

Civic League v. Edison ce/24

1988

● Notice of Motion To Impose Restraints (3)  
Order Imposing Restraints (4)  
Cert. of Louie Nikolaidis (19)

PI # 5196

● Pgs 26

ML000053V

Louie Nikolaidis, Esq.  
 22 Langley Place  
 New Brunswick, N.J. 08901  
 (201) 828-2033  
 Attorney for Objector, Civic League  
 of Greater New Brunswick

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CIVIC LEAGUE OF GREATER NEW          :
BRUNSWICK,                          : STATE OF NEW JERSEY
                                     : COUNCIL ON AFFORDABLE
                                     : HOUSING
                                     : DOCKET NO.
                                     :
                                     : Civil Action
                                     :
EDISON TOWNSHIP, a municipal         : NOTICE OF MOTION TO
corporation of the State of New     : IMPOSE RESTRAINTS
Jersey, located in Middlesex        : (Returnable July 18, 1988)
County, and THE PLANNING BOARD      :
OF EDISON TOWNSHIP,                :
                                     :
                                     : Petitioners.
                                     :
-----X

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PLEASE TAKE NOTICE that on Monday July 18, 1988 at 9:00 A.M., the undersigned, attorney for the Civic League of Greater New Brunswick, will apply to the Council on Affordable Housing of the State of New Jersey, at their offices at 11C Princess Road, Lawrenceville, N.J. 08648 for an Order Imposing Restraints on Edison Township and the Edison Township Planning Board prohibiting the Township and the Planning Board from selling and/or contracting for the sale of municipal land and from granting development approvals for privately owned land in the Township of five acres or more.

PLEASE TAKE FURTHER NOTICE that the applicant will rely upon the annexed Certification of Louie Nikolaidis in support of this application.

PLEASE TAKE FURTHER NOTICE that the applicant respectfully requests oral argument on this motion.

LOUIE NIKOLAIDIS, ESQ.  
Attorney for the Civic League  
of Greater New Brunswick

Dated:

  
\_\_\_\_\_  
Louie Nikolaidis

CERTIFICATE OF SERVICE

I, LOUIE NIKOLAIDIS, certify that on June 24, 1988 the enclosed Notice of Motion to Impose Restraints, proposed Order Imposing Restraints, Letter Brief and Certification of Louie Nikolaidis were mailed, first class postage pre-paid, to the following:

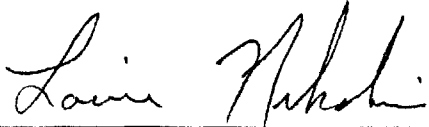
Peter A. DeSarno, Esq.  
Villager Building  
11 Route 27  
Edison, New Jersey 08820

Counsel for Edison Township

Sheldon Schiffman, Esq.  
636 Morris Turnpike  
Short Hills, New Jersey 07078

Counsel for the Edison Township Planning  
Board

Dated: June 24, 1988

  
\_\_\_\_\_  
Louie Nikolaidis, Esq.

Louie Nikolaidis, Esq.  
 22 Langley Place  
 New Brunswick, N.J. 08901  
 (201) 828-2033  
 Attorney for Objector, Civic League  
 of Greater New Brunswick

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:
CIVIC LEAGUE OF GREATER NEW      : STATE OF NEW JERSEY
BRUNSWICK,                       : COUNCIL ON AFFORDABLE
:                                 : HOUSING
:                                 : DOCKET NO.
:                                 :
:                                 : Civil Action
:                                 :
:                                 : ORDER IMPOSING
EDISON TOWNSHIP, a municipal     : RESTRAINTS
corporation of the State of New  : (Returnable July 18, 1988)
Jersey, located in Middlesex    :
County, and THE PLANNING BOARD  :
OF EDISON TOWNSHIP,            :
:                                 :
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This mater having been opened before the New Jersey Council on Affordable Housing by the Civic League of Greater New Brunswick, Louie Nikolaidis, Esq. appearing, and the Civic League having made formal application pursuant to NJAC 5:91-11.1 for an Order Imposing Restraints against Edison Township and its Planning Board on the sale and/or contract for sale of municipal land and on the granting of development approvals for sites of five acres or more, and the court having heard appropriate argument and good cause having been shown:

