credit rehab units complete after April, 1980

8. Brief description of six year affordability control: (Kindly attach sample lien)

None.

. Statement that all of the above units were below code standard and raised to code standard after rehabilitation.

All rehabilitated units were below code standard. As a result of rehab grant, code violations were corrected.

. Statement that all of the above owners met either low or moderate income eligibility criteria at time of rehabilitation.

Grant award is limited to low and moderate income homeowners.

Tested to by:

Rehabilitation Program Administrator

Certified by:

CREDITING DOCUMENTATION

NEW CONSTRUCTION:

MUNICIPALITY: Edison Township
COUNTY: Middlesex County

<u>A. NAME OF PROJECT</u>	<u>ADDRESS OF PROJECT OR UNIT</u>	<u># UNITS</u>	<u>GOVERNMENT FUNDING SOURCE</u>	<u>DATE OF INITIAL OCCUPANCY</u>
Greenwood & Colonial Square Apts.	Grove Ave. Edison	431 equivalent units (332 rental apts.)	HUD 236 program	1982

B. Brief description of 20 year affordability control:
(kindly attach sample lien if non-government constructed)
HUD 236 rental housing program. 40 year affordability control.

C. Statement that all of the above occupants/households met either low or moderate income eligibility criteria.
Occupancy limited to low & moderate income households under HUD 236 mortgage subsidy financing program.

Certified by:

CHIEF ELECTED MUNICIPAL OFFICIAL

Edison mini-city hearing fiery

By ERIC J. GREENBERG
and STEPHEN McCARTHY
News Tribune Staff Writers

N.J. official probes fears of toxics

The mammoth Rivertown application for 4,000 diversified units in Edison's Raritan Center will be decided later this month, said Planning Board Chairman Valentine Meszaros following a stormy five-hour public hearing last night.

Even as the public hearing heated up, a state official said he will conduct his own study to determine whether the state should intervene in the proposed billion-dollar development proposed for a waterfront site in the old Raritan Arsenal property.

Joseph Malazinsky, a hazardous waste enforcement officer for the state Department of Environmental Protection, said he will look into the impact on human health or environment that might arise from the ambitious project that encompasses residential, commercial, and office uses.

About 100 spectators packed Edison Town Hall last night to voice their views on the mini-city development.

The public hearing on the site plan erupted into acrimony late in the evening as Meszaros gavelled down residents seek-

ing to offer comment about the impact of the project on environmentally sensitive wetlands.

"I think this is a damn disgrace the way he conducted the whole affair," said James Engel about the planning board chairman. "These people are supposed to be our representatives. They shouldn't be telling members of the public to shut up."

"You're going to have more traffic than anticipated," said long-time resident Karl Kovach during the public session.

"Sure, ratables are going to come in but we don't know how much (in town-

ship services) are going out," he said.

Other residents were concerned about the impact on hundreds of acres of environmentally sensitive wetlands. Denise Weigle pointed out that the wetlands on the 940-acre site have not yet been delineated.

Meszaros assured her the board would request a wetlands delineation at the proper time.

Meszaros stressed that the hearing last night was merely to determine whether the Rivertown project would receive a preliminary site plan approval.

Township Planner John Chadwick said the project would be phased in over a 20-

See MINI-CITY Page A-2

News-Tribune
6/2/88

Edison mini-city decision near

Continued from Page A-1

year period and each section would have to win Planning Board approval after a public hearing.

However, the developers and township officials are eager to have the Rivertown concept approved to circumvent a tough new state ban on building in wetlands that takes effect July 1.

Meszaros also said he believes that an approval for Rivertown would dissuade the state from choosing Edison as the site for a hazardous waste incinerator.

"You're going to have more traffic than anticipated. Sure, ratables are going to come in but we don't know how much (in township services) are going out."

**Karl Kovach
Edison resident**

However, last week, township officials speaking before the state Hazardous Waste Facilities Siting Commission assured that panel that the Rivertown project had been in the works for years and was not being proposed in order to block the incinerator.

No federal or state agency has been able to determine if there are buried munitions or toxic waste left behind at the former Army facility, which closed in 1961.

In an attempt to discover once and for all if hazardous materials lie under the Raritan Arsenal tract, the Army Corps of Engineers is conducting a search.

The study is due to be completed next year.

Army Corps officials say the arsenal was used to store and dispose of muni-

"I think this is a damn disgrace the way he conducted the whole affair. . . . These people are supposed to be our representatives. They shouldn't be telling members of the public to shut up."

**James Engel
Edison resident**

tions and hazardous waste for nearly 45 years.

But Malazinsky, an enforcement officer with the Hazardous Waste Site Division of DEP, said he learned by accident that Edison was considering a residential and commercial development at the site.

