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Trial Brief on behalf of the
defendant Borough of
Madison.

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MORRIS COUNTY FAIR HOUSING)
COUNCIL, et al.,)
)
Plaintiffs,)
)
vs.)
)
BOONTON TOWNSHIP, et al.,)
)
Defendants,)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY

42-4270

Civil Action

TRIAL BRIEF ON BEHALF OF THE DEFENDANT
BOROUGH OF MADISON

HERBERT A. VOGEL
Attorney for Defendant
Borough of Madison
Maple Avenue at Miller Road
Morristown, New Jersey 07960
(201) 538-3800

On The Brief:
THOMAS F. COLLINS, JR., ESQ.

PRELIMINARY STATEMENT

The Borough of Madison adopts the "Trial Brief on Certain Issues Common to All Defendants"; this trial brief is being submitted to supplement the above Trial Brief. To the extent that the Trial Brief of the Defendant Borough of Madison is inconsistent with any of the portions of the common brief, the Madison Brief shall be considered to take precedence. This brief supports the position of the Borough of Madison that it is a developed municipality and therefore is not obligated to provide the opportunity for a share of the regional need for low and moderate income housing. The brief also supports the position that even if Madison is found to be a developing municipality, it has nonetheless provided and will continue to provide the opportunity for more than its fair share of the regional need.

I. STATEMENT OF FACTS

Madison Borough is an older built-up suburban community with a total area of approximately 4.2 square miles or 2,644 acres. In 1980, the total population of Madison was 15,222.¹ The Borough experienced its most rapid development between 1940 and 1960, during which years the population grew from 7,944 to 15,122. Between 1960 and 1970 the population grew by only 1,588 or 10.5 percent to a total of 16,710. Between 1970 and 1980 the population declined by 8.9 percent.

In 1974, the residential uses within the Borough were primarily single family homes, with approximately 73 percent single family and the remaining 27 percent a combination of two family homes, 3-7 family homes, garden apartments and mixed uses.² In 1974, the residential uses comprised approximately 47 percent of the total land area; 3.5 percent of the land area was devoted to Business, Greenhouses and Mixed Uses; .6 percent was in industry and 19.7 percent was in public and semi-public uses, and; the remaining land area was devoted to vacant land, railroads and streets.³

1. See the Report of Harvey S. Moskowitz, December 3, 1979, for a detailed examination of the population, housing, zoning and other characteristics of Madison. See also Madison's Proposed Counterfindings to Plaintiff's Proposed Findings.

2. See Moskowitz, at 14.

3. See Moskowitz, at 9.

Currently, only 187 acres or seven percent of the total land area of the Borough can actually be considered uncommitted, or available vacant and developable land and most of this acreage is scattered throughout the Borough in small parcels.⁴

Madison is located outside the central cities, but it is certainly an older built-up suburb. The Borough has a population density of approximately 4,000/acre, which is nearly 2 times greater than the next most dense municipality named in this suit. The Borough is located along Route 24 and the Morris-Essex line of what is now Conrail.

The Zoning Ordinance for the Borough of Madison, adopted on February 28, 1978, provides for single family detached housing, single family attached housing, two family and multi-family housing. Single-family residential lots are permitted to be as small as 6,250 square feet in appropriate areas and two-family dwellings are permitted on 7,500 square feet of land. Minimum tract sizes for various forms of attached and multi-family housing range from slightly over one acre to three acres with gross densities of up to 6 to 8 townhouses per acre and up to 10 to 12 garden apartments per acre.

4. See Moskowitz, at 11, which indicates that of the 411.5 vacant lands, 185 acres are committed to the development of the Prudential Office Complex; 6.6 are under construction with single family attached housing; 26 acres have been approved for 208 townhouse units; and; 6 acres have received preliminary site plan approval for 32 units.

In 1971, the Borough established a Housing Authority which currently administers approximately fifty units of Section 8 subsidized housing scattered throughout the Borough. Of these 50 units, approximately 16 are reserved for senior citizens and the remaining 34 are for families.

The housing allocation report offered by the plaintiff, A Revised Statewide Housing Allocation Report for New Jersey, prepared by the New Jersey Department of Community Affairs (N.J.D.C.A.), Division of State and Regional Planning, in May 1978, states that the total 1990 housing allocation for Madison Borough is 387 units, only forty-four units more than the indigenous housing need in 1970 which was 343 units. This low allocation results from the acknowledgement by the N.J.D.C.A. of Madison's "development limit".