It is on this \_\_\_\_ day of \_\_\_\_ 1988 ORDERED as follows:

1. Edison Township and the Edison Township Planning Board ("Petitioner"), its agencies, departments and officers are hereby restrained 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;

2. 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 Petitioner, its agencies, departments and officers for any and all publicly owned land in Edison Township and for any and all privately owned land in Edison Township of five acres or more (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 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 Petitioner as a result of a final determination 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 conditions 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 provision 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 COAH upon notice to the Civic League. If the Civic League wishes to object, an objection within 15 days of the receipt of the request and proposed form of Order must be submitted to COAH with a copy to the proponent of the request. If the Civic League fails to object within this period COAH may grant the request for the waiver or exemption.

COUNCIL ON AFFORDABLE HOUSING

Dated:

By: James L. Logue, III  
Chairman



Louie Nikolaidis, Esq.  
 22 Langley Place  
 New Brunswick, N.J. 08901  
 (201) 828-2033  
 Attorney for Objector, Civic League  
 of Greater New Brunswick

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CIVIC LEAGUE OF GREATER NEW BRUNSWICK,	: STATE OF NEW JERSEY
	: COUNCIL ON AFFORDABLE
	: HOUSING
Objector,	: DOCKET NO.
	:
v.	: Civil Action
	:
EDISON TOWNSHIP, a municipal corporation of the State of New Jersey, located in Middlesex County, and THE PLANNING BOARD OF EDISON TOWNSHIP,	: CERTIFICATION OF
	: LOUIE NIKOLAIDIS
	:
	:
Petitioners.	:
	:
-----X	

LOUIE NIKOLAIDIS, of full age, hereby certifies:

1. I am an attorney at law representing the Civic League of Greater New Brunswick ("Civic League"), an objector to Edison Township's petition for substantive certification. I am fully familiar with the facts and circumstances of this case.
2. I submit this Certification in support of the Civic League's application for an Order Imposing Restraints on Edison Township, its Planning Board and its officers, agents and/or departments.
3. A summary of the background of this matter is necessary to place this application in proper perspective. On or after February 18, 1987, the Edison Township Planning Board

adopted a Housing Element dated January 1987. The Housing Element was formally filed with COAH on March 25, 1987. Subsequent to its filing with COAH, Edison Township ("Edison") did not seek substantive certification from COAH nor did it adopt ordinances implementing the affordable housing sections of its Housing Element.

4. On or about June 13, 1988, the Civic League filed a Mount Laurel Complaint and sought an Order to Show Cause with Temporary Restraints in Superior Court before Honorable Eugene D. Serpentelli, A.J.S.C. The League sought to restrain Edison Township from public auction and/or sale of municipally owned land or from contracting for the sale or use of municipally owned land. The League also sought to stay all development approvals not in compliance with its fair share obligation which would have vested the applicants with rights as a result of such approvals.

5. In support of its motion for temporary restraints, the Civic League submitted a certification and report of its expert Allan Mallach. Mr. Mallach is a licensed professional planner in the State of New Jersey, and a member of the American Institute of Certified Planners (AICP). A copy of his certification and report are attached as Exhibit A.

6. Upon the representation of counsel for the Edison Planning Board that no residential developments of five acres or more, except for the Rivertown development, would be placed on

the Planning Board's agenda prior to its July 20, 1988 regularly scheduled meeting, the parties agreed to a consent order to be presented to Judge Serpentelli.

