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~~General~~

29-May-1984

Affidavit of Lester Jack Nebenzahl
with Appendix

pgs = 26

ML000539V

file

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ATTORNEYS FOR DEPENDANT, TOWNSHIP OF PISCATAWAY

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URBAN LEAGUE OF GREATER NEW
BRUNSWICK, ET AL.,

 Plaintiffs,

vs.

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

 Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

DOCKET NO. C 4122-73

CIVIL ACTION

AFFIDAVIT

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LESTER JACK NEBENZAHL, being duly sworn according
to law, upon his oath, deposes and says:

1. I am the full-time municipal planner for the
Township of Piscataway, and am a licensed planner of the State of
New Jersey.

2. I respectfully submit the within Affidavit in
opposition to the application brought by the Plaintiffs, Urban

League (now "Civic League") of Greater New Brunswick, seeking interim restraints against, certain actions and approvals* to be rendered by the Planning Board of the Township of Piscataway*

3. I have read and reviewed the affidavits of Allen Mallech and Bruce Gelber submitted in support of Plaintiff's application to file an Amended Complaint, and for other relief, which this Court will consider on June 1, 1984, and I wish this Affidavit to be considered my response thereto.

4. The Court is clearly aware of the context of Plaintiff's application. The consensus methodology has developed a fair share number for Piscataway exceeding 4,000, with 3,744 Mount Laurel units to be incorporated within our zoning by 1990, plus 448 units (approximately) to be staged to meet excess reallocated present need. The Plaintiffs' expert, Mr. Mallech, has concluded that Piscataway's fair share number should be 3,156 (with no staging). Both results include a 20% factor applied to Piscataway's prospective need, to accommodate a situation which may occur if a municipality has insufficient vacant developable land to accommodate its fair share. Applying this factor to Piscataway is inappropriate, in light of the conclusions reached by every expert in this case

.that Piscataway has only limited available land- Therefore, the numbers presented by the consensus methodology and Mr. Mailech should be reduced substantially, by approximately 500 for each report.

5. This conclusion is buttressed by Mr. Mallech's affidavit dated May 1, 1984 which recites, in pertinent part: "I have determined on a preliminary basis that the amount of vacant land in the Township in parcels potentially suitable for multi-family residential development is between 1,100 and 1,250 acres." Mr. Mallech's affidavit further asserts that the appropriate achievable number for Piscataway is between 1,760 and 2,500 units, and that no density should exceed 8 to 10 units per developable acre.

6. I respectfully incorporate within this Affidavit my fair share analysis and my testimony related thereto, as though set forth herein at length. My initial fair share study reflected that Piscataway's fair share number should be between 715 and 949 units. If a revised multiplier were utilized in connection with affordability criteria, consistent with my testimony, the number would increase to between 949 and approximately 1,150. I further wish to assert my belief that when dealing with a municipality which is substantially developed and

densely populated, it* is extremely important to treat all aspects of the analysis with conservatism, so as not to despoil existing planning and to be consistent with the Municipal Land Use Law and the State Development Guide Plan.

7. As a professional planner, I believe that my numbers reflect an appropriate fair share for Piscataway Township. The existing zoning ordinance and master plan, fully reviewed by all appropriate municipal agencies, conforms generally to this range. That range considers our lack of developable vacant land, to be explored in greater detail later in this affidavit, and was determined in consideration of municipal planning objectives, specifically including, but not limited to, existing residential densities, existing patterns of development, existing prime agricultural lands, traffic patterns, Piscataway^f's chronic traffic congestion and proposed road improvements designed to alleviate some bottlenecks, and other related factors. Furthermore, the Township's fair share housing study clearly reflects the Township's perceived obligation under Mount Laurel.

