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natural object or structure of any kind on real property  
or upon the ground itself.

**C. Prohibition of signs.**

- (1) No signs shall be hereafter erected, placed or maintained at any place in the Town of Penfield except as provided by this code and only after a permit therefor has been obtained in compliance with the provisions of this section.
- (2) Notwithstanding provision (1) above, the owner or occupant of premises in any district may erect a sign thereon for the sale of his property or the products raised thereon, without a permit, provided such sign shall be not larger than sixteen (16) square feet, including both sides of double-faced signs.
- (3) The use of pennants, banners, spinners, streamers, moving signs, or flashing, glittering or reflective, animated or rotating signs or similar eye-catching devices is not permitted. Preexisting signs in the above category shall conform to this revised regulation immediately upon the adoption of this ordinance. No signs shall consist of pictorial designs or illustrations.
- (4) Any sign or billboard directing attention to a business or to products sold elsewhere than on the same lot is prohibited by this ordinance.

**D. Procedure for obtaining permit.**

- (1) A permit to erect, enlarge, place or maintain any sign permitted by this ordinance must be obtained from the Building Official.
- (2) Application for a permit which requests a sign not permitted under this ordinance must be presented to the Penfield Zoning Board of Appeals. Upon such an application to the Board, a public hearing shall be held,

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with notice of such hearing published in accordance with law. The Zoning Board of Appeals may, after holding such public hearing, grant such variance(s) as it shall determine in accordance with the applicable provision of laws. Before recommending the issuance of such a permit, the Zoning Board of Appeals must find the following facts to be true:

- (a) The proposed sign(s) is (are) in harmony with the standards for permitted signs and within the spirit of the ordinance.
  - (b) The presence of the proposed sign shall not be detrimental to adjacent property.
  - (c) The proposed sign does not, by reason of its location, create a hazard of any nature to the public in general or to any adjacent owner or occupant.
  - (d) The proposed sign(s) does (do) not in any way interfere with the lawful enjoyment of the public highway or of adjacent property.
- (3) Application for a sign permit shall be made in writing by the owner, lessee or erector and be accompanied by a scale drawing showing dimensions, proposed design, the legend, colors, materials, structural details and a tape or plot location map delineating location of buildings, parking areas, other signs on the same property, frontage of each unit, and/or any fences or other obstructions in relation to the designated location of the proposed sign. Lessee or erector applicants shall evidence approval of owner for such erections.
- (4) The fee for the issuance of a sign permit shall be one dollar (\$1.) per square foot of sign area. Any additions to an existing sign shall be by permit application, as prescribed above, and be subject to a fee of one dollar (\$1.) per square foot for the additional footage of sign area.

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- (5) Double-faced signs shall be calculated at total area of both sides for purpose of assessing fees. Area of irregular shaped signs or panel signs of individual letters shall be calculated by using the total rectangular area encompassed by the outline.
- (6) No permit issued under the terms of this section shall be transferable to any person other than the original applicant without the consent of the Zoning Board of Appeals.
- (7) A sign permit shall become null and void if the work for which the permit was issued has not been started within a period of six (6) months after the date of issue of the permit.

### E. Standards for permitted signs.

- (1) Individual business establishments will be permitted one (1) identification sign except where there is public access to the other side of the building, such as on a corner where there are both front and side entrances on a public street or parking lot providing access to the building, in which case one (1) additional identification sign will be permitted for each entrance. In addition to the above, one (1) freestanding sign may be permitted, but only upon application to and approval by the Zoning Board of Appeals.
  - (a) Such signs shall be located on the same premises as the business or profession to which they refer.
  - (b) Such sign(s) shall be securely attached to the buildings or to structurally sound standards.
  - (c) The total area of such sign(s) on each lot shall not exceed three (3) square feet for each linear foot of building frontage facing toward a street or parking-lot area.