Using maps supplied by a concerned citizen, Malazinsky said he'll compare the outline for the proposed development with maps used by the Army Corps to locate sites where munitions or toxic waste are possibly buried. He said he wants to know how close the potential munitions or toxic waste sites are to the proposed Rivertown location.

Malazinsky said the state has "broad

powers" to enforce state statutes if human health or the environment are endangered by a development.

He said he's uncertain whether the Rivertown proposal poses such hazards. It is up to the developer to alert DEP if a development might violate state statutes, he said.

Malazinsky said he may have no authority to demand maps and other planning materials from the developers or Edison Township.

But if he can't learn about the site independently, he said he'll visit Edison to review the preliminary site plan.

JOHN M. PAYNE, ESQUIRE
 Rutgers Law School
 15 Washington Street
 Newark, New Jersey 07102
 (201) 648-5378
 Attorney for Plaintiff, on behalf of the
 American Civil Liberties Union of New Jersey

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 MIDDLESEX COUNTY/OCEAN COUNTY
 DOCKET NO. L-

CIVIC LEAGUE OF GREATER NEW BRUNSWICK,	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	(MOUNT LAUREL)
-vs-	:	
	:	
EDISON TOWNSHIP, a municipal	:	
corporation of the State of New	:	
Jersey, located in Middlesex	:	
County, New Jersey,	:	
	:	<u>CERTIFICATION OF</u>
and	:	<u>PENDING ACTIONS</u>
	:	
THE PLANNING BOARD OF EDISON	:	
TOWNSHIP,	:	
	:	
Defendants	:	

OCEAN COUNTY] :ss:
 NEW JERSEY]

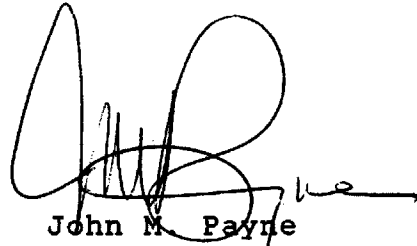
JOHN M. PAYNE, of full age, deposes and says:

1. I am attorney for the Civic League of Greater New Brunswick in this action. I make this certification pursuant to R.4:5-1.

2. To the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding.

3. Edison Township has filed a Housing Element with the Council on Affordable Housing but has not moved for substantive certification of that Housing Element. Upon filing this action, it is my intent to exhaust administrative remedies on behalf of plaintiffs as required by the Fair Housing Act of 1985, N.J.S.A. 52:27D-309, -316, by requesting initiation of mediation and review by the Council on Affordable Housing.

I certify that the foregoing statements made by me are true. I am aware that that if any of the foregoing statements are willfully false, I am subject to punishment.



John M. Payne

June 13, 1988

JOHN M. PAYNE, ESQUIRE
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
(201) 648-5378
Attorney for Plaintiff, on behalf of the
American Civil Liberties Union of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY/OCEAN COUNTY
DOCKET NO. L-

CIVIC LEAGUE OF GREATER NEW BRUNSWICK	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	<u>(MOUNT LAUREL)</u>
-vs-	:	
	:	
EDISON TOWNSHIP, a municipal	:	
corporation of the State of New	:	
Jersey, located in Middlesex	:	
County, New Jersey,	:	
	:	<u>ORDER TO SHOW CAUSE</u>
and	:	<u>WITH TEMPORARY RES-</u>
	:	<u>TRAINTS ON SALE AND</u>
THE PLANNING BOARD OF	:	<u>DEVELOPMENT OF VACANT</u>
EDISON TOWNSHIP,	:	<u>LAND</u>
	:	
Defendants	:	

This matter having been opened to the Court by the American Civil Liberties Union of New Jersey (John M. Payne, Esq., appearing), attorney for plaintiffs, by way of an application for an Order to Show Cause with Temporary Restraints;

and telephone notice of the application having been given to: Peter DeSarno, Esq., attorney for defendant Township of Edison; Sheldon Schiffman, Esq., attorney for defendant Planning Board of Edison; and Steven Barcan, Esq., attorney for Garden State Buildings, L.P.; and the Court having determined that:

1. Plaintiffs have a reasonable probability of success on the merits of their claim regarding the unconstitutionality of defendants' ordinances as being violative of the Mount Laurel doctrine and the regulations of the Council on Affordable Housing promulgated under the Fair Housing Act of 1985;

2. Developable land appears to be a scarce resource in Edison Township which, if not restrained from sale or unconditional development by Edison Township, is likely to cause immediate and irreparable harm in that the defendants will be significantly hindered in their ability to satisfy their Mount Laurel obligations;

3. A balancing of the hardships weighs against defendants and in favor of plaintiffs and low and moderate income households; and for good cause otherwise shown;

IT IS ON THIS ____ DAY OF JUNE, 1988, ORDERED AS FOLLOWS:

1. Defendant shall show cause before the Honorable Eugene D. Serpentelli, A.J.S.C., Ocean County (Middlesex County),

at the Ocean County Courthouse, Toms River, New Jersey, on the ___ day of _____, 1988, at ___ in the _____, or as soon thereafter as counsel may be heard, why an Order should not be entered converting the temporary restraints and order set forth below in paragraphs 2 and 3 of this Order into an interlocutory injunction.

