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Tewksbury Twp

Sep. 1985

Plaintiff's on cross-motion for  
partial summary judgment  
+ for denial of D's motion for  
transfer.

- Certif. of Thomas S. Beesel,  
Robert Rivell

Robert Tublitz

- proposed form of Order

pjs 20

UL 000748 M

J. SKILLMAN

ML000748M

THOMAS J. BEETEL  
*Attorney at Law*  
20 MAIN STREET  
P.O. BOX 187  
FLEMINGTON, NEW JERSEY 08822  
(201) 788-1921

LAMBERTVILLE OFFICE  
115 NO. UNION STREET  
LAMBERTVILLE, NEW JERSEY 08530  
(609) 397-2965

September 5, 1985

Superior Court of New Jersey  
RJH Justice Complex  
CN 971  
Trenton, NJ 08625  
Attn: John M. Mayson, Clerk

RE: Rivell v. Township of Tewksbury  
Docket No. L-040993-84 P.W.

Dear Mr. Mayson:

In connection with the above referenced matter, kindly find enclosed an original and one copy of Plaintiff's Cross-Motion for Partial Summary Judgment and for denial of Defendant's Motion for transfer, together with Certifications of Thomas J. Beetel, Esq., Robert Rivell and Robert Tublitz, P.P. and proposed form of Order. Kindly file same, returning a filed copy to me in the stamped and self-addressed envelope provided.

A copy of the enclosed Cross-Motion is being sent to those persons note below.

Thanking you for your attention to this matter I remain,

Very truly yours,

Thomas J. Beetel

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Enclosure

cc: The Honorable Stephen Skillman, J.S.C. (Order O & 2; return envl.;  
Richard Dieterly, Esq. (Ack. of Serv.) Ack. of Serv.)  
Mr. Robert Tublitz  
Mr. Robert Rivell  
Hunterdon County Motions Clerk  
**Middlesex County Motions Clerk**

Thomas J. Beetel, P.A.  
# 20 Main Street  
Flemington, N.J. 08822  
201-788-1921  
Attorney for Plaintiffs

Plaintiff : SUPERIOR COURT OF NEW JERSEY  
ROBERT E. RIVELL et al : LAW DIVISION, HUNTERDON/  
: MIDDLESEX COUNTY  
: MOUNT LAUREL  
: DOCKET NO. L-040993-84 PW  
vs. :  
TOWNSHIP OF TEWKSBURY, : CIVIL ACTION  
a municipal corporation, :  
located in Hunterdon County : CROSS MOTION FOR PARTIAL  
New Jersey : SUMMARY JUDGMENT AND FOR  
: DENIAL OF DEFENDANT'S MOTION  
: FOR TRANSFER.

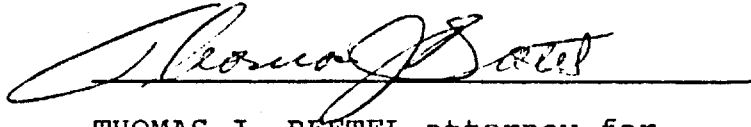
TO: Richard Dieterly, Esq.  
c/o Gebhardt & Keifer, Attorneys  
21 Main Street, Clinton, N.J. 08809  
Attorneys for Defendant.

PLEASE TAKE NOTICE that on September 13, 1985, at 9:00  
in the forenoon, or as soon thereafter as counsel may be  
heard, the undersigned attorney for the plaintiffs, Robert  
E. Rivell, et al. will apply to the Superior Court, Law  
Division, Hunterdon County/Middlesex County, at the Court  
House in New Brunswick, N.J. for following Orders.

1. For the Granting of a Partial Summary Judgment Motion on  
the Constitutionality of the Defendant's Ordinances;
2. For Denial of the Defendant's Motion for Transfer of the  
within matter to the Council on Affordable Housing.

In Support of this Cross Motion the undersigned will  
rely upon Certifications and the Brief annexed hereto.

Plaintiff joins in the request for oral argument.