7. On or about June 15, 1988, Judge Serpentelli approved the Consent Order and ordered that the action, Civic League of Greater New Brunswick v. Edison Township and the Planning Board of Edison Township, L - 68376/88, be transferred to COAH. The text of that Consent Order is attached as Exhibit B. Therefore, as an exclusionary zoning suit transferred to COAH by the Court, Edison's filing of a Housing Element and Fair Share Plan is deemed to be a petition for substantive certification. N.J.A.C. 5:91-4.2.

8. On or about June 23, 1988, the Civic League filed its objections to Edison's Housing Element and Fair Share Plan. A copy of those Objections are attached as Exhibit C. The Civic League relies on both its Objections and the Mallach Report in support of its motion for restraints.

9. I have 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 if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: June 24, 1988

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Louie Nikolaidis

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	:	
V.	:	CERTIFICATION OF 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

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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.

EDISON TOWNSHIP [2]

[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

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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.



EDISON TOWNSHIP [3]

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 funds<sup>4</sup>. 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.

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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

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<sup>4</sup>Although 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.

## EDISON TOWNSHIP [4]

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

EDISON TOWNSHIP [5]

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

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-6837688

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>CONSENT ORDER</u>
	:	
and	:	
	:	
THE PLANNING BOARD OF	:	
EDISON TOWNSHIP,	:	
	:	
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 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. (Wilentz, Goldman & Spitzer, Attorneys), attorney for Garden State Buildings, L.P.; and the parties having conferred in an attempt to resolve the matters raised by the Order to Show Cause, and it having been represented to the Court by counsel for the Edison Planning Board that no residential development applications larger than five acres are on the Planning Board agenda for June 15, 1988, and it having been further represented that the Planning Board would not meet again in regular or special session for the consideration of new applications until July 20, 1988, and it having been further represented by counsel for the Civic League that an immediate application would be made to the Council on Affordable Housing for such restraints as COAH determines to be proper,

IT IS ON THIS 15th DAY OF JUNE, 1988, ORDERED AS FOLLOWS:

1. This action is hereby transferred to the Council on Affordable Housing.
2. Any development approval granted to the residential portion of the Rivertown development shall require compliance with §86-6(Q) of the Zoning Code of Edison, which requires a 10%

set aside for low and moderate income households. This requirement shall apply to all segments of the Rivertown development, whether given final approval before or after 1993. If COAH subsequently determines that some or all of these units must be made available without age restrictions, the Rivertown applicant shall abide by this requirement.

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

We consent to entry of the above Consent Order:

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John M. Payne, Esq.  
Attorney for Civic League of  
Greater New Brunswick

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Peter A. DeSarno, Esq.  
Attorney for Township  
of Edison

---

Steven Barcan, Esq.  
Attorney for Garden State  
Buildings, L.P.,

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Sheldon Schiffman, Esq.  
Attorney for Edison  
Planning Board

**OBJECTIONS OF THE CIVIC LEAGUE OF  
GREATER NEW BRUNSWICK TO EDISON TOWN-  
SHIP'S HOUSING ELEMENT AND FAIR SHARE PLAN**

**INTRODUCTION**

On or after February 18, 1987, the Edison Township Planning Board adopted a Housing Element dated January 1987. The Housing Element was formally filed with COAH on March 25, 1987. Subsequent to its filing with COAH, Edison Township ("Edison") did not seek substantive certification from COAH nor did it adopt ordinances implementing the affordable housing sections of its Housing Element.

On or about June 13, 1988, the Civic League of Greater New Brunswick ("Civic League") filed a Complaint and Order to Show Cause with Temporary Restraints in Superior Court before Honorable Eugene D. Serpentelli, A.J.S.C.

On or about June 15, 1988, Judge Serpentelli ordered that the action, Civic League of Greater New Brunswick v. Edison Township and the Planning Board of Edison Township, L - 68376/88, be transferred to COAH. Therefore, as an exclusionary zoning suit transferred to COAH by the Court, Edison's filing of a Housing Element and Fair Share Plan is deemed to be a petition for substantive certification. N.J.A.C. 5:91-4.2.