- (d) Freestanding sign(s) is (are) not to be located closer to the public way than twenty (20) feet, and no sign shall exceed twenty (20) feet in height above the ground level, nor sixty-four (64) square feet per face of a double-faced sign. A minimum height from ground level to the bottom of the sign panel must be such that there will be no interference with sight distance.
- (e) No sign shall be erected in such a manner as to confuse or obstruct the view of any traffic sign, signal or device.
- (2) No sign of any size or description, except traffic signs placed by public agencies, may be erected, placed or maintained within the highway limits of any public way within the Town of Penfield. No billboard or sign which now extends into, has been erected in, or suspended over any portion of a public way may remain unless the owner delivers to the Town of Penfield an insurance policy insuring the town against all loss, liability or damage suffered by all persons by reason of the construction or maintenance of such sign, and shall be written at limits of twenty-five thousand dollars (\$25,000.) for property damage, fifty thousand dollars (\$50,000.) for bodily injuries to one (1) person and one hundred thousand dollars (\$100,000.) for bodily injuries for more than one (1) person as a result of one (1) accident.
- (3) The Building Official shall require the proper maintenance of all signs, and such signs, together with their supports, shall be kept in good repair. The display surfaces shall be kept neatly painted at all times. The Building Official may order the removal of any sign that is not maintained in accordance with the provisions of this code. Painting, repainting, cleaning or repair maintenance shall not be considered an erection

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or alteration which requires a permit unless a structural change is made.

- (4) No permit shall be required to change the advertising copy or message on a painted, printed or changeable-letter sign.
- (5) Signs in commercial or industrial districts may be illuminated if the illumination is indirect and is so designed and shielded that the light sources do not constitute a possible hazard to traffic and cannot be seen from any adjacent residential district. A New York State Board of Fire Underwriters' Certificate of Approval must be submitted for every electrically illuminated sign.
- (6) Regulations applying to motor vehicle supply stations.
  - (a) One (1) sign on the face of the building identifying name of the station, not to exceed the limits as stated in Subsection E (1) (c).
  - (b) One (1) pole sign with trademark, nonrotational, not to exceed the restrictions as stated in Subsection E (1) (d).
  - (c) One (1) accessory sign attached or adjacent to the building indicating services, products, trade information or other information, excluding product advertising, may be permitted on one (1) permanent sign, structure, single-faced, and not to exceed thirty-two (32) square feet in total area.
- (7) Political posters. Special permits for political posters and signs may be granted by the Building Official. Such posters and/or signs must be removed within ten (10) days after election.
- (8) Signs for the internal control of traffic, including entrance and exit types, may be necessary in some

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cases and permits therefor may be issued by the Building Official.

- (9) Signs during construction or in connection with a real estate development may be permitted for a temporary period of not more than six (6) months, provided such sign does not exceed thirty-two (32) square feet. The fee for the issuance of a permit for such a sign shall be ten dollars (\$10.). Any such permit may be renewed for additional periods of like duration under the same procedures and conditions and for a like fee as required for the original permit.
- (10) Shopping plazas and industrial areas are permitted one (1) major identification sign on application to the Zoning Board of Appeals.
- (11) The use of "A" frame or removable curbside signs is prohibited except those used for real estate sales pertaining to available lots and houses within the Town of Penfield, and these are not to exceed six (6) square feet per side or a total area not to exceed twelve (12) square feet. Any existing signs not conforming to this provision shall be removed upon adoption of this ordinance.
- (12) The discontinuance of business at any given location shall require the removal within fifteen (15) days of all signs relating to said business.

### F. Existing signs.

- (1) Any sign(s) or billboard existing and erected before the adoption of this Sign Ordinance which is nonconforming and for which no permit was issued shall be removed within six (6) months from the effective date of this ordinance.
- (2) Any sign existing and erected before the adoption of this Sign Ordinance which is nonconforming and for which a permit was issued shall be removed within two

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(2) years from the effective date of this ordinance, except that in no event shall such an existing sign be required to be removed less than ten (10) years from the date of issuance of the permit.

### G. Penalties for violation.

- (1) Violations of the requirements of this ordinance are subject to the penalties as set forth in § 29-27 of the Zoning Ordinance.
- (2) The Building Official shall have the authority to enforce the removal of any signs that are in violation of this ordinance. Failure to comply with this written order within ten (10) days shall be considered a violation. If after thirty (30) days from date of such notice the objectionable sign has not been removed, the Town of Penfield shall have the authority to remove such sign and will charge the owner for the cost of the removal.
- (3) Prior to this action, the owner of the sign may request a hearing before the Zoning Board of Appeals, and no action will be taken by the town until a decision has been rendered by the Zoning Board of Appeals.

H. Severability provisions. If any section, subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### § 29-17. Filling of land and dumping of waste material.