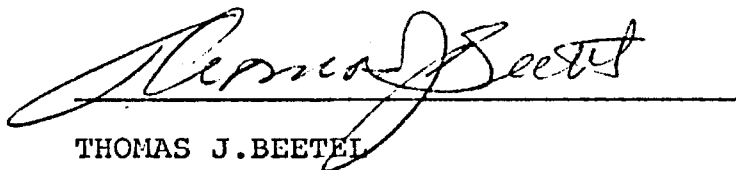
A handwritten signature in cursive script, reading "Thomas J. Beetel", is written over a horizontal line.

THOMAS J. BEETEL, attorney for  
Plaintiff.

DATED: SEPTEMBER 4, 1985.

CERTIFICATION

I hereby certify that the original of the within Notice of Cross Motion has been filed with the Superior Court Clerk, and a copy of the said Cross Motion has been filed with the Hunterdon County Clerk and the Middlesex County Clerk and a copy has been served upon the attorneys for the defendant, as well as a copy being forwarded directly to the Honorable Stephen Skillman, J.S.C. at the Middlesex County Court House, New Brunswick, N.J., 08900.

A handwritten signature in cursive script, reading "Thomas J. Beetel", is written over a horizontal line.  
THOMAS J. BEETEL

Thomas J. Beetel, P.A.  
# 20 Main Street  
Flemington, N.J. 08822  
201-788-1921  
Attorney for Plaintiffs

Plaintiff	:SUPERIOR COURT OF NEW JERSEY
	:LAW DIVISION, HUNTERDON/
ROBERT E. RIVELL, et al	:MIDDLESEX COUNTY
	:MOUNT LAUREL
	:DOCKET NO.L-040993-PW
vs.	:
TOWNSHIP OF TEWKSBURY,	:CIVIL ACTION
a municipal corporation,	:
located in Hunterdon County	: CERTIFICATION ON CROSS
	: MOTION FOR PARTIAL SUMMARY
	: JUDGMENT AND FOR DENIAL OF
	: DEFENDANT'S MOTION FOR
	: TRANSFER.

Thomas J. Beetel, being of full age, does hereby  
certify to the following facts, aware of the punishment  
provided by law for any willful misstatement of fact.

1. I am the attorney for the plaintiffs in the above  
entitled matter.

2. Suit in this matter was instituted on June 18, 1984.

3. An Ordinance was passed by the defendant, Township,  
on or about the 10 day of July, 1984. This Ordinance was  
passed shortly after the Plaintiff announced he was about to  
institute suit, and was passed without any studies having  
been made with regard to the lands in question, where  
defendant would have placed its so called "low and moderate  
income housing". This statement is based upon the  
deposition of one Gerhardt Fuchs' deposition of February 12,  
1985,

said Gerhard Fuchs having been the defendant's Planning Board Chairman at the time. This ordinance would purport to allow townshouses at 3 units per acre or 5 apartments per acre with a 20% set-aside for low and moderate income housing. I have been advised on good authority that this was merely an attempt to have "something on the books" in anticipation of the Plaintiffs' suit for Mt. Laurel relief.

4. Since the Suit was started, it has been ascertained that the lands so designated under the "rushed through" ordinance have been investigated by the plaintiff's agents in preparation for trial. The lands were found to have severe environmental constraints, such as high water tables, etc. but even more importantly were found to be unavailable for developments. This statement is based upon the statements of Dale Blazure, a realtor, hired by plaintiff to investigate the lands subject to the ordinance, and his personal investigation, supplied to the defendant in the form of his reports. Additionally, the passage of the Ordinance in the manner in which was introduced is highly suspect, and may not be in conformity with the manner in which Ordinances are required to be passed pursuant to New Jersey Law. This item is still the subject of investigation, and should be explored at the trial of this matter.

5. The Ordinance, even assuming its validity, is thus an attempt to "have something on the books" adopted without the necessary studies required of a Planning Board, before forwarding its study and recommendations to the Municipal

Government, as required by the N.J. Land Use Law, without revision of the Master Plan, as also required, and before determining if the lands were available for such development. Thus, the allegation by the Plaintiff, that the Ordinance in question (4-84) was nothing more than "camouflage zoning". ( See brief attached at page 2).