2. Defendant, its agencies, departments and officers are hereby temporarily restrained until the return date of this Order to Show Cause or further Order of this court, from:

a. public auction and/or sale of any and all municipally owned land;

b. contracting with any person or entity for the purpose of development of any and all municipally owned land;

3. It is hereby further ordered as follows:

a. Any and all development approvals, including but not limited to general approvals, subdivision and site plan approvals and variances (but excluding building permits), which may be granted by defendant, its agencies, departments and officers for any and all publicly-owned land in the Township of Edison and for any and all privately owned land in the Township of Edison in excess of 2 acres (which acreage shall be determined by totalling the entire acreage of contiguous lots included in the same development or under the same ownership or control) shall if granted be made subject to the provisions of this paragraph.

b. All development approvals covered by this paragraph shall be conditioned on the applicant's compliance with any ordinance, regulations or other requirements adopted hereafter by defendants as a result of a final determination by this Court or by the Council on Affordable Housing that require provision of low and moderate income housing units within the development for which approval has been conditionally granted.

c. No rights shall be vested in lands subject to this paragraph except as limited by the conditions imposed herein.

d. More specifically, the Planning Board and the Zoning Board of Adjustment may continue to process all applications for development filed with them and to hold hearings and render determinations thereon, but in the case of any such applications which fall within the scope of this Order, the municipal agency having jurisdiction over the application for development, if it determines that it will approve the application, shall approve the application with the condition as set forth above.

e. If the municipal agency fails to act on an application for development which is within the scope of this Order, within the time set forth by the appropriate provisions of the municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq., any automatic or default approval shall be deemed conditioned as set forth above.

f. Approval of an application for development which is within the scope of this Order, within the time period prescribed by the appropriate provisions of the MLUL, shall not subject the approving agency, by virtue of the conditions imposed by this Order, to the claim of any applicant or interested party that the agency has failed to act on the application within the time period prescribed by the MLUL or to any claim that an automatic or default approval has occurred; and

g. No building permits or certificates of occupancy shall be issued or granted to applicants for developments which fall within the scope of this Order.

4. Any person or entity (including but not limited to applicants and interested parties) affected by the Order regarding development approvals contained herein shall have the right to seek a waiver or exemption from the terms thereof by submitting a request for same, with a proposed form of Order attached thereto, to the Court upon notice to plaintiffs' counsel. If plaintiffs wish to object, an objection within 15 days of the receipt of the request and proposed form of Order must be submitted to the Court with a copy to the proponent of the request. If plaintiffs fail to object within this period the court shall may grant the request for the waiver or exemption.

5. Defendants shall have leave to move for dissolution or modification of the temporary restraints and order contained

in this Order to Show Cause on five days notice. This Order to Show Cause shall remain in effect if the controversy that is the subject of this suit is transferred to COAH, and thereafter until such time as COAH, in accordance with its procedures, makes a determination on whether continuance of restraints is appropriate.

6. If defendant or any other person or entity affected by this Order to show Cause wish to file a Brief or any papers in connection with the relief sought prior to the return date of this Order to Show Cause, same shall be filed at least 8 days prior thereto.

7. A copy of the within Order shall be forthwith served upon all counsel hereto and counsel to the Board of Adjustment.

EUGENE D. SERPENTELLI, A.J.S.C.

SERVICE LIST

Peter A. DeSarno, Esq.

Villager Building

11 Route 27

Edison, New Jersey 08820

Sheldon Schiffman, Esq.

636 Morris Turnpike

Short Hills, New Jersey 07078

Steven E. Barcan, Esq.

Wilentz, Goldman & Spitzer

900 Route 9

Box 10

Woodbridge, New Jersey 07095

JOHN PAYNE, ESQ.
RUTGERS UNIVERSITY LAW SCHOOL
15 WASHINGTON STREET
NEWARK, N.J. 07102
201-648-5378
ATTORNEY FOR PLAINTIFFS ON BEHALF
OF THE ACLU OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY

CIVIC LEAGUE OF GREATER NEW	:	
BRUNSWICK	:	
Plaintiffs	:	
	:	CERTIFICATION OF
V.	:	ALAN MALLACH
	:	
TOWNSHIP OF EDISON	:	
Defendants	:	
	:	

ALAN MALLACH, of full age, hereby certifies:

1. I am a housing and planning consultant, a licensed professional planner in the State of New Jersey, and a member of the American Institute of Certified Planners (AICP). I have been extensively involved in issues arising from the Mount Laurel litigation and its progeny, including the New Jersey Fair Housing Act, since the first Mount Laurel trial in 1972. During recent years, I have evaluated numerous municipal housing elements, on behalf of the Civic League of Greater New Brunswick, the Department of the Public Advocate, and others. I have also prepared a number of housing elements on behalf of municipalities in different parts of New Jersey.