II. LEGAL ARGUMENT

POINT I - THE BOROUGH OF MADISON IS A FULLY DEVELOPED MUNICIPALITY AND IS NOT REQUIRED TO PROVIDE THE OPPORTUNITY FOR A SHARE OF THE REGIONAL NEED FOR LEAST COST AND LOW AND MODERATE INCOME HOUSING.

In Pascack Ass'n, Ltd. v. Mayor and Coun., Washington Tp., 74 N.J. 470, at 477 (1977), the New Jersey Supreme Court held that a fully developed, middle-upper income, moderate to low density, primarily single family township was not obligated under So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975), to zone for multi-family, low and moderate income housing, despite a shortage for such housing in the county. The Supreme Court essentially held that the reasonableness of the exclusion by zoning of multi-family housing depended upon the nature and extent of development in the municipality.

In reaching its conclusion the Supreme Court stated:

" The ideal of the well balanced community, providing all kinds of housing for a cross-section of the regional population pattern, is, quite obviously, realizable physically only in the kind of developing municipality of sizable area identified in Mount Laurel as such see 67 N.J. at 160 or perhaps in a developed municipality undergoing thorough-going redevelopment of blighted areas. Pascack Association, 74 N.J. at 486-487.

The various characteristics which were used to identify Mount Laurel as a "developing municipality" were

clearly stated by the Supreme Court:

"As already intimated, the issue here is not confined to Mount Laurel. The same question arises with respect to any number of other municipalities of sizeable land area outside the central cities and older built-up suburbs of our North and South Jersey metropolitan areas (and surrounding some of the smaller cities outside those areas as well) which, like Mount Laurel, have substantially shed rural characteristics and have undergone great population increase since World War II, or are now in the process of doing so, but still are not completely developed and remain in the of inevitable future residential, commercial and industrial demand and growth. Most such municipalities, with but relatively insignificant variation in details, present generally comparable physical situations, courses of municipal policies, practices, enactments and results and human, governmental and legal problems arising therefrom. It is in the context of communities now of this type or which become so in the future, rather than with central cities or older built-up suburbs or areas still rural and likely to continue to be for some time yet that we deal with the question raised."
Mt. Laurel, 67 N.J. at 161. (emphasis added)

In Fobe Associates v. Mayor and Council of Demarest, 74 N.J. 519 (1977), the Supreme Court held that a small predominantly single family residential borough of two and one half square miles in area of which 97.5 percent was developed and which contained no industry and little commerce was not required to rezone to permit multi-family housing, even though the borough zoning ordinance absolutely prohibited such uses. Fobe Associates, 74 N.J. 523-527. In reaching its decision, the Court reiterated the Mount Laurel characteristics of a "developing municipality". The Court also pointed out the similarity between Washington Township, which was held to be

a developed municipality in Pascack Association, and Demarest Borough. Fobe Associates, 74 N.J. at 526.

A simple comparison of some of the relevant statistics regarding the Mount Laurel characteristics of a developing municipality clearly indicates that Madison Borough is a developed municipality very similar to Washington Township and Demarest Borough and very dissimilar from Mount Laurel.⁵ Madison has a total land area of 4.2 square miles or 2,644 acres of which 93 percent is developed or committed for development. Demarest had an area of 2.5 square miles of which 97.5 percent was developed or unavailable for development and Washington Township had a total area of 3.25 square miles or 1,984 acres of which approximately 97 percent was developed. Mount Laurel, on the other hand, had an area of 22 square miles or 14,000 acres of which 65 percent was still vacant or in agricultural use. Mount Laurel 67 N.J. at 163. Madison is an older built-up suburb with a density of approximately 4,000 people per acre, which is nearly 2 times more than the most dense municipality named in this suit. In sharp contrast to Mount Laurel, Madison Borough has no land in agricultural use and has had no farming uses for almost 20 years.

5. See the Moskowitz Report for a lengthier discussion of various relevant statistics.

In 1974, only .6 percent of the land area of Madison Borough was used for industrial uses and only 3.5 percent was used for businesses and nurseries. These figures are very similar to percentages for Washington Township and Demarest Borough; in Washington commercial uses occupied 3.25 percent of the land area and there were no industrial uses, and in Demarest there was no industry and little commerce. In Mount Laurel, on the other hand, 29.2 percent of the land area or 4,121 acres were zoned for industry. Madison is also distinguishable from Mount Laurel and other developing municipalities by the fact that it has not experienced rapid population growth and it is unlikely to experience future growth. Between 1960 and 1970 Madison's population grew by only 1,588 or 10.5 percent, and between 1970 and 1980 the population declined by 1,488 or a drop of nearly 9 percent.⁶ This decline and limited growth in population indicates that Madison Borough is the complete opposite of the "archetypal" developing municipalities like Mount Laurel and Madison Township, which both experienced "explosive" population growth between 1950 and 1975. See Madison, 72 N.J. at 501 and Mount Laurel, 67 N.J. at 161.