6. Coupled with the "suspect" Ordinance is the fact that Defendant's expert appraiser, Mr. Michael Morris, has admitted in depositions that the land in Tewksbury Township is the most expensive in all of Hunterdon County, and perhaps the State of New Jersey, leads inevitably to the conclusion that the defendant in realty is continuing its exclusionary zoning practices of 3 and 5 Acre Zoning, and has not assumed its fair share burden, as required by the New Jersey Supreme Court, and the cases it has decided in this area.

7. Adding to the above injustices, is the fact that a trial date had been set in this matter, to wit, July 23, 1985, which defendant requested be adjourned to explore the possibilities of a resolution of the matter. This was after depositions of Robert Hordon, Hydrologist, Robert Tublitz, planner, Bruce Clay, comptroller, William Steinfield, economic advisor to plaintiff, Plaintiff's testimony, Harry Oldstein, developer, Robert Queale, defendant's planner, Gerhardt Fuchs, Planning Board Chairman, numerous reports and interrogatories having been provided and filed, as well as status conferences with the Court, there being held out

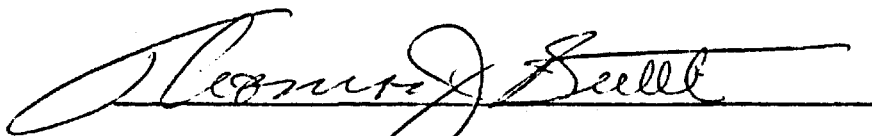
to Plaintiff that the matter could be resolved. Plaintiff and his representatives then engaged in over 2 months of negotiations, explaining the viability of his project, and providing additional data concerning same, and held meetings with the defendant's representatives up until August 28, 1985, but received instead of a solution, a Motion to transfer the matter to the Housing Council on August 30, 1985, complete with brief, which had to be underway for a considerable time before the final meeting, demonstrating the tactics of defendant, and facially a lack of "good faith".

8. All during these discussions, it became more and more apparent that defendant realized its Ordinances were defective, either constitutionally, procedurally or practically, in that the fair share was not being met, the passage of the ordinance was at least suspect, and in violation of its Master Plan, and practically the lands which defendant had selected were not available and environmentally constrained. Therefore, based on these facts and the applicable law, it is submitted and review of the facts and circumstances are such that same are susceptible to only one conclusion, that is the apparent tactics of delay on behalf of the defendant, the "lack of good faith", the attempt to have the Council decide its " fair share" rather than a "Master" to be appointed by the Court, To transfer the matter would be a reward for all of those tactics.



9. When the Ordinance, the facts related above, the applicable law, the reports of Plaintiff's planner are reviewed, and same are incorporated by reference into this Certification, due to time constraints, and the defendant's tactics of filing same over the Labor Day week-end, with the apparent hope that Plaintiff would not be able to reply in time, it will become apparent that defendant wishes only to avoid the Trial of this matter by whatever means it can find, and avoid the Court's determination of its actions and ordinances. To do so would be a "manifest injustice" within the meaning of the very Legislation that defendant grounds its claim for relief.

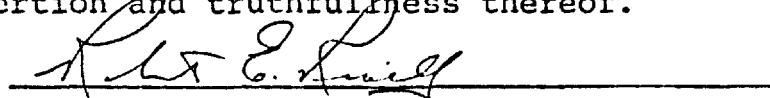
I have read the above statements, and they are true to the best of knowledge, information and belief.



Thomas J. Beetel, attorney for  
Plaintiffs.

Dated: September 4, 1985.

I have read the above statements made by Mr. Beetel, and join in the assertion and truthfulness thereof.



Robert E. Rivell



Robert Tublitz.