2. I have reviewed the Housing Element and Affordable Housing plan adopted by Edison Township, and filed with the New Jersey Council on Affordable Housing in March 1987. I have prepared a report evaluating the activities set forth in this housing element which is attached to and made a part of this certification.

3. As set forth in detail in that report, I have concluded that, after interpreting the representations made in the Edison Township housing element in the most favorable way consistent with the Fair Housing Act and the rules and procedures of the Council on Affordable Housing, Edison Township has an unmet fair share obligation of 405 low and moderate income units for which no plan or program is set forth in the housing element.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'Alan Mallach', written over a horizontal line.

Alan Mallach

June 9, 1988

AN ANALYSIS OF THE HOUSING ELEMENT AND FAIR SHARE PLAN OF EDISON TOWNSHIP

Prepared for the Civic League of Greater New Brunswick by Alan Mallach PP/AICP

June 1988

Edison Township has submitted a housing element and fair share plan to the New Jersey Council on Affordable Housing (COAH) pursuant to the provisions of the New Jersey Fair Housing Act, C.222, P.L. 1985, and the regulations adopted by COAH under the provisions of this act. This plan was adopted by the township in January 1987, and filed with the Council in March of that year.

The position of this housing element is that through a variety of credits earned by the township for housing activities that have taken place during recent years, the township has more than met its fair share obligation as set forth by COAH. Certain further housing activities to be conducted are also set forth. The purpose of this report is to evaluate each of the activities set forth in the housing element, and determine, based on an objective assessment of the activity and the relevant provisions of case law, statutes, and COAH regulations, what credit, if any, should be given. Based on that evaluation, it will then be possible to determine whether Edison Township has or has not met its fair share obligations under the Fair Housing Act.

One point should be noted before evaluating the activities in the housing element. Although COAH has adopted a 1000 unit cap with respect to municipal fair share obligations, this cap applies only to the fair share after the municipality has received any credits to which it is entitled. Thus, for purposes of evaluating whether a municipality has met its fair share obligation through credits, the cap does not apply. Therefore, for purposes of this analysis, Edison's fair share obligation is 1,111 and not 1,000 low and moderate income units.

[1] Indigenous Need: Edison claims that its rehabilitation program has resulted in the rehabilitation of 100 units, and their removal from the indigenous need total, since 1980 (p.8). The rehabilitation program is funded with Community Development Block Grant funds, with a ceiling of \$4,499 per household (pp.5-6). It is COAH policy, soon to be reinforced with a formal rule, that rehabilitation efforts in which less than \$4,500 was expended do not qualify for credit. This is based on the reasonable premise that much if not all rehabilitation efforts costing less than that amount are largely cosmetic in nature.

Since by definition none of the rehabilitation loans or grants made by Edison reach the COAH threshold of \$4,500, the township is not entitled to any credit for this activity.

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[2] Inman Grove senior citizen housing: This development contains 240 units constructed under the Federal Section 236 program, in which all households receive further Section 8 rental assistance, completed in 1982. This project appears to qualify for credit toward the township's fair share goal/1.

Although the project appears to qualify, the township has sought additional credits by applying the rental bonus authorized by COAH pursuant to N.J.A.C. 5:92-14.4 to this project. This is clearly inappropriate. It is clear from the intent of the COAH rule that it was designed to act as an incentive for prospective production of rental housing. Indeed, the language of the rule provides that the amount of the bonus to which any municipality is entitled is calculated "after crediting, after adjustments and after subtracting indigenous need" (C.5:92-14.4(a))/2. On that basis, it appears inappropriate for Edison to claim the rental bonus for units constructed prior to the enactment of the Fair Housing Act. For this reason, only 240 units of credit should be granted for this project.

[3] Greenwood/Colonial Square Apartments: This development contains 332 rental units constructed under the Federal Section 236 program completed in 1982. This project appears to qualify for credit toward the township's fair share goal/3.

Although the township seeks bonus credits for this project as well, these additional credits are inappropriate for the same reason as given above. Thus the total credit for this project should be 332 units.

[4] Public Housing Modernization: The township housing authority administers 160 existing units of public housing for which \$1.5 million in Federal modernization funds were received and expended between 1980 and 1986. The township is seeking credit as well as bonus rental credit for these units. It is clear that the bonus rental credit is inappropriate, not only for the reasons discussed above, but also because no new rental units were created

1/It should be noted that the crediting documentation forms for this project attached to the housing element have been neither certified nor properly executed as required by COAH.