A. The use of stone, brick, building blocks, gravel, fill dirt or top soil, whether originating on the premises or elsewhere, for the purpose of filling to establish grade and/or to improve the front, side or rear yard areas of an existing structure or of a proposed structure for which a building permit has been issued, is hereby

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permitted in any district within the Town of Penfield, provided that any area where stone, brick, gravel and fill dirt are deposited shall within a reasonable time be covered with at least one (1) foot of clean nondeleterious top soil and seeded with a permanent pasture mixture or other fast-growing surface vegetation, and that such reseeded shall continue until growth has been established. Reasonable time as herein used shall be construed to mean no later than the end of the next natural planting season following the commencement of said filling operation.

B. The dumping of any material not expressly permitted in Paragraph A of this section is hereby declared to be the dumping of waste material and is prohibited in all districts in the town except under a permit therefor issued by the Zoning Board of Appeals after a public hearing thereon.

C. Before issuing a permit hereunder, the Zoning Board of Appeals shall find the following facts based upon the evidence produced at the public hearing or submitted to it or upon personal observation of members of the Board:

1. The granting of such permit is in the public interest to establish grades or improve the premises in question.
2. The proposed operation does not create a public hazard.
3. The proposed operation will not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent property.
4. Adequate plans have been presented to show that the material or substance so deposited is to be leveled off as soon as deposited; dust preventative or similar material is to be used and applied to prevent dust and sand from flying or being carried from said premises during and on the completion of said operation; sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance; and when the operation is completed the material will be covered with at least one (1) foot of clean non-



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deleterious top-soil within a reasonable time thereafter and seeded with a permanent pasture mixture or other fast growing surface vegetation and that such reseeding is to continue until growth has been established.

5. The Zoning Board of Appeals may require as a condition for the issuance of such a permit that the applicant file with the Town a surety company bond in an amount to be fixed by the Board, conditioned upon the compliance of the applicant with the conditions fixed by the Board upon the issuance of said permit, to insure compliance with the provisions of this section.
6. Any such permit issued by the Zoning Board of Appeals shall expire on the 31st day of December following the issuance thereof and may be renewed under the same procedures and conditions required for the original permit.
7. The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars (\$25.00).
8. Any permit issued hereunder may be revoked after a hearing upon ten (10) days written notice to the holder of such permit, upon proof presented to the Zoning Board of Appeals that any condition of this section has not or is not at the time of the hearing being complied with.

### § 29-18. Motor vehicle supply stations. [Amended 7-5-67]

(a) The Town Board may, on special application issue a permit for the operation of a motor vehicle supply station in any Commercial District. The Board may require the applicant to submit such information as it may require, and to fix the location of all structures on the premises. No such permit shall be issued

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unless a recommendation is first obtained from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find, after public notice and hearing, that:

1. The proposed structures are located consistent with the regulations of the district in which they are to be located, and that the design and type of proposed structure is in harmony with other structures in such neighborhood. [Amended 7-5-67]

2. The proposed use will not create a traffic hazard at the proposed location. To this end a minimum frontage of two hundred (200) feet will be required on any road used for access to the station. [Amended 7-5-67]

3. The applicant has, in writing, agreed to construct and operate such proposed station in strict accordance with such conditions and restrictions as may be imposed by the Town Board. [Amended 7-5-67]

4. The lot area is sufficient to permit construction of the largest station that might be needed in the future. This should at the least provide for four (4) inside bays and parking for fifteen (15) cars, of which ten (10) spaces must be in a screened area behind the station. [Added 7-5-67]

5. All parking and outside storage shall comply with the front, side and rear lot setback requirements. [Added 7-5-67]

(b) Any permit granted hereunder may be revoked by the Town Board after due hearing on not less than ten days notice to the person holding such permit in the event that the use violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit, or shall have become a nuisance.

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(c) Any such special permit heretofore granted shall be deemed to be indefinitely extended subject, however, to the power of revocation hereinbefore, and in this section, set forth.

(d) The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars (\$25.00).