Based upon the above facts and legal principles

6. See Moskowitz, at 10 and the Madison's Responses and Proposed Counterfindings to Plaintiff's Proposed Findings, at 3.

regarding the distinction between developed and developing municipalities, it is readily apparent that Madison Borough cannot be considered a "developing" municipality in any sense of the word. There is, however, one significant distinction between the "developed" municipality of Madison Borough and the "developed" municipalities of Demarest and Washington. Unlike those municipalities, Madison Borough has taken conscious and deliberate steps to provide the opportunity for the development of a significant amount and variety of low and moderate income housing and least cost housing.⁷ Unlike Demarest and Washington, it has not prohibited multi-family uses; on the contrary, through its zoning ordinance, housing authority and programs it has actively fostered the development of the housing necessary for its residents and for a share of the regional need.

7. See the discussion in Point II below:

CONCLUSION - POINT I

Considering the above facts and legal principles it should be concluded that the Borough of Madison is not a developing municipality, but rather is a fully developed municipality, and therefore is not required to provide the opportunity for a share of the regional need for low and moderate income housing.

POINT II - EVEN IF THE BOROUGH
OF MADISON IS FOUND TO BE A
"DEVELOPING MUNICIPALITY" UNDER
MADISON AND MOUNT LAUREL, IT
IS PROVIDING MORE THAN ITS
FAIR SHARE OF THE REGIONAL
NEED FOR LEAST COST AND LOW
AND MODERATE INCOME HOUSING.

The Defendant Borough of Madison shares in the criticisms expressed by the other defendants concerning the arbitrary demarcation of region and the related arbitrary allocation of low and moderate income housing proposed by the plaintiff. The definition of region and the allocations proposed by the plaintiff are inconsistent with the guidelines set forth by the Supreme Court in Madison and Mount Laurel in that they bear no relationship to the housing market area. Madison, 72 N.J. at 537. Furthermore, the Madison Court pointed out that formulaic quotas for fair share need not be established by the trial court. Madison, 72 N.J. at 499.

Nonetheless, even if one assumes the validity of the plaintiff's definition of region and the fair share allocations proposed by the plaintiff based on the N.J.D.C.A. report, A revised Statewide Housing Allocation Report for New Jersey, the defendant Borough of Madison takes the position that it is already meeting and exceeding the fair share

allocations proposed by the plaintiff.⁸

In the N.J.D.C.A. report, the 1990 housing allocation for Madison Borough is 387 units which is only 44 units more than the indigenous 1970 housing need of 343 units. This relatively low allocation resulted from the acknowledgment by the State agency of Madison's "development limit".⁹

Through the efforts of the Madison Borough Housing Authority and through the Borough zoning ordinance and land use practices, the Borough is providing and will continue to provide substantial numbers of actual low and moderate income housing units and will also provide the opportunity for many additional least cost housing units. Table I indicates the nature and extent of housing in Madison Borough in 1974.

8. The plaintiff's expert, Mary Brooks, has created six different allocations based upon two different percentage shares of various population projections. See the Report of Mary Brooks and the Plaintiff's Proposed Findings as to Madison at 8. Madison has or will provide the opportunity for low and moderate income housing in excess of most of these allocation. Madison takes the position that, considering the lack of available vacant land and other development limits, it may be physically impossible to meet two or three of the highest allocations advocated by Mary Brooks.

9. A term used in the N.J.D.C.A. Housing Allocation Report.

TABLE I

HOUSING COUNT - 1974

<u>Residential Uses</u>	<u>Number of Dwelling Units</u>	<u>Percent of Total Dwelling Units</u>
Single-Family Homes	3,348	72.88
Two-Family Homes	530	11.54
3-7 Family Homes	127	2.76
Garden Apartments	456	9.93
Mixed Uses	<u>133</u>	<u>2.89</u>
Total:	4,594	100.00%

Source: Borough of Madison Master Plan, 1975: Comprehensive Revision, prepared by Robert Catlin and Associates, adopted May 3, 1976.