The Civic League respectfully submits the following objections to Edison's Fair Share Plan pursuant to N.J.A.C.

GENERAL OBJECTIONS

The Civic League expressly reserves its rights with respect to objections it may have regarding the Fair Housing Act and the methodology and regulations of COAH in general; including but not limited to objections as to regions, filtering and fair share. The Civic League also reserves its right to object to any implementing ordinances the Township may draft pending the drafting and implementing of the same.

SPECIFIC OBJECTIONS

1. Indigenous Need Obligation

Edison has proposed to meet its entire indigenous need obligation of 216 units through credits for past rehabilitation (100 units) and through a promise to rehabilitate an additional 116 units.

The entire proposed credit of 100 units must be rejected. The Township has failed to properly document its right

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<sup>1</sup> In support of these objections and further elaboration of them, the Civic League adopts and incorporates by reference the expert report of Alan Mallach, AICP, dated June 1988, annexed hereto as Exhibit A.



to those credits. The documentation it has provided indicates that the units for which it seeks credits do not meet minimum COAH standards. For example, its reliance on Community Development Block Grant Funds, which are capped at \$4,499 per household, fails to meet COAH's \$4,500 minimum guideline.

Since Edison intends to address the remaining 116 units of its indigenous need obligation "through continuation of local housing rehabilitation programs," Edison Housing Element p. 10, and that program does not meet COAH guidelines, the Township has failed to present a valid plan for achieving compliance as to the 116 units it concedes must still be provided.

## 2. Reallocated Present and Prospective Need

COAH has determined Edison's present and prospective need to be 895 units. Edison's Fair Share Plan relies wholly on proposed credits for affordable housing built and occupied after 1980 to meet this obligation.<sup>2</sup> The 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 is required by N.J.A.C. 5:92-6.1.

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<sup>2</sup> The plan does make reference to two projects, Clara Barton School Conversion and Tyler Estates, but the information provided on those projects is so inadequate, they cannot, without further information, be seriously considered as meeting Edison's obligation for reallocated and prospective need.

b. Edison's claim for a credit of 1.33 units for each rental unit produced after 1980 is inappropriate. COAH's rules are explicit on this issue, only those units produced after the Housing Element is certified are eligible for the bonus rental credit. N.J.A.C. 5:92-14.4.

c. Edison's claim for credit for all senior citizen housing produced since 1980 is inappropriate. COAH rules only allow that 25% of the net fair share obligation after credits and adjustments can be met through senior citizen housing. N.J.A.C. 5:92-14.3.

d. Edison's claim for credit for rehabilitating pre-existing public housing built prior to 1980 is inappropriate. N.J.A.C. 5:92-6.1(2)(i).

e. Edison's claim for credit for hospital beds "occupied" by medicaid and medicare individuals is inappropriate. These facilities are clearly institutional health-care facilities and not housing.

The above objections apply to Edison's claim for credits in the following manner:

1. Edison's claim for 100 credits for past rehabilitation should be totally rejected.
2. Edison's claim for 312 credits for the Inman Grove senior citizen housing project should be reduced to a maximum of

240 units.\*

3. Edison's claim for 431 credits for the Greenwood/Colonial Square Apartments should be reduced to a maximum of 332 units.\*

4. Edison's claim for 208 credits for public housing modernization should be totally rejected.

5. Edison's claim for 430 credits for beds at Roosevelt and JFK hospitals should be totally rejected.

Therefore, the shortfall in Edison's Fair Share Plan is at least 539 units (1111-572).

#### CONCLUSION

When all of the above-described defects are considered, Edison's prepared "Plan" falls far short of COAH standards, mandating the denial of substantive certification.

Dated:

Respectfully submitted,



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Louie Nikolaidis  
Attorney for Objector  
Civic League of Greater New  
Brunswick

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\* This credit is contingent on Edison providing proper documentation.