### § 29-19. Utility or communication installations.

(a) The Town Board may, on special application, issue a permit for the construction and maintenance of a public or private utility or communication structure, as it shall deem essential to the public welfare, and impose such conditions as may be found necessary in the public interest and may modify or vary the restrictions of this Ordinance as to height, size and location of structures applying to the District where such installations is to be located. No such permit shall be issued unless a recommendation is first obtained from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find, after public notice and hearing that:

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1. The proposed installation will not be detrimental to adjacent property.
2. The proposed installation will not by reason of its location or nature, create a hazard of any nature to the public or to any adjacent owner or occupant.
3. The proposed installation will not unreasonably interfere with the lawful enjoyment of the public highways or of adjacent property.

(b) Any such permit granted hereunder may be revoked by the Town Board after due hearing on not less than ten (10) days notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

(c) Any such permit heretofore granted shall be deemed to be indefinitely extended, subject however, to the power of revocation hereinbefore and in this section set forth.

(d) The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars (\$25.00).

### **§ 29-20. Recreational area. [Amended 9-6-66]**

(a) The Town Board may, on application, issue a temporary permit for a term which it may specify, for the use of a specified area in any District for a private playground, athletic field, carnival, circus, or other recreational or amusement use, whether operated for profit or not. The Board may require the applicant to submit such information as it may require and may fix the location of all structures on the premises. No such permit shall be issued unless a recommendation is received from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find after public notice and hearing, that the contemplated use will not:

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1. Be detrimental to adjacent property.
2. By reason of its location or nature, create a hazard of any nature to the public or to any adjacent owner or occupant.
3. Unreasonably interfere with the lawful enjoyment of the public highways or of adjacent property.

(b) Any permit granted hereunder may be revoked by the Town Board, after due hearing, on not less than ten (10) days notice to the person holding such permit, in the event that the use made thereunder violates any of the conditions of its issuance or shall have become a nuisance and any such permit may be renewed by the said Board for such period as it shall determine, upon application in accordance with the procedures for an original permit.

(c) The fee for the issuance of a permit, or of any renewal thereof, under this section shall be the sum of Twenty-Five Dollars (\$25.00).

### § 29-20.1 Swimming pools. [Added 9-6-66, amended 9-5-67]

(a) PRIVATE SWIMMING POOLS are hereby declared to be a permitted accessory use in any Residential District. A permit must be obtained from the Building Department prior to the erection of any private swimming pool, but no such pool shall be constructed or maintained in any district unless:

1. Such pool and any appurtenances, such as aprons or decks, shall conform to the minimum setback requirements for a structure in such District.
2. There shall be erected and maintained a chain-type fence or other similar protective type of enclosure completely enclosing the area containing such pool, such fence or enclosure to be not less than four (4) feet in height above ground level, any fence portion thereof to be securely supported by posts at intervals of not more than eight (8) feet, and permitting access, other than directly from the dwelling, only by a gate that may be securely fastened

and locked. A fence shall not be required in the case of and aboveground pool when the structural walls thereof are at least four (4) feet above ground level, except that any steps leading to the pool deck shall be enclosed by a gate that may be securely fastened and locked. Notwithstanding the foregoing, a fence shall be required if the walls of the pool are so constructed or any appurtenant structures, such as a filtering system, are so located as to provide a means by which the wall of this pool can be climbed and entry gained to the deck of the pool.

3. There is a sufficient source of water supply to accommodate such pool without detriment to normal water consumption requirements and all proposed water connections are proper and adequate.
4. The proposed drainage of such pool is adequate and will not interfere with the public water supply system, with existing sewage and drainage facilities, with the property of others or with public highways.
5. A suitable filtering system is installed in pools requiring in excess of one thousand seven hundred sixty (1,760) gallons of water to fill. [Approximately ten (10) feet diameter by thirty-six (36) inches deep]

(b) GROUP SWIMMING POOLS. No group swimming pool shall be constructed or maintained in any district unless a special permit therefor is granted by the Town Board, except that permits for swimming pools to be erected in connection with apartments or motel structures may be issued by the Building Department. No such permit shall be issued unless a favorable recommendation is received from the Zoning Board of Appeals which, after a public notice and hearing, has found that the proposed pool will not:

1. Be detrimental to adjacent property.
2. By reason of its location or nature create a hazard of any nature to the public or to any adjacent owner or occupant.

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3. Unreasonably interfere with the lawful enjoyment of the public highway or of adjacent property.
4. Violate any standards and requirements of the State of New York and the Monroe County Health Department.

Any permit granted hereunder may be revoked by the Town Board, after due hearing, on not less than ten (10) days' notice to the person holding such permit, in the event that the use made thereunder violates any of the conditions of its issuance or shall have become a nuisance.