THOMAS J. BEETEL, ESQ.  
20 Main Street, PO Box 187  
Flemington, NJ 08822  
201-788-1921  
Attorney for Plaintiff

Plaintiff,	:SUPERIOR COURT OF NEW JERSEY
	:LAW DIVISION, HUNTERDON
ROBERT E. RIVELL, et al	:MIDDLESEX COUNTY
	:MOUNT LAUREL
VS.	:DOCKET NO. L-040993-84 PW
	:
Defendant,	:CIVIL ACTION
TOWNSHIP OF TEWKSBURY,	:
a municipal corporation,	:CERTIFICATION ON CROSS-
located in Hunterdon County	:MOTION FOR DENIAL OF
New Jersey	:DEFENDANT'S MOTION FOR
	:TRANSFER.

ROBERT TUBLITZ and ROBERT E. RIVELL, both being of full age do hereby certify to the following facts, aware of the punishment provided by law for any willful misstatement of fact:

1. Robert Tublitz does hereby certify that he is professional planner engaged by the Plaintiff in the above entitled matter and is aware of the facts to which he hereby certifies.

2. Robert E. Rivell states that he is the Plaintiff in the above entitled action, and is authorized to certify not only for himself but for his wife Barbara Rivell.

3. The adjournment of the trial date as requested by the Defendant, has resulted in the Plaintiff suffering a manifest injustice.

4. The Defendant approached the Plaintiff about June 15, 1985, one month after the scheduled order was issued by

the Court, in an attempt to settle the matter. The Defendant requested the Plaintiff to postpone the trial date which was set for July 23, 1985 due to the difficulty of the Defendant to negotiate at the same time while being required to prepare Briefs, and for trial.

5. An informal agreement was reached wherein both parties would attempt to settle and bargain in good faith, that a series of meetings will be agreed upon, and adhered to, and that all information expressed, obtained, and exchanged by either side would be confidential and non-evidential, in consideration that the trial be postponed with the consent of the Court (See Gebhardt & Kiefer letter of July 9, 1985, and Thomas J. Beetel's letter to the Court dated July 22, 1985).

6. A series of meetings were held, notwithstanding many discussions prior to and during the meetings. The first was held July 1, 1985 with the Township Committee at the Tewksbury Town Hall, and the second was held at the office of Gebhardt & Kiefer, Esqs., attorney for the Defendant, in Clinton, New Jersey, on July 3, 1985 wherein an informal agreement was reached to be privileged non-evidential.

7. Additional meetings were held July 15, 1985 at the Saw Mill School in Tewksbury Township with members of the Township committee, and experts of both parties, namely; Mr. Olenick, P.E., Mr. Robert Tublitz, P.P., Mr. Robert Hordon, PhD. for the Plaintiff. Another meeting was held on July

23, 1985 at the same place, wherein Mr. Robert Tublitz, P.P. and Thomas J. Beetel, Esq., were present for the Plaintiff. After the meeting of July 23, 1985, it became apparent to the Plaintiff that little or no substantive progress was developing. (See Thomas J. Beetel's letter to the Court dated August 1, 1985).

8. Notwithstanding, both parties continued to discuss the matter, privately, in concert with others, in many locations; the last being August 28, 1985, at the office of Gebhardt & Kiefer, Esqs., with Mr. Robert Tublitz, P.P. and Thomas J. Beetel, Esq., and Mr. Deiterly, attorney for the Defendant, two members of the Tewksbury Township Committee, and Mr. William Queale, Jr., P.R. present. A reasonable offer to settle was tendered by the Plaintiff, and a request to study same was proposed by the Defendant, no indication was given by the Defendant of it's plan to ask for a transfer to the housing counsel.

9. As per the Court's letter dated July 23, 1985, wherein the Court required a status letter be filed by both parties no later than August 30, 1985, said letter was sent, (See Thomas J. Beetel's letter to the Court dated August 30, 1985). Almost concurrently I was served on August 30, 1985, after business hours with a Motion requesting this matter be transferred to the Housing Council pursuant to the recently adopted Fair Housing Act.

10. The Defendant relies on the fact since there has been no trial to date. They are entitled to said request,

nothing could be farther from the facts, for the following reasons:

a) The Complaint was filed with the Court by covering letter dated June 18, 1984.

b) A status conference was held by the Court on July 27, 1984.

c) An Order on status conference dated August 30, 1984 was issued by the Court.

d) Adherence to said "Order" by the Plaintiff.

e) A status conference was held by the Court, May 14, 1985.

f) A "Scheduling Order" issued by the Court, dated May 15, 1985.

g) Adherence to said "Order" by the Plaintiff.