8. To summarize, Piscataway has approximately 1,800 acres of vacant land, not including isolated non-contiguous parcels of small acreage. Approximately 112 acres are environmentally sensitive, being part of the floodplain. 243 acres suitable for high density residential development- have* been zoned

for such purposes by our 1978 and 1983 zoning ordinances. 435.25 acres are located appurtenant to industrial development, in such specific locations that residential use at any density is clearly inappropriate. ^{180.9} 445-ac\es are prime farm land, actively devoted to agriculture. ^{S/O»2fr} ~~-----i*4r57~~ additional acres are actively devoted to agriculture, although not prime farm land (Lots 14, 33, 35, 42, 43 and 45 ^{if, U + frjrm f frjtJ %1-11, +zo} on the accompanying schedule}. 105 vacant acres are owned by Rutgers, the State University, and are zoned for educational uses (Lots 55 and 56). 40 acres (Lot 5) are encumbered with a "superfund designation", alleging containing buried waste material of a potentially hazardous nature. 17.05 acres (Lots 61 and 62) are subject to a public trust, having been created by clustering two single family residential developments around each. Therefore, the total land inappropriate for residential development at any density or subject to continued present use, in accordance with the dictates of the State Development Guide Plan, totals 1290[^]# acres (rounding to 1,300).

9. Further, with respect to Piscataway's fair share, there are several factors which, arguably, will be considered by the Court during the compliance phase of the Trial. For example, Piscataway has 34 units presently receiving Section 8 subsidies, and has processed an additional 195 applications now

awaiting action. Further, Piscataway has permitted the construction of 3,466 multi-family dwelling units, all fully built. Using the consensus methodology which applies a 30% factor to the II County regional median household income to determine affordability, Piscataway has ⁷⁵²² multi-family units which meet Mount Laurel guidelines. Census data reflects that a particular census district housing substantial multi-family dwelling units contains households of which more than 50% fall into Mount Laurel categories. In addition, the 1980 census reflects that the median income of Piscataway renters for 1979 was \$18,669. Therefore, a substantial number of Piscataway's tenants are Mount Laurel households. Our existing rent control ordinance acts as a substantial limitation upon prospective rent increases.

10. Furthermore, Piscataway has 348 family student apartments on the Busch Campus of Rutgers University which rent for between \$278 and \$318 per month, clearly meeting Mount Laurel guidelines.

11. In addition, Piscataway houses 432 single-student apartments and 1,736 residence hall units, not reported as housing units in the 1980 census. These are fully occupied units, and Piscataway will seek consideration for these units during the Trial.

12. The point of this analysis, which is by no means complete* is to reflect that consideration of Plaintiff's application based upon pre-compliance fair share numbers only is inappropriate and unfair. I respectfully assert that the fair share numbers reflected in my analysis are legitimate and justifiable in connection with Piscataway. To some extent, the inappropriateness of the fair share numbers reached by other experts, in Piscataway's case, is reflected in Mr. Mallech's affidavit of May 1, 1984, although I respectfully suggest that his limitation did not go far enough. Under these circumstances, I respectfully suggest that Piscataway has sufficient vacant developable lands to meet its legitimate fair share obligation.

13. Addressing the specific sites referred to in this application:

(a) Site 30 is a 50.58 acre site, bounded to the north by an existing office development presently being expanded, to the West by a small two lane road and part of a floodplain, to the south, by one residence on a ten acre lot, a school and an existing single family residential development, and to the east by vacant lands (Site 32). The industrial and office development contiguous to the north is extensive and further

development is imminent (the property having been subdivided and approved for additional office and industrial development}. Although there may be only limited topographical and environmental constraints which preclude the use of this property for residential development, the adjacent office uses and limited traffic access (only local roads) militates strongly in favor of present zoning and light industrial development* Indeed, the developers' subdivision approval was conditioned on a traffic circulation plan which channels traffic away from existing residential development, through the prospective industrial area. Such channeling, to the same extent, is impractical for residential development. Plaintiff's argue that development of this parcel for office purposes would have a "domino" effect on the appurtenant land is fatuous; that land, now used in connection with an existing dairy farm, fronts on an arterial road and should be evaluated on its own merits (see infra.).