See also, Moskowitz' Report, December 12, 1979 at 14.

At the present time approximately 27 percent of Madison's housing units are multi-family units.¹⁰ This percentage will increase to 32 percent, with the construction of 266 new multi-family units, which are presently being considered or have already been approved by the Planning Board.

In addition, it is noteworthy that, a substantial number of the Borough's single-family residences are on very

10. These figures exclude faculty and student housing for approximately 1,250 persons on Drew University.

small or small lots ranging in size from 6,000 to 9,375 square feet.

The Zoning Ordinance of the Borough of Madison clearly provides for a wide variety of housing types which are within the least cost parameters established under the Madison decision. For example, the ordinance provides the opportunity for single-family detached residential housing on lots as small as 6,250 square feet in various areas and two family dwellings are permitted on 7,500 square feet of land. These are clearly "very small lots" under Madison and Mount Laurel and are consistent with least cost parameters. See Madison, 72 N.J. at 505 citing Mount Laurel, 67 N.J. at 170, n.8, 187. Minimum tract sizes for various forms of attached and multi-family housing are also very small; they range in size from slightly over one acre to three acres. Tract sizes are consistent with least cost provisions and also are very appropriate for Madison in that they recognize the scattered nature of the remaining vacant available land.

The zoning ordinance also permits townhouses at densities of 6-to 8 units per acre, with very small minimum floor area requirements. Garden apartments are permitted with densities of 10.8 dwelling units per acre to 11.8 dwelling units per acre.¹² These densities are clearly in accord with

12. See the analyses of the Ordinance by Allan Mallach as provided in Plaintiff's Proposed Findings as to Mount Olive and the Report of Allan Mallach.

reasonable planning standards and, although they are slightly less dense than the least cost standards created by plaintiff's expert, they are certainly within the parameters of "least cost" as defined in Madison.

The Borough of Madison, through the Madison Housing Authority, which was established in 1971, has taken significant steps toward construction of a substantial amount of low and moderate income housing. The Madison Housing Authority currently administers approximately fifty (50) units of Section 8 subsidized housing scattered throughout the Borough. Of these 50 units, approximately 16 are reserved for senior citizens and the remaining 34 are for families. The Housing Authority has also proposed the construction of thirty (30) units of low and moderate income housing on three scattered sites within the Borough, although consideration is still being given to increasing the number of sites to decrease the densities of development. A Federal grant of \$276,000 has been awarded to the Borough of Madison for the acquisition of sites for this project. The Borough of Madison is also exploring the possibility of obtaining an additional 100 to 150 Section 8 subsidized housing units.

Clearly, the Borough of Madison has considered and is attempting to provide for low and moderate income housing opportunities through a variety of techniques including the use of available Federal and State rent and construction

subsidy programs, rezoning to encourage private multi-family housing, and working with existing institutions to provide land for specialized housing.

CONCLUSION - POINT II

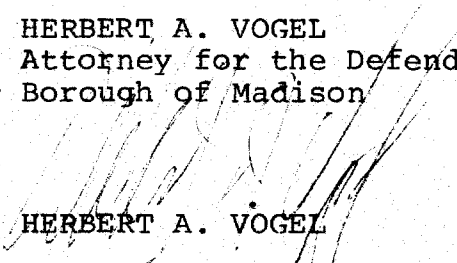
Considering the above facts and legal principles, it should be concluded that even if Madison Borough is found to be a "developing municipality" it is providing more than its fair share of the regional need for least cost and low and moderate income housing.

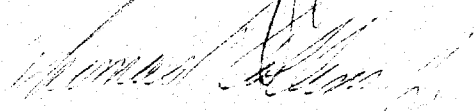
CONCLUSION

Based upon the above facts and principles of law and on the arguments in the Trial Brief on Certain Issues Common to All Defendants, the Borough of Madison respectfully requests that the court find that Madison Borough is not a "developing municipality" under Madison or Mount Laurel and that it is not obligated to provide for a share of the regional need for least cost and low or moderate income housing. If it is found that Madison is a developing municipality, the Borough of Madison requests that the court find that Madison has met its obligation to provide its fair share of the regional need for least cost and low and moderate income housing.

Respectfully submitted,

HERBERT A. VOGEL
Attorney for the Defendant
Borough of Madison


HERBERT A. VOGEL


THOMAS F. COLLINS, JR.