11. By way of the above, this case is now pending for one year and some two and one-half months with all the attendant costs, expenses and efforts by the Plaintiff. Said Plaintiff, notwithstanding the property in question has expended 4107,480.00± towards the prosecution of this case and an additional \$136,735.00± in taxes. Interest and the loss in utilization of said property. Since the postponement of the trial date, due to an attempt to settle this matter at the request of the Defendant, the Plaintiff has expended an additional \$29,600.00± towards experts, reports, meetings and additional interest and taxes. In addition, the Plaintiff has an outstanding mortgage which due and payable on September 14, 1985 in the amount of

\$650,000.00 which could cause financial damage upon the Plaintiff. The Defendant is well aware of this fact. (See R. Rivell's deposition, dated February 14, 1985, page 84, Exhibit D-9).

12. The Plaintiff only agreed to postpone the trial date, set for July 23, 1985, based upon good faith bargaining, an understanding that a trial would be held by the Court in September, or as the Court deems appropriate, and that they are to have their day in Court, the Court and Defendant by way of a letter acknowledged this understanding.

13. The Defendant does not make this Motion with his hands clean. An understanding being reached, namely a postponement of the trial date at the Defendants request, then to enter Court, stating because no trial has been held, this request for relief flies in the face of justice, fairness and equity, in fact it is injustice. The Plaintiff on August 1, 1985 told this Court, that "our attempts to accommodate so not appear to be fruitful . . . . and a trial date be fixed in September as barely possible". The Plaintiff has prepared his last brief, is ready to be submitted at a date affixed by the Court, as per the same letter.

14. The Plaintiff asks the Court to deny this Motion per "The Fair Housing Act", due to a Manifest Injustice which will be inflicted upon the Plaintiff due to the following:

a) The protracted length of the prosecution of this case with its attendant costs, and the failure of the Plaintiff of being afforded due process.

b. The request of the Defendant to postpone the trial date in order to settle, when even after one month, it was not working out, and so stated by the Plaintiff as of August 1, 1985 by letter.

c) The request to transfer this matter to the Housing Council, due to the fact there has been no trial date, is a function of the Defendant, not the Plaintiff, and certainly not of the Court and is totally unfair.

d) The reliance by the Plaintiff on Court's consent to postponement with the understanding of both parties a trial would be held in September 1985.

e) The unfairness of the Motion, because it would cause additional delay creating a financial burden upon Plaintiff, as to his mortgage expiration, and additional carrying costs.

f) The failure of the Court too decide the constitutionality of the Tewksbury Township Zoning Ordinance per "Mount Laurel II" which is the Keystone of this Litigation, as well as other complaints revelent to this case, thereby denying due process.

15. As to manifest of injustice, The Fair Housing Act, as mentioned earlier in this brief requires the Court to "consider whether or not the transfer would result in a manifest injustice to any party to the litigation".

Manifest Injustice (See Howe v. Strelecki 98 N.J. Super 513 page 521 App Div 1968), "is akin to" fundamental unfairness "and a possible confined to a deprivation of due process", such, is the case in matter.

16. The United States Constitution, Amendment XIV (1968) states "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within it's jurisdiction the protection of the law". It is the agreement of the Plaintiff that this Court has jurisdiction, that we are entitled to due process, not just for us, but by the nature "Mount Laurel II", namely the constitutionality of the Tewksbury Zoning Ordinance which would go unheard if this Court transferred this matter to the Housing Council. It is unfair to the Plaintiff if the Defendant were successful in their Motion due to the fact that the Defendant does not have clean hands in front of this Court, and that its request for equity has been trained by it's own doings and the Motion should be denied, and a trial date set.