(b) Site 8 consists of 35.6 acres, bounded to the north by the industrial area of an adjoining borough (Middlesex); to the west by an existing operating industrial manufacturing plant (Rheometrics), to the south by the Port Reading Railroad and the Rutgers Industrial Center, a major industrial park, and to the east by a proposed planned residential development of 88 acres. In my judgment, the present zoning for light

industry is preferable to residential use. First, the existence of the 88 acre prospective planned residential development appurtenant to the site reflects a fair commitment to that portion of the municipality. Proper planning dictates that high density units should not all be located in one part of the municipality. Second, the Township's master plan reflects a proposed collector road through the middle of the site. This road was planned to ease the anticipated traffic congestion attributable to the existing and proposed residential development in the area. The addition of more than 300 units, as Plaintiffs suggest, would have a materially adverse impact upon traffic flow through that entire portion of the Township, the bulk of which is planned to funnel onto the one arterial roadway in the area, Possumtown Road. The site is most suitable for non-noxious light industrial development, from a planning viewpoint.

(c) Site 75 is a 4-acre parcel surrounded on three sides by existing single family detached development, and on the fourth side by a clogged arterial roadway (which traffic studies performed during the late 1960^fs by the State of New Jersey indicated was beyond capacity then). This roadway (River Road) is designated as temporary Route 18 and is used by a volume of trucks and tractor-trailers servicing nearby industrial sites.

Although the site is suitable for residential development, the minimal size of the tract and the appurtenant traffic problem make high density residential development unsuitable.

14. In summary, it is the position of the Township that there are severe planning constraints to the high density residential development of any of the three lots in question. It is the further contention of the Township that the Mount Laurel obligation does not require the rezoning of land not suitable for high density housing; indeed, Plaintiff experts' report expressly observed that the land to be occupied by Mount Laurel households should be fully appropriate, in all respects, for such use.

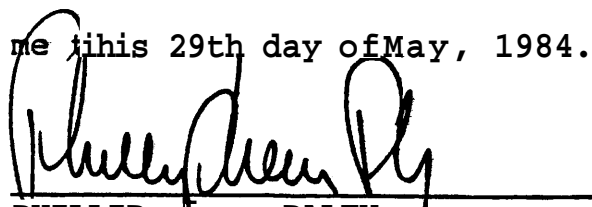
15. Appended hereto, to give a full picture to the Court of our vacant land situation, is a schedule addressing the specific parcels identified as vacant within the Township. It is my understanding that this kind of analysis was what was sought by the Court at the time of argument on temporary restraints. The sites in question have been identified by the Plaintiff as those generally exceeding four acres, which Plaintiffs allege may constitute vacant developable land. A specific delineation of the sites is contained within the graphics placed

with the Court for safekeeping several weeks ago. The analysis contained in the appendix is not intended to be exhaustive, but is a summary of the position of the Township regarding potential use for high density residential development of each site.

16. I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me is wilfully false I may be subject to punishment for contempt of Court.


LESTER JACK NEBENZAHL

Sworn to and subscribed before
me this 29th day of May, 1984.


PHILLIP LEWIS PALEY
ATTORNEY AT LAW OF NEW JERSEY

APPENDIX

Site No* 1: A 10.7 acre site of which 50% is floodplain. The site is located in the most densely populated area of the Township. Although topographically suitable for residential development, its size, and the surrounding volume of traffic, militate against high density development.

Site No. 2: A 125 acre site directly across from a steel fabrication plant, owned by the owner of this site, consisting largely of woodlands used as a forest (and so assessed for tax purposes). A portion of this property is designated as prime farm land by the Soil Conservation Service of the State of New Jersey. 15 acres of this site are floodplain. The owners of the property have indicated some intent to use portions of the property in connection with the expansion of their business, although no application is pending. This site is adjacent to 2,000 garden apartments directly to the south, is located in an area of dense population, and would require substantial buffering on the eastern portion from the fabrication plant. The bulk of the property is inappropriate for high density residential development.

Site No. 3: A 24.9 acre tract, zoned for shopping center uses to accommodate that portion of the Township with

limited commercial development. Limited neighborhood shopping requires a majority of the population to travel further distances to obtain goods or services than are appropriate or efficient. Although not farmed, the property is classified as prime farm land by the Soil Conservation Service.

Site No. 4: A 10 acre tract adjoining a heavy industrial manufacturing plant, used by the owners thereof as a buffer between the plant and existing single family and high density residential development. This site is clearly inappropriate for any residential use.