(c) The fee for the issuance of a permit under this section shall be the sum of one cent (\$.01) per square foot of ground area covered.

**§ 29-20.2. Golf courses. [Added 6-7-71, effective 6-27-71]**

A. The Town Board may, on special application, issue a permit for the construction and maintenance of a golf course, as hereinafter defined, in any district of the town.

B. "Golf Course" is defined to mean any privately, semi-privately or publicly owned course consisting of at least nine (9) golf holes of conventional design and distance, and may include the following facilities as accessory to the principal use:

- (1) Clubhouse, including kitchens, dining areas, game rooms, bar, grill, locker rooms, baths.
- (2) Swimming pools.
- (3) Parking areas.
- (4) Tennis or paddle-ball courts.

C. In the case of a golf course containing eighteen (18) or more holes of play, there may be included the following additional facilities as accessory to the principal use:

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- (1) Pitch-and-putt course, unlighted.
- (2) Driving range, unlighted.

**D. No such permit shall be issued unless a recommendation is first obtained from the Planning Board. Prior to recommending the issuance of such a permit, the Planning Board shall find, after public notice and hearing that:**

- (1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.
- (2) The proposed use would not endanger or tend to endanger the public health, safety, morals or the general welfare of the community. In making such determination, the Board shall consider lot areas; necessity for and size of buffer zone; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the nature and use of other premises, and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property. Where structures require sanitation facilities, it shall be a requirement that public sewers be available.
- (3) The proposed use will be in harmony with the probable future development of the neighborhood, and will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

**E. In granting such a permit the Town Board may attach such conditions and limitations as it considers to be desirable in order to insure compliance with the application and the purposes of this ordinance.**



F. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

G. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon proper resolution by the Town Board and the payment of a fee of one hundred dollars (\$100.), and shall issue a renewal annually thereafter in January of each year upon payment of like fee.

**§ 29-21. Administration.**

This ordinance shall be administered by the Building Official who shall be appointed and may be removed by the Town Board and who shall serve at the pleasure of the Town Board. It shall be the duty of the Building Official to secure the enforcement of this ordinance, subject to the rules, regulations, resolutions and ordinances of the Zoning Board of Appeals and the Town Board, and issue all permits or certificates required by this ordinance.

**§ 29-22. Building permits.**

No permit for the construction, structural alteration, reconstruction or moving of a structure shall be issued by any official

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of the Town of Penfield, unless the application therefor has been certified by the Building Official as apparently complying with this ordinance.

**§ 29-23. Certificate of occupancy.**

It shall be unlawful to use or to permit the use of any structure hereafter erected, structurally altered, reconstructed, moved or converted wholly or partly in its use, or of any premises here-

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after altered or converted, wholly or partly in its use, until a Certificate of Occupancy to the effect that the structure or premises so erected, altered, reconstructed or moved and the proposed use thereof, conform to the provisions of this Ordinance, shall have been issued by the Building Official.

**§ 29-24. Zoning Board of Appeals.**

a. ORGANIZATION. The Zoning Board of Appeals, heretofore created pursuant to the provision of the Town Law, is hereby continued as now constituted. Each member of said Board shall continue to hold office to the expiration of his present term, at which time the Town Board shall appoint a successor as provided by law.

b. PROCEDURE. The Zoning Board of Appeals, consistent with the provisions of the Town Law applicable thereto, shall determine its own rules of conduct and procedure.

c. POWERS.

(1) REVIEW. Any interested or aggrieved party shall have the right to appeal to the Zoning Board of Appeals from any order, requirement, decision or determination made by the Building Official, and said Board shall thereupon hear and determine the same.

(2) VARIANCES ON APPEAL. The Zoning Board of Appeals shall have the power upon appeal and after public notice and hearing, to vary or modify the application of any of the regulations or provisions of this Ordinance relating to the use, construction, or alteration of structures, or the use of land, where it shall appear that there are practical difficulties or unnecessary hardships in the carrying out of the strict letter of this Ordinance, to the end that the spirit of the Ordinance shall be observed, public safety and welfare secured and substantial justice done.