2/Further indication of the intent of COAH to apply the bonus only to prospective units is apparent from this language; any attempt to apply the bonus to a previously constructed development for which one is seeking credit creates a mathematical absurdity, because any application of the bonus to a credit would increase the amount credited, thus reducing the base from which the maximum bonus is calculated, thus reducing the amount of the bonus.

3/The crediting documentation forms for this project attached to the housing element have been neither certified nor properly executed as required by COAH.

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as a result of this undertaking.

Although the modernization of older public housing projects is a worthy undertaking, it is extremely debatable whether it should be entitled to any fair share credit under the Fair Housing Act. The housing in question is owned and operated by the Edison Housing Authority as subsidized housing. Since the units are complete, structurally sound housing with all basic facilities (complete plumbing, central heating, etc.) they would not have figured in the township's indigenous need for fair share purposes.

In recent years, because of the extent of deferred maintenance and other problems affecting older public housing projects, Congress has appropriated funds for modernization of these projects. It can reasonably be considered the minimum obligation of a responsible housing authority which operates an older project to obtain and utilize these funds in order to ensure the long-term viability of the project. Neither indigenous nor prospective need is in any way affected by the application of these funds⁴. For these reasons, we consider credit inappropriate for this activity.

[5] Roosevelt Hospital and JFK Facility: These facilities are clearly institutional health-care facilities and not housing, and are inappropriate for credit to be granted.

These represent the activities for which Edison has sought credit. A tabular summary of the request, and the conclusions of this analysis, is given immediately below.

TABLE 1: EDISON TOWNSHIP FAIR SHARE CREDITS

	PROPOSED BY TOWNSHIP	CONSIDERED APPROPRIATE
REHABILITATION	100	0
INMAN GROVE	312	240
GREENWOOD/COLONIAL	431	332
PUBLIC HOUSING	208	0
ROOSEVELT & JFK	430 (BEDS)	0
TOTAL	1481	572

⁴Although we recognize that Edison did not receive fair share credits when these public housing projects were first built, in principle to grant credit for modernization efforts of this sort is tantamount to a form of fair share "double-dipping". One could imagine, for example, that if the owner were to undertake a modernization of Inman Grove (for which credit is proposed above) in 1997, the township might seek credit during the 1993-1999 period for a group of units for which they had already received credit in 1987-1993, and so forth.

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On the basis of this analysis, Edison has a continuing and unmet fair share obligation of 539 units (1111-572). There are a number of proposals through which Edison indicates that additional low and moderate income housing will be provided.

[1] Rehabilitation: The township plans to meet its remaining 116 units of indigenous need through continuation of its ongoing rehabilitation program. There are two reasons why this is inadequate as proposed:

a. As noted earlier, the maximum loan or grant available under this program is \$4,499. This is below the minimum amount set by COAH for fair share credit.

b. The program as described in the housing element is offered exclusively to low and moderate income homeowners. It is virtually certain that a substantial part of Edison's indigenous need is made up of tenant-occupied units. It is statistically incontrovertible that a substantially larger number of lower income tenants than homeowners live in substandard housing conditions. On its face, it is inappropriate for a municipality to seek to meet its entire indigenous need through a program unavailable by definition to a substantial part of the lower income population living in substandard housing.

If Edison seeks to incorporate a rehabilitation program in its fair share program, it must (a) significantly increase the maximum loan or grant available per unit; (b) incorporate a realistic and workable rental housing component; and (c) present details of the provisions to be adopted to ensure that units will remain affordable at least to the extent required by COAH rules. The program as designed does not meet any of these conditions.

[2] Senior Citizen Housing: Two projects, the Clara Barton School and Tyler Estates, are identified as projects through which the township plans to provide a total of 150 units of low and moderate income senior citizen housing. The housing element provides extremely limited information with respect to these projects; it is not enough to serve as a basis for a conclusion as to whether these units will realistically be produced.

In addition, it should be noted that under COAH rule 5:92-14.3 only 25% of the net fair share obligation after credits and adjustments can be in the form of senior citizen housing. As noted earlier, Edison's net fair share obligation appears to be 539 units. Thus, the maximum number of senior citizen housing units that can be counted toward that obligation is $539 \times .25 = 134$ units.

Assuming that adequate documentation can be provided, the Clara Barton and Tyler Estates projects may potentially meet up to 134 of the 539 low and moderate income units remaining to be provided

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by Edison Township. If, for purposes of discussion, they are considered a legitimate part of the municipality's fair share plan, that leaves Edison with an unmet fair share obligation of 405 low and moderate income units. Since no plan or program is provided for these units, the housing element and fair share plan submitted by the township is clearly deficient.

A handwritten signature in black ink, appearing to read "Alan Mallach", written over a horizontal line.