17. It should be noted that the developments within the Defendant Township within the past year demonstrate that it is a developing, dynamic, non-static community. At the intersection of County Route 523 and Interstate 78, there is being amassed by a joint venture among Paul Ferber, The Mack Corporation, Cox & Sagner and Weaver, of some 154 acres, (and attempting to acquire some 100 plus acres additional land) on which the joint venture will construct Research and



Office facilities, numbering hundreds of thousands of square feet. Presently it is the largest and highest price per acre land in Hunterdon County (\$50,000.00 per acre), and if the additional land is acquired, it will become the largest dollar value per acre in the State of New Jersey. Add to this development which is occurring with the Township-defendant's corporation, (authorizing a study to be made for sewer and water to these proposed facilities by Malcolm Pirnie, P.E., within the Limited Growth Area of the State's Development Guide Plan), and an additional 450 acres owned by Merck Company which is contiguous to the Joint Venture lands, there is a joining of the Growth and Limited Growth areas in Tewksbury and Readington Townships. The A.M. Best Company is already located at the intersection and occupies 63 additional acres. These lands are all zoned for Research and Office facilities at present.

There thus emerges a clear picture of the Defendant-Township attempting to encourage massive Research and Office development within its limited growth zone. Simultaneously, studies have shown the wage scale of the workers in this township to be such that they cannot afford to own homes in the Defendant-Township, but can only afford to work there. Consequently, the township is encouraging Commercial Development, and discouraging by its tactics in the present suit, the opportunity for affordable low and moderate income housing by delaying that opportunity, while asking that the Housing Council and unformed Housing Plan to consider what

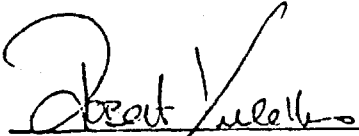
the Township's duty to provide housing is. After all these years of exclusion, the Township wants to know what it should do. It plays on one hand with industry, and denies on the other the opportunity for affordable housing, and thus continues the sociological tragedy for exclusion, with Plaintiff's lawns located within a mile of said massive developments on the same County Road (523).

18. Conclusion: The basis of this case is one of constitutionality. Has Tewksbury Township through their zoning ordinance, provided a realistic opportunity for low and moderate income people to live in Tewksbury Township? We have presented thorough reports, interrogatories, depositions, a prima facie case as to the unconstitutionality of Tewksbury Township Zoning Ordinance. Furthermore there are other issues before the Court as to existing zoning as applies to the Plaintiff's property, the challenge to the State Development Guide Plan, and the fair share number. The main issue is the validity of the ordinance. Transferring this case would be a manifest injustice to my client, as well as those other interested parties, namely low and moderate income persons who would