(3) SPECIAL PERMITS AND VARIANCES. When in its judgment the public convenience and welfare will be serv-

ed and the appropriate use of neighboring property will not be substantially injured thereby, the Zoning Board of Appeals may, in appropriate and specific cases, after public notice and hearing and subject to appropriate conditions and safeguards, vary the application of the regulations of this Ordinance and grant exceptions in harmony with their general purpose and intent, as follows:

- (a) Grant a permit whenever it is provided in this Ordinance that approval of the Zoning Board of Appeals is required or refuse to grant the same where such action is justified.
- (b) Permit such variation of the yards, lot area or lot width requirements of this Ordinance as may be necessary to secure an appropriate improvement of a parcel of land where such parcel was separately owned or where such parcel was subdivided and recorded in the office of the Clerk of Monroe County at the time of the adoption of this Ordinance and is of such restricted area or exceptional topography that it cannot be appropriately used or improved without such variation.
- (c) Permit in any district, such modification of the requirements of these regulations as to height, yards, lot area and lot width, as said Board may deem necessary and proper to secure appropriate development of a lot where adjacent thereto are buildings or structures that do not conform to such regulations.
- (d) Permit the extension of a non-conforming use or structure provided such use or structure existed at the time this Ordinance becomes effective.
- (e) Permit the extension of a structure or use into a more restricted district immediately adjacent thereto, but not more than fifty (50) feet be-

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yond the boundary line of the district in which said structure or use is authorized.

- (f) Permit such modification or variation of the yards, lot area and lot width requirements of this Ordinance as will permit completion of the development of a tract of land according to the Ordinance in effect when such development was first commenced, in instances where a map of a part of such tract has been approved and construction actually commenced prior to the adoption of this Ordinance.

### § 29-25. Appeal from decisions of Zoning Board of Appeals.

Any interested or aggrieved person may appeal to the Town Board from any action, decision or determination of the Zoning Board of Appeals by filing a written notice of such appeal with the Clerk of the Town of Penfield within ten (10) days after such action, decision or determination has been taken or made. The Town Board shall thereafter hear and determine such appeal upon the evidence produced before the Zoning Board of Appeals or upon such new or additional evidence as it shall see fit to receive.

### § 29-26. Amendments.

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the Planning Board, after public notice and hearing, amend, supplement, change, modify or repeal this Ordinance or change the Official Amended Zoning Map, pursuant to the provision of the Town Law applicable thereto. Every such proposed amendment shall be first referred to the the Planning Board for report prior to public hearing thereon.

### § 29-27. Penalties.

Any person, firm, company or corporation owning, controlling or managing any structure or lot wherein or whereon there shall be placed or there exists anything in violation of any of the provisions of this Ordinance; and any person, firm, company or corpo-

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ration who shall assist in the commission of any violation of this Ordinance, or of any conditions imposed by the Zoning Board of Appeals, or, who shall build any structure contrary to the plans or specifications submitted to the Building Official and by him certified as complying with this Ordinance; and any person, firm, company or corporation who shall omit, neglect or refuse to do any act required by this Ordinance, shall be guilty of an offense and subject to a fine not to exceed Fifty Dollars (\$50.00), or by imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment, or by a penalty of Five Hundred Dollars (\$500.00) to be recovered by the Town of Penfield in a civil action. Each week that such violation, disobedience, omission, neglect or refusal shall continue, shall be deemed a separate offense. In addition to the remedies hereinabove set forth, the Town Board may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, demolition, moving and/or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or premises, or to prevent any illegal act, conduct, business or use in and about such premises.

### § 29-28. Repeal of Existing ordinances.

All rules, regulations and ordinances of this Town, inconsistent herewith, are hereby repealed as of the date this Ordinance takes effect, except that this Ordinance does not repeal, abrogate or impair conditions now existing or permits previously issued relating to the erection or alteration of structures or the use of the premises but whenever this Ordinance imposes greater restrictions upon the erection or alteration of structures or the use of the premises than required by existing provisions of law, ordinances, regulations or permits, the provisions hereof shall control insofar as the same is legally permissible.

### § 29-29. Effective date.

This Ordinance shall take effect immediately upon its passage, publication and posting of notice of adoption thereof, as prescribed by law, or by personal service of a certified copy hereof.