Site No. 5s A 40 acre tract identified as a "super-fund", currently being investigated and analyzed by the Department of Environmental Protection. This site is clearly inappropriate for any residential use.

Site No. 6: A 55.6 acre tract comprised of ten parcels of varying owners, the largest of which is 14.2 acres. A portion of the property is classified as prime farm lands. From a traffic and road access perspective, the property cannot support high density residential development, expressly in light of the existing high density development directly to the north.

Site No. It An 88 acre parcel zoned for ten units to the acre and eminently suitable for high density development.

Site No. 8: A 35.6 acre parcel,, which is the subject of this application and has been discussed earlier.

Sites No. 9, 10, 11, 12 and 13s A 175 acre active farm classified as prime farmlands. It is bounded on the north by a major chemical manufacturing facility (Union Carbide) and a phenol plant; on the west by high density residential development; on the south and east by detached single family residential development* The proximity of the manufacturing facilities, as well as the limited buffering capacity, make this property unsuitable for high density residential development.

Site No. 14s A 66 acre active farm directly bordered by Route 287 along its entire length. The narrowness of the property and its proximity to Route 287, a heavily travelled highway, suggest that the bulk of this property is unsuitable for residential development. If access problems to the site were resolved, the property would be appropriately suitable for offices or related uses.

Site No. 15s A 6.5 acre tract entirely floodplain.

Site No. 16s A 14.29 acre tract adjacent to a railroad and heavy industrial uses. This site is clearly inappropriate for any residential use.

Site No. 17, 18, 19 and 201 These parcels lie in the midst of existing industrial development and are clearly inappropriate for any residential use.

Site No. 21: A 14.54 acre site surrounded by Route 287 (on the south) and existing heavy industrial development (on the north). It is clearly inappropriate for any residential development.

Site No. 22: A five acre site in the midst of existing industrial development. It is clearly inappropriate for any residential development.

Site No. 23: A 28.79 acre site, of which approximately eight acres are floodplain. It is completely surrounded by either Route 287 or existing industrial development. It is clearly inappropriate for any residential development.

Site No. 24 and 25: These parcels constitute 18.74 acres in the aggregate* They are located adjacent to industrial development, on the south and west, and Route 287 on the north. These parcels are clearly inappropriate for residential development.

Site No. 26: This tract is comprised of six individual non-contiguous^ lots> 41 acres in the aggregate. The parcels

are interspersed throughout existing industrial acres, including a machine packaging plant. These parcels are clearly inappropriate for residential development.

Site No. 27: A 31 acre site, which has received subdivision approval for use as an industrial park. It adjoins other industrial and office development and is clearly inappropriate for residential development.

Site No. 28: A 6.38 acre site, identified as prime farm land by the Soil Conservation Service, and being actively farmed. The site is adjacent to floodplain. The small size of the parcel and its appurtenance to floodplain militates against its use for high density residential development.

Site No. 29: A 1.05 acre site lying entirely within floodplain.

Site No. 30: A 50.58 acre site which is the subject of this application, and which has been discussed in detail earlier.

Site No. 31: A 10.9 acre site, actively farmed, and designated as prime farm land. The site has limited access, fronting on a narrow two-land road. The same constraints applicable to site 30 govern the development of this parcel.

Site No. 32s A 43.62 acre parcel, traversed by a pipeline and high tension wires. The traffic congestion on the appurtenant roadway, a narrow two lane road, would be severely exacerbated by a high density residential development.

Site No. 33: This site consists of two lots, one being 24 acres in area, the other being 39. The 39 acre parcel is assessed as farm land. The same traffic constraints applicable to site 32 are relevant here, such that high density residential development is inappropriate for this site.

Site No. 34t A 14.3 acre tract, subject to the same constraints as site 33.

Site No. 35: A 74.65 acre tract used as an active dairy farm on which considerable livestock is maintained. This parcel is across the road from sites 32, 33 and 34, and the same constraints relating to those sites apply here as well.

Site No. 36: This site consists of two corner lots at the intersection of two County roadways, the two lots are non-contiguous. The aggregate acreage is 2.17. One of the lots has been determined by the Superior Court Judge to be inappropriate for residential development, because of the high traffic volume. The lots are clearly inappropriate for residential use.