Alan Mallach, PP/AICP

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Attorney for Plaintiff, on behalf of the
American Civil Liberties Union of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY/OCEAN COUNTY
DOCKET NO. L-

CIVIC LEAGUE OF GREATER NEW BRUNSWICK	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	(<u>MOUNT LAUREL</u>)
-vs-	:	
	:	
EDISON TOWNSHIP, a municipal	:	
corporation of the State of New	:	
Jersey, located in Middlesex	:	
County, New Jersey,	:	
	:	<u>CERTIFICATION</u>
and	:	<u>JOHN M. PAYNE</u>
	:	
THE PLANNING BOARD OF	:	
EDISON TOWNSHIP,	:	
	:	
Defendants	:	

OCEAN COUNTY]] :ss:
NEW JERSEY]]

JOHN M. PAYNE, of full age, deposes and says:

1. I am an attorney at law representing the Civic League plaintiff in this action. In this capacity, I am fully familiar with the facts and circumstances of this case.

2. I submit this affidavit in support of the plaintiff's application for an Order to Show Cause with Temporary Restraints.

3. On June 13, 1988, I was informed by Donald Palombi, Esq., Deputy Attorney General for the Council on Affordable Housing, that COAH will initiate review and mediation of Edison's Housing Element immediately upon request after filing of the Civic League's complaint in the Superior Court. COAH recognizes this as the appropriate way to initiate review and mediation when, as here, the municipality has not requested substantive certification.


4. Mr. Palombi also informed me that on request by an interested party, COAH could expedite consideration of whether to continue any restraints that might have been imposed by the Court.

5. On June 13, 1988, I examined the three applications filed with the Edison Planning Board which collectively constitute the Rivertown development. These applications cover a total of approximately 978.7 acres, consisting of 508.7 acres to be devoted to office use, 19 acres to retail/office use, 11 acres to residential/retail use, 133 acres devoted to residential use, and 301 acres devoted to open space.

6. In the residential portion of the Rivertown development, it is proposed that 3,846 units be constructed, consisting of 1,471 1-bedroom units, 1,595 2-bedroom units, 501 3-bedroom units, and 279 studio units. No low and moderate income units have been proposed for inclusion in the Rivertown development.

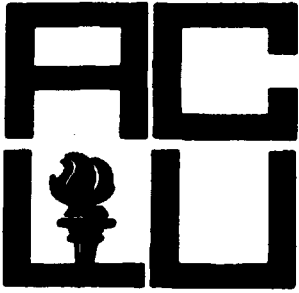
7. On June 13, 1988, I reviewed the current Zoning Code of the Township of Edison. Except for a 10% set aside provision for low and moderate income senior citizen housing, §86-6(Q), added by amendments dated January 14, February 25, and June 24, 1987, the Code does not appear to have any inclusionary features.

I certify that the foregoing statements made by me are true. I am aware that that if any of the foregoing statements are willfully false, I am subject to punishment.



John M. Payne

June 13, 1988



American Civil Liberties Union of New Jersey

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Edward Martone
Executive Director

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President

Eric Neisser
Legal Director

June 13, 1988

Hon. Eugene D. Serpentelli, A.J.S.C.
Ocean County Courthouse
CN-2191
Toms River, New Jersey 08754

Re: Civic League of Greater New Brunswick v.
Township of Edison, Docket No.

Dear Judge Serpentelli:

Please accept this letter brief in support of plaintiff's application for an Order to Show Cause with Temporary Restraints concerning Edison Township.

This is a novel Mount Laurel action, one which has never before been brought in this state by a public interest plaintiff, so far as we are aware. In essence, the Civic League seeks to compell Edison to submit to mediation and review in the Council on Affordable Housing as to its Housing Element, which it has filed with COAH without seeking substantive certification. The Complaint filed with the Order to Show Cause will trigger review by COAH, as we will explain below. But for this action by the Civic League, Edison is able to claim the protection from Superior Court litigation provided by the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., without having to implement any realistic fair share plan at all.

This action arises under emergent conditions because of the strong likelihood that the Edison Township Planning Board will grant general development approval to a 3,846-unit residential development called Rivertown at its meeting on Wednesday evening, June 15, 1988, thus vesting rights on a very significant parcel of vacant land in Edison without requiring an appropriate Mount Laurel component. Because of what Edison concedes is a limited amount of developable residential land, approval of Rivertown would seriously interfere with Edison's ability to comply with the Mount Laurel doctrine, as the Civic League seeks in this

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action. The Civic League therefore asks for temporary restraints imposing Mount Laurel conditions on any development approvals granted by Edison (and also a restraint on any sales of municipally-owned land), to be continued until further order of this Court or a superceding order of the Council on Affordable Housing after transfer.