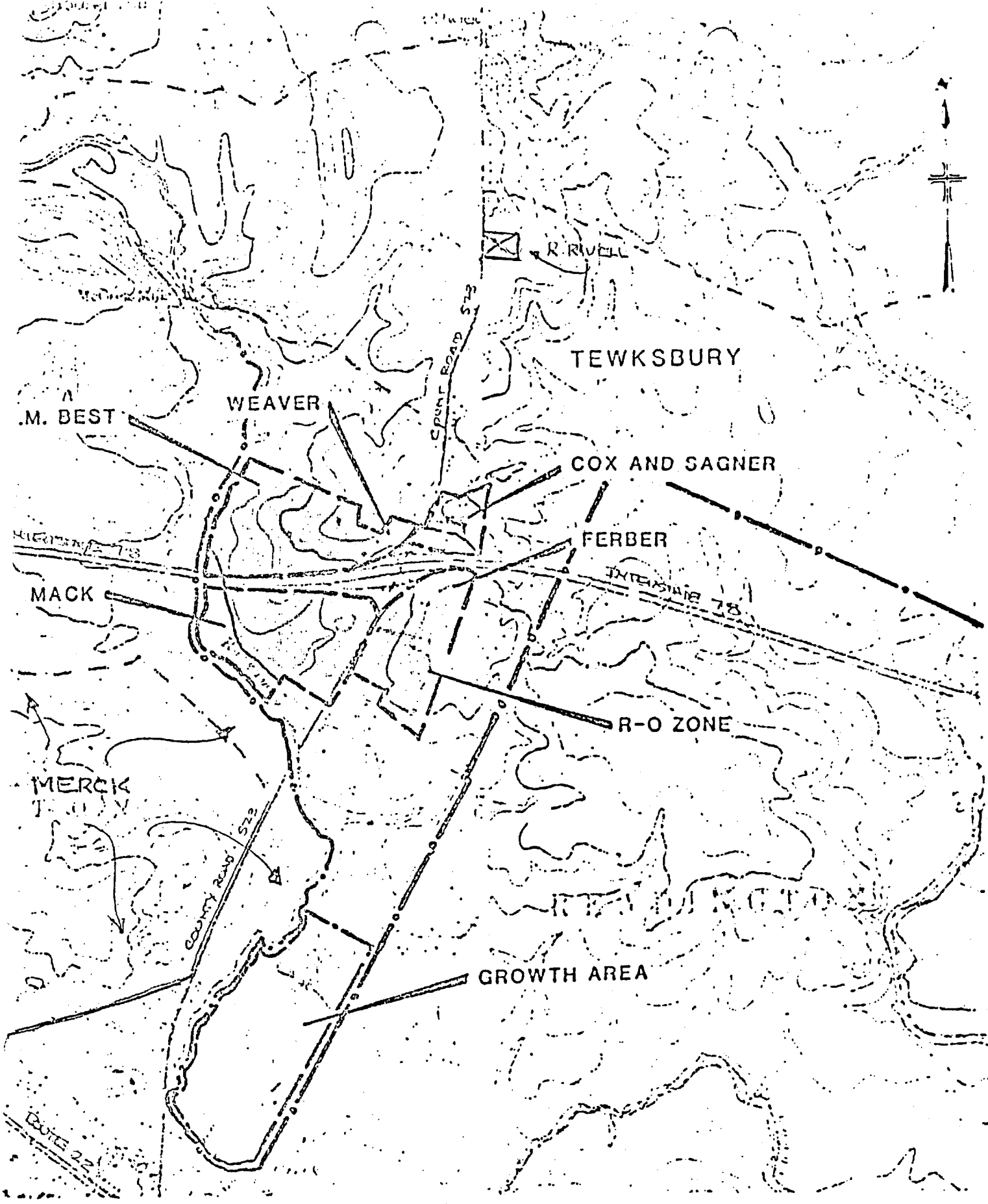
deny equal protection as per the United States Constitution and the New Jersey Constitution, and is contrary to the spirit of "Mount Laurel I" and "Mount Laurel II".

I have read the above and state that it is true to the best of my knowledge and belief.

  
Robert E. Rivell

  
Robert Tublitz

Dated: September 5, 1985



LEGEND

- TOWNSHIP BOUNDARY
- STUDY AREA BOUNDARIES

STUDY AREA

SCALE: 1" = 2000'

THOMAS J. BEETEL, ESQ.  
20 MAIN STREET; PO BOX 187  
FLEMINGTON, NJ 08822  
201-788-1921  
Attorney for Plaintiff

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ROBERT E. RIVELL, et al	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	HUNTERDON COUNTY/
	:	MIDDLESEX COUNTY
vs.	:	MOUNT LAUREL
	:	
TOWNSHIP OF TEWKSBURY, a	:	DOCKET NO. L-040993-84 PW
Municipal corporation located	:	
in Hunterdon County, New Jersey,	:	Civil Action
	:	
Defendant.	:	ORDER
	:	
	:	
	:	

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This matter being opened to the Court by Thomas J. Beetel, Esq.,  
Attorney for the Plaintiff in the within matter and Richard Dieterly, Esq.  
appearing on behalf of the Defendant, and for good cause having been  
shown;

It is on this                      day of                      , 1985;

ORDERED that partial Summary Judgment on the Constitutionality  
of the Defendant's Ordinances be granted to the Plaintiff;

AND IT IS FURTHER ORDERED that defendant's notice of Motion for  
transfer of the within matter to the Council on Affordable Housing is  
hereby denied.

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Stephen Skillman, JSC

Dated: September                      1985