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF NEW YORK

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Title  
Omitted  
In  
Printing

NOTICE OF  
MOTION TO  
DISMISS  
COMPLAINT

Civil Action  
1972-42

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By: Robinson, Williams, Robinson and Angeloff  
Attorneys for Plaintiffs  
700 Reynolds Arcade Building  
Rochester, New York 14614

PLEASE TAKE NOTICE that upon the annexed  
affidavit of James M. Hartman, sworn to the  
15th day of March, 1972, the undersigned  
will move this Court at a Motion Term  
hereof to be heard at the Federal Building,  
Church and Fitzhugh Streets, in the City  
of Rochester, New York, on the 24th day

NOTICE OF MOTION TO DISMISS COMPLAINT

of April, 1972, at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for the following relief:

1. To dismiss the action on the ground that this Court does not have jurisdiction over the subject matter of this action pursuant to Rule 12(b)(1).

2. To dismiss the action on the ground that the complaint fails to set forth a claim upon which relief can be granted pursuant to Rule 12(b)(6).

The undersigned will further move this Court, in the alternative, for an Order pursuant to Rule 12(e) for a more definite statement of the complaint on the ground that the same is too vague, general and indefinite to apprise the defendants



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NOTICE OF MOTION TO DISMISS COMPLAINT

of the nature of the claim and enable them to frame a responsive pleading.

PLEASE TAKE FURTHER NOTICE that the undersigned will move at the time and place aforesaid for an Order pursuant to Rule 23(c)(1) determining that this action has been improperly instituted as a class action and should be dismissed on the ground that the same does not meet the requisites set forth in Rule 23 for a class action.

HARRIS, BEACH AND WILCOX  
Counsel to Andrew V.  
Siracuse, Esq.  
Attorney for Defendants  
Office and Post office  
Address  
Two State Street  
Rochester, New York  
14614  
716-232-4440

By/s/James M. Hartman  
A member of the firm

DATED: Rochester, New York  
March 30, 1972

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF NEW YORK

- - - - -

ROBERT WARTH, Individually  
and on behalf of all  
other persons similarly  
situated, et al.,  
Plaintiffs

MOTION TO  
DISMISS  
COMPLAINT

-against-

Civil Action  
1972-42

IRA SELDIN, Chairman,  
et al.,  
Defendants.

- - - - -

Defendants move this Court to dis-  
miss this action for the reason that the  
Court lacks jurisdiction over the subject  
matter of the action for the reason that  
none of the plaintiffs has standing to  
bring this suit and none of the  
defendants has any interest in the subject  
matter of the suit and that the defendant  
Metro-Act, Inc., is an improper party  
plaintiff and for the further reason that

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### MOTION TO DISMISS COMPLAINT

the complaint fails to show the existence of an actual controversy between the parties of the nature required by Article III of the United States Constitution and Section 2201 of the Judicial Code, Title 28; and defendants further move the Court to dismiss this action for the reason that the plaintiffs have failed to state a claim upon which relief can be granted as required pursuant to Section 12(b)(6) of the Federal Rules of Civil Procedure for the reason that plaintiffs have failed to set forth a short and plain statement of the claim showing that the pleader is entitled to relief in accordance with Rule 8 of the Federal Rules of Civil Procedure and the defendants further move in the alternative for an Order pursuant to Section 12(e) directing a more definite statement for the reason the complaint

MOTION TO DISMISS COMPLAINT

herein is so vague and ambiguous that defendants cannot be reasonably required to frame a responsive pleading in that no time, date, place or act has been alleged; and the defendants further move for an Order pursuant to Rule 23 (c)(1) determining that this action has been improperly commenced as a class action for the reason that plaintiffs have failed to show that the class is so numerous that joinder of all members is impractical, that there are questions of law or fact common to the class, that the claims or defenses of the representative parties are typical of the claims or defenses of the class and particularly with reference to Rule 23(b)(2) under which the action is purported to have been commenced that the party opposing the class has acted or

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## MOTION TO DISMISS COMPLAINT

refused to act on grounds generally applicable to the class thereby making appropriate and final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

HARRIS, BEACH AND WILCOX  
Counsel to Andrew V.  
Siracuse, Esq.  
Attorney for Defendants  
Office and Post  
Office address  
Two State Street  
Rochester, New York  
14614  
716-232-4440

By /s/James M. Hartman  
A member of the firm

DATED: Rochester, New York  
March 30, 1972

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF NEW YORK

- - - - -

ROBERT WARTH, Individually  
and on behalf of all  
other persons similarly  
situated, et al.,

Plaintiffs,

-against-

IRA SELDIN, Chairman, et al.,  
Defendants..