1. Procedural posture of the case. On or after February 18, 1987, the Edison Planning Board adopted a Housing Element dated January, 1987, which it formally filed with the Council on Affordable Housing on March 25, 1987. Pursuant to §309(b) of the Fair Housing Act, filing the Housing Element is sufficient to require exhaustion of administrative remedies before COAH as to any exclusionary zoning litigation instituted against Edison. However, a municipality is not required to seek substantive certification of its Housing Element, see §313, and it has no statutory obligation to implement the Housing Element by adopting conforming land use regulations. Thus, for purposes of the Civic League's Mount Laurel complaint against Edison, the Housing Element cannot be used by Edison to claim present compliance with constitutional standards.

The Fair Housing Act is not explicit about the procedure for handling a suit such as this one. The requirement of exhaustion, §309(b), implies that the litigation is automatically transferred to COAH for mediation and review. At the very most, the case will be automatically transferred to COAH upon the motion of either party, see Hills Development Co. v. Twp. of Bernards, 103 N.J. 1, 38 (1986). The transfer triggers a petition for substantive certification, id., because the requirement of exhaustion cannot be met otherwise. By copy of these papers, COAH has been informed of this action, and counsel has been informed by the Deputy Attorney General representing COAH that review and mediation will be instituted simply upon notice that this suit has been filed. (See Payne Certification, para. 3.)

2. Temporary restraints. "Scarce resources" motions such as this one were specifically approved by the Supreme Court in Hills, 103 N.J. at 61-63, and are provided for in COAH Regulations, N.J.A.C. 5:92-11.1. "Scarce resources" are those "that may be essential to the satisfaction of the municipality's obligation to provide for its fair share of its region's present and prospective need for low and moderate income housing." Id. Land may be a scarce resource. Hills at 61.

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Because both the Court and COAH may issue scarce resource restraints, the Supreme Court has articulated a sensible method for allocating responsibility between the two institutions in transfer cases. In Hills, the Court held that restraints issued by the Mount Laurel judges could continue in effect after a case was transferred to COAH until COAH had had an opportunity to act on the issue. Hills at 62. While the specific problem in Hills was that COAH would not be able to issue orders until it had written and promulgated its procedural rules, a period of seven months, the principle is equally applicable here. This case must begin in the Superior Court and COAH's jurisdiction therefore cannot be perfected for a period of some days or weeks. See N.J.A.C. 5:91-13.4 (time for filing notice of motion with COAH). As in Hills, the Fair Housing Act cannot sensibly be construed to prevent an order of this Court continuing in effect until adequate time to present the matter to COAH has elapsed. Once COAH acts, of course, its decision to continue or dissolve the restraints will prevail over the terms of this Court's Order.

The familiar tests for obtaining temporary relief are reasonable probability of success, irreparable harm, and a balance of harms favoring the party seeking relief. See Crowe v. DeGoia, 90 N.J. 126 (1982). Plaintiffs meet these tests.

a. Probability of success. Plaintiffs state a valid Mount Laurel claim by establishing Edison's fair share obligation of 1,111 units of low and moderate income housing, shifting the burden to Edison to demonstrate that this obligation has been satisfied. See Mount Laurel II, 92 N.J. 158, 222. The fair share obligation of 1,111 units is accepted in Edison's Housing Element, filed with COAH on March 25, 1987. The Township's only affirmative compliance response has been to adopt a 10% senior citizen set aside requirement, which is insufficient both under Mount Laurel II and under COAH's ceiling of 25% age-restricted units. See N.J.A.C. 5:92-14.3.

In addition, the report prepared by plaintiff's housing expert, Alan Mallach, concludes that Edison will have an unmet need of at least 405 low and moderate income units under the Housing Element prepared by the township. (Mallach affidavit, Report page 5.) The claim of 1.33 units for rental units created is invalid because N.J.A.C. 5:92-14.4 only applies to newly created units, after all credits for previously created units have been taken. The credits claimed for "affordable" hospital beds and for rehabilitation of public housing are

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patently invalid, as explained in Mr. Mallach's Report. The Township's proposed rehabilitation program, by its own admission, is limited to a dollar amount below that which COAH recognizes as adequate, and the claimed credit for senior citizen housing exceeds the percentage allowed by N.J.A.C. 5:92-14.3.

Moreover, the credits that Mr. Mallach finds might be allowed are an extremely generous "best case" scenario, assuming that all of Edison's other claims can be substantiated. Since the documentation contained in the housing element is sketchy, it is quite possible that Edison's unmet need will be substantially larger once subjected to testing in mediation and review before COAH. In any event, there is a clear probability of success because of the substantial level of unmet need.

b. Irreparable harm. In the absence of a valid plan for otherwise meeting its fair share, developable land is the sine qua non of an adequate remedy for plaintiffs. There can be no doubt about this after the Supreme Court's recognition of land as a scarce resource in Hills.

Edison, in its Housing Element, concedes that land is a scarce resource:

A total of 6,695 dwelling units have been constructed in the Township since January of 1980 through July of 1986. This number of dwellings equals an annual average production of 1,030 dwelling units per year. Because of the limited developable land area suited for residential use, this rate of construction will not continue at the same level for the next six year period.

