

Sayreville (no year)

pre trial memo: Factum ad Legem Contention

pgs = 4

no P.I.

M000313D

RIDERCOVERING 3-4 FACTUAL AND LEGAL CONTENTIONS and
7 LEGAL ISSUES AND EVIDENCE PROBLEMS

THE BOROUGH OF SAYREVILLE HAS AT ALL TIMES MAINTAINED AS FOLLOWS:

1. The following individual defenses as hereinafter enumerated:

(A) Its Master Plan, Sub-Division Ordinances and Zoning Ordinances and particularly its PUD Ordinances have at all times provided fair and reasonable housing needs to meet the legitimate and constitutional rights of the individual plaintiffs, and the alleged Class they represent.

(B) Sayreville submits that the Association not for pecuniary profit has no standing in this suit to raise any claims under the U.S. Federal Constitution and cites the recent U.S. Supreme Court Case of Warth v. Seldin, decided 6-25-75, 43 Law Week 4906.

(C) Sayreville also claims the right under the Petaluma case, to phase in or phase out any changes it may desire in any of the foregoing ordinances, or practices or policies over an extended period of time, rather than to be required to do so by any specific date.

(D) Moreover it asserts that in the event the Courts should determine that Sayreville's ordinances, practices or procedures fail to provide reasonable housing needs for some unspecified class or classes in some specified or unspecified regions, the Borough of Sayreville asserts and will prove that the plaintiffs have failed to establish the existence, size, location or areas covered by any such Class with the degree of particularity required in order to cast upon Sayreville any additional legal or constitutional burdens other than that which it is now carrying.

(E) With respect to such areas of Sayreville's remaining lands which the plaintiff may allege should be made available for low or medium income families, there is the overriding municipal obligation of protecting the Borough and its people as it now exists against the following:

(a) Flooding - Since large areas of the Borough have been incorporated within the flood plain areas as defined by various agencies of the State of New Jersey;

(b) There are also grave drainage problems which render much of its available acreage unsuitable for residential purposes.

(c) Any substantial increase in population beyond that presently provided for by its present ordinances would overtax and drain the available potable water supplied;

(d) And that any untoward or substantial increase would prevent the establishment of preservation of the so-called "green belts";

(e) That Sayreville's present Zoning and Planning Ordinances have not been designed for fiscal purposes nor to achieve or maintain any low tax rate;

(f) None of Sayreville's present ordinances or subdivision ordinances have any specific limitation on their use for residential purposes because of the alleged absence of utilities which might otherwise make them feasible for low or medium income housing requirements.

2. Moreover, Sayreville alleges and will prove at the trial that it has not only dedicated all of its available unimproved areas suitable for residential purposes to that specific purpose, but that over, above and beyond that it has adopted a PUD Ordinance under which it has placed approximately 2500 acres which would normally be unfit for any housing use.

(A) These include the heavily scarred and mined out areas formerly owned by the Sayre & Fisher Company (approximately 800 acres) now PUD; property of The Crossman Company (approximately 500 acres), formerly used for mining of clays and sands, and miscellaneous properties in the same heavily mined category owned by other individuals approximating 1,000 acres, more or less - now PUD.

(B) Moreover, as the Court knows, PUD has the additional virtue and advantages that the developers are required to provide a so-called "mix" wherein said developers are likewise required to commit proper proportions of said lands to industrial uses, commercial uses and open or recreational uses.

(C) Thus Sayreville, by its adoption of PUD and its inclusion in PUD of practically all of its marginal lands which would otherwise be unsuitable for any purpose, has now rendered substantial additional acreage available for the construction of homes in the low and middle income brackets and has thus more than met any constitutional tests which may have been set up by the Mt. Laurel case.

3. In the event that the plaintiffs allege or try to establish that Sayreville has zoned more areas than required for existing industries or the legitimate expansion thereof, this defendant alleges and is prepared to establish and prove that the nature of Sayreville's industries are such that they are in lines of products which it has been established, require constant re-examination, modernization and expansion.

Moreover, Sayreville alleges and will prove that the industries within its borders and particularly the so-called "heavy" industries are of such a nature and character that it would be unwise, improper and possibly unsafe to permit residential areas in either close or near proximity to the active plants.

In particular these industries include the company formerly known as the National Lead Company, now known as N.L. Industries, which has purchased substantial areas surrounding its plant, not only for the express purpose of providing for its ultimate enlargement or expansion, but also for the purpose of establishing a safety buffer zone so that it may not be harassed by individual home owners who may challenge that its operation creates noxious fumes, odors, noises, fire hazards, health hazards and the like.

Similarly, such industries as the E.I. Dupont Co. consists not only of one plant, but two plants, one devoted to the manufacture of laquers and the other devoted to the manufacture of film in very substantial quantities. The Court, I am sure, will take notice of the fact that these products are of a volatile type and the question of a fire hazard is always present to some extent and at least to the extent where the owners of the factories themselves have established, trained and maintained its own fire fighting equipment.

A third or fourth factory is owned and operated by Hercules, Inc. The original name of the company was the Hercules Powder Co. It too has acquired acreage adjacent to it for the same purpose as the other industries mentioned and is in fact seeking to acquire additional acreage which it feels it requires.

In summary of the foregoing, it is respectfully submitted that the land Sayreville has zoned for industrial purposes is an absolute minimum, is not excessive in any respect, and in fact should be increased rather than decreased, and hence any attack on this phase of its zoning is unsound and invalid.

4. By virtue of the foregoing facts, Sayreville takes the position that every available acre presently unimproved is either included in the reasonable industry holdings required by its various

industrial plants to continue in profitable operation, or that it has actually exceeded its requirements with reference to providing additional areas for low and medium income housing by incorporating even its marginal and heavily mined out lands into its PUD ordinance so that every available acre of land suitable for this purpose has been made available for that purpose.

AS TO LEGAL ISSUES AND EVIDENCE PROBLEMS:

Sayreville refers to the facts and allegations set forth in the above Rider covering Paragraphs 3-4 to indicate the legal issues and evidence problems involved so far as the Borough of Sayreville is concerned.