Site No- 37: A 7.82 acre tract effectively surrounded by single detached homes, the development of this parcel for high density housing would be substantially out of character with the surrounding neighborhood.

Site No. 38: A 48 acre parcel which has been zoned for high density residential development and is eminently suitable for Mount Laurel housing.

Site No. 39: A 7.8 acre parcel which is partially floodplain and is reflected on Piscataway Township Community Facilities Plan as proposed open space. It is clearly inappropriate for any development.

Site No. 40: A 29.2 acre parcel zoned for shopping center purposes to service portions of the Township and surrounding municipalities requiring additional commercial development. The parcel is traversed by power lines and border the floodplain which has a limiting effect on the ability of the parcel to be developed. The bulk of this parcel is unsuitable for high density residential development.

Site No. 41: An aggregate of 55.9 acres consisting of a number of non-contiguous parcels located among existing industrial development, and clearly inappropriate for high density residential development.

Site No. 42? A 32.4 acre active farm, owned by an elderly woman who has expressed an interest in ensuring that this property is maintained perpetually as a farm. The farm house is eligible for designation as a National Historic site. In light of the limited agricultural lands within the Township, this property is inappropriate for high density residential development.

Site No. 43: A 14.7 acre tract actively farmed. It is extremely close to a prospective development of 550 homes (a Hovnanian development), the developer of which has committed itself to construct 20% of the proposed dwellings in conformity with Mount Laurel guidelines, as directed by the Township. This tract is surrounded by existing detached single family residential uses to the east and a cemetery to the west. The principal road access is a rural country lane of limited capacity.

Site No. 44: A 20 acre tract zoned for townhouse development at a density of five units per acre. This parcel is surrounded by cemeteries and lies directly across a two-lane road from the Hovnanian development, being subject to the same constraints as parcel 43.

Site No. 45: A 41.9 acre tract which is the subject of litigation, in which the owner seeks to consolidate its action with this litigation. The same constraints reflected in the comments regarding parcel 43 apply here.

Site No, 46? A 55 acre parcel which has been rezoned to accommodate high density residential housing and is eminently suitable for Mount Laurel development.

Site No. 47: A 9.4 acre tract appurtenant to a Hovnanian development; the same constraints applicable to parcel 43 apply here as well.

Site No. 48: A 6.16 acre tract surrounded by half acre detached single family dwellings. The size of the tract and the adjacent residential uses make high density residential development inappropriate.

Site No. 49i A 17.29 acre tract consisting of two non-contiguous parcels. The first parcel is 5.54 acres; the second parcel is less than 12 acres, and consists of several separate lots, owned by different owners. The lack of contiguity of the parcels, and its multiple ownership, make high density residential development inappropriate.

Site No. 50: A 2.88 acre parcel, adjacent to a large garage for buses. The property is traversed by a pipeline, which limits the utility of the parcel, both practically and by deed covenant. The parcel is adjacent to a church and the municipal building of the Township, and is across the street from a large bank and the Township post office. Given the size of the tract, and its location, high density residential development is inappropriate.

Site No- 51: A 4.3 acre tract, consisting of two non-contiguous parcels, owned by at least three separate owners, and traversed by a pipeline, in part. The largest acreage owned by one owner is 2.03 acres* The parcel is divided by a municipal thoroughfare. Its small size, non-contiguity, and diverse ownership, suggest that it is inappropriate for high density residential useage.

Site No. 52: A 12.77 acre grouping of non-contiguous parcels owned by at least nine separate owners. The same constraints applicable to parcel 51 apply hereto.

Site No. 53: A 9.4 acre tract rezoned by the Township for Senior Citizen Housing at 20 units per acre. This parcel, owned by the Board of Education of the Township of Piscataway, is eminently suitable for high density Senior Citizen residential housing, being adjacent to the Municipal Senior Citizen Center, the Municipal Library and other Municipal facilities.

Site No. 54: A 6.2 acre tract surrounded by single family residential housing, and, to the west, by River Road, which limits the utility of the site for high density residential uses.