Because of limited available land and available suited for residential development, the average annual production of housing over the next 6 year period is expected to decrease significantly.

Edison Housing Element at 6. In the absence of discovery at this threshold stage of the proceedings, plaintiffs are unable to present more detailed information about developable land in Edison. Unfortunately, neither the Housing Element nor the Land Use Element of the Master Plan contain any useful data in this regard. For present purposes, however, Edison's acknowledgement of its "significant decrease" in available land is sufficient to warrant temporary restraints, particularly when one realizes that

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under customary "inclusionary" ordinances only twenty percent of the "significantly decreased" number of residential units that Edison anticipates will be set aside for low and moderate income households.

While plaintiff seeks restraints concerning all 2-acre parcels or larger, the urgency of its request is underscored by the pending Rivertown application, which is to be heard and possible voted on by the Planning Board on June 15, 1988. This application, which projects almost 4,000 housing units to be built over a twenty-year period obviously presents a tremendous opportunity for Edison to meet its fair share, once the fallacies of the present Housing Element are confirmed by COAH. To allow rights in this development to vest without a Mount Laurel component will burden not only the present six-year plan but several succeeding six-year plans thereafter.

3. Balance of harms. The harm to plaintiff if restraints are not granted must be weighed against the harm to defendants if restraints are granted. Crowe v. DeGoia, supra. The defendants, as public bodies, would suffer little if any harm were restraints to be granted, since the ultimate objective of this action is a declaration of constitutionally and statutorily mandated obligations which are binding on the municipality and its agencies in any event. As a matter of law, moreover, landowners are not entitled to approval of their development applications simply because they are complete and pending, if there is good reason to deny or delay final action, as there is here.

As a practical matter, however, it is equitable for this court to insure that the interests of landowners who may be affected by the restraints not be interfered with unnecessarily. To this end, the proposed Order is drawn very narrowly as to development approvals. It requires only that any such approvals granted by the municipality be conditioned on the applicability of any ordinances, regulations or other requirements subsequently adopted by Edison to come into compliance with its fair share obligation. Hearings can go forward, approvals can be granted, and rights can vest as to any interests other than the Civic League's interest in securing low and moderate income housing. The proposed Order also provides an expeditious mechanism for releasing individual properties from the restraints if they are not needed for fair share purposes, or if the landowner agrees to an appropriate inclusionary component.

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As to the Rivertown application, for instance, which is an important although not exclusive focus of the temporary restraints, the general development approval sought by the applicant pursuant to N.J.S.A. 40:55D-45.1 (L.1987, c.129) would not be barred by the restraints. If, as appears from press reports, one concern that the Rivertown applicant has is to obtain vested rights before new wetlands regulations become effective on July 1, 1988, the Mount Laurel restraints we seek would not prevent this from happening. Moreover, given the scope of the Rivertown proposal, its twenty-year duration, the necessity for obtaining preliminary and final approval section by section, and the power to alter the terms of the general approval if conditions change, see N.J.S.A. 40:55D-45.5, the brief period of uncertainty about inclusion of affordable housing (COAH can act within a matter of months) is hardly crucial to the viability of the project.

Conclusion. By this action, the Civic League plaintiff seeks to close a very large loophole in the Fair Housing Act. Edison has sought to cull out the benefit of the Act, protection from litigation, while avoiding its constitutional burden, providing a realistic opportunity for affordable housing, by filing its Housing Element without moving for substantive certification. Because of the absence of effective builder incentives in the Act, it has been necessary for the Civic League to act in order to secure its interest in provision of affordable housing throughout Middlesex County, including Edison. The Complaint filed today will bring Edison before the Council on Affordable Housing and will ultimately result in a determination of whether its Housing Element complies or not with the Constitution and the Fair Housing Act. By this action, the Civic League hopes to perfect an expeditious mechanism for expanding the scope of COAH review.

The application for temporary restraints is an important component of the Civic League's effort to bring Edison into compliance. By the Township's own admission, relatively little housing development can be anticipated during the current fair share period. The Civic League's housing expert, Alan Mallach, concludes that Edison has a shortfall of at least 405 units in its Housing Element fair share plan, and that shortfall could grow by several hundred units if some of the undocumented assumptions in the Plan prove over-optimistic, as they often do. The Rivertown application presents an unparalleled opportunity to deal with the deficiencies of the Edison Housing Element, an op-

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portunity to which Edison seems indifferent. The carefully limited proposed Order will preserve the status quo with minimal effect on landowners until the mechanism crafted by the Legislature -- review and mediation in the Council on Affordable Housing -- can be invoked.

Respectfully submitted,

John M. Payne
Attorney for Plaintiff

cc: Service list
Council on Affordable Housing