Site No. 55: A 105.9 acre site owned by Rutgers, the State University, and anticipated to be developed by the University

as part of the Busch Campus, in connection with the educational objectives of the University.

Site No* 56: A 15 acre site zoned for a "conference center" owned by Rutgers, the State University, on which a proposed executive conference center is to be developed, together with a much improved alumni-faculty club. This site is inappropriate for high density residential uses.

Site No. 57: A 40 acre tract, owned by Rutgers, the State University, and intended to be developed for high density residential uses. The property is eminently suitable for Mount Laurel housing.

Site No. 58: A 62 acre site appurtenant to existing industrial uses. The property is clearly unsuitable for residential uses of any density.

Site No. 59: A 29.27 acre tract in the midst of existing industrial and office development. The tract will be bisected by a proposed municipal thoroughfare (Centennial Avenue) designed to facilitate ingress and egress of industrial and office traffic through the Township. This site is partially within the floodplain, and incorporates acreage designated as a National Historic site. The property is unsuitable for residential development at any density.

Site No. 60: This parcel is municipally owned (mostly by the Board of Education) and is appurtenant to existing park and recreational uses* It is intended for development as open space or municipal recreation, in large part. It is surrounded by existing detached single family dwellings of density between 1/2 and 1/3 acre. The bulk of the property is inappropriate for development as high density residential*

Site No. 61: Parcel 61 is a 10.42 acre tract; parcel 62 is a 6.67 acre tract. Both parcels are devoted to the public trust, and were created through clustering in an existing single family development, pursuant to authority provided by the Municipal Land Use Law. Both parcels are inappropriate for any development, and are appropriate for open space.

Site No. 63: A 2.85 acre lot bisected by a brook and subject to flooding. The size of the parcel and the potential flooding impact make the parcel unsuitable for high density residential development.

Site No. 64: A 1.65 acre tract adjacent to industrial development, not suitable for residential development in any density.

Site No* 65: A 4.8 acre tract, completely within floodplain.

Site No. 66: A 3.5 acre tract, of which more than, two acres lie within floodplain. A developer has obtained approval for the construction of residences on that portion of the site suitable for development.

Site No. 67: A 3.4 acre tract completely within floodplain and not suitable for any development.

Site No. 68: A 2.81 acre tract formerly owned by a non-profit corporation for the purpose of development of a pistol-firing range. The limited size of the tract renders it unsuitable for high density residential development.

Site No. 69: A 6.5 acre parcel owned by several entities, consisting of several non-contiguous tracts. The parcel is adjacent to a municipal fire training facility and is not appropriate for residential development at any density.

Site No* 70: A 9.1 acre tract surrounded by industrial uses and a railroad which is not suitable for residential development at any density.

Site No. 71: A 5 acre tract located in the midst of an existing and operating industrial park which is not suitable for residential development at any density.

Site No. 72: A 5.1 acre tract directly adjacent to - tract number 59 and subject to the same constraints relating thereto.

Site No. 73: A 6.99 acre tract lying completely within floodplain, and unsuitable for any development.

Site No. 74: A 3.4 acre tract lying within existing industrial and office development and unsuitable for residential development at any density.

Site No. 75: A four acre tract which is the subject of the within application, and which has been treated in detail earlier in this Affidavit.

Site No. 76: A 6.54 acre tract, consisting of eight non-contiguous lots of varying ownership. This parcel is located within an area of detached single family development and is inappropriate, considering the surrounding development and the nature of the ownership involved, for high density residential development.

Site No. 77: A 6.45 acre tract, actively farmed. The property is surrounded on all sides by existing detached single family development. It is inappropriate for high density residential development.

Site No. 78s A 2.99 acre tract which is the subject of a prior subdivision approval for single family residential dwellings. It is located in the midst of existing single family residential development and is inappropriate for high density residential development.

Site No. 79: A 7.2 acre tract directly adjacent to existing commercial uses* including a large bowling alley. The parcel is adjacent to Site No. 38, which has already been rezoned by the Township to permit high density residential dwellings. The proximity of this site to the existing commercial useage on an inadequate road and the surrounding commercial uses generating high volumes of traffic suggest that this site should not be incorporated within the proposed high density development.