- - - - -

STATE OF NEW YORK)  
COUNTY OF MONROE) ss:  
CITY OF ROCHESTER)

JAMES M. HARTMAN, being duly sworn,  
deposes and says:

1. I am a member of the firm of  
Harris, Beach and Wilcox, of counsel in this  
litigation to Andrew V. Siracuse, Esq.,  
attorney for the Town of Penfield, New  
York, and I submit this affidavit in  
support of the defendants' motion, pursuant

AFFIDAVIT, JAMES M. HARTMAN

to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint on the ground that this Court lacks jurisdiction over the subject matter of this case and that the complaint fails to set forth a claim upon which relief can be granted and, in the alternative, pursuant to Rule 12(e) for a more definite statement of the complaint.

2. This is a class action brought against the Town of Penfield, New York, and various officers and agencies thereof, pursuant to Title 42, United States Code, Sections 1981, 1982, 1983 and 1984, and pursuant to Title 28, United States Code, Section 2201, as well as the First, Ninth and Fourteenth Amendments to the Constitution of the United States. Under attack in this lawsuit are the zoning laws and practices of the defendants herein,

AFFIDAVIT, JAMES M. HARTMAN

on the ground that they are discriminatory and exclusionary. The relief sought is a judgment declaring the zoning ordinance of the Town of Penfield null and void under the aforesaid statutes and Constitution of the United States; enjoining the aforesaid defendants from enforcing the same; compelling them to enact a nonexclusionary zoning ordinance and granting damages in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00).

3. The plaintiffs have brought this action on behalf of themselves and other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(b)(2).

4. Plaintiffs Robert Warth, Lynn Reichert, Victor Vinkey and Katherine Harris have alleged that they are property owners and taxpayers of the City of Rochester and it is as such that they claim standing



## AFFIDAVIT, JAMES M. HARTMAN

to sue herein, although the City of Rochester is not a party to this action. The complaint does not allege any direct injury resulting to any of these plaintiffs as a result of the land-use laws and practices of the Town of Penfield. They have not alleged any measurable appropriation or disbursement of tax monies by the Town of Penfield which they seek to challenge. Although suing herein as taxpayers, they do not allege any genuine, good-faith, dollars-and-cents injury to themselves, or any other injury which singles any of them out from the general run of mankind.

5. Plaintiff Andelino Ortiz alleges, in addition to being a property owner and taxpayer of the City of Rochester, that "he is employed in the Town of Penfield, New York, but has been excluded

## AFFIDAVIT, JAMES M. HARTMAN

from living near his employment as he would desire by virtue of the illegal, unconstitutional and exclusionary practices of the Town of Penfield." The complaint does not set forth any right of plaintiff Ortiz which is alleged to have been infringed, although the complaint does contain the implicit assertion that the Constitution of the United States guarantees satisfaction of a "desire" to reside in the Town of Penfield.

6. There is no allegation in the complaint that plaintiff Ortiz has ever attempted to take up residence in the Town of Penfield; nor does the complaint allege what laws of the Town of Penfield or what practices of the defendants herein have frustrated his desire to take up residence in the Town of Penfield.

7. Plaintiffs Clara Broadnax,

AFFIDAVIT, JAMES M. HARTMAN

Angelea Reyes and Rosa Sinkler allege that they are residents of the City of Rochester and are persons of low and moderate income, who cannot afford to live in the Town of Penfield. They seek a declaration that the Town of Penfield's zoning ordinances exclude them from residing within the Town and are, therefore, unconstitutional. As with plaintiff Ortiz, the complaint fails to set forth the basis of any legal right enjoyed by these plaintiffs, other than to imply that any person who wishes to reside in the Town of Penfield possesses a constitutional right to do so. As with plaintiff Ortiz, there is no allegation that any of these plaintiffs has made an effort to take up residence in the Town of Penfield; nor, other than citing the entire Zoning Ordinance of the Town of Penfield, has the complaint alleged

AFFIDAVIT, JAMES M. HARTMAN

any local laws of the Town of Penfield or any practices of the defendants herein which have frustrated the desire of any of these plaintiffs to take up residence in the Town of Penfield or which have injured any of them in any other way.

8. While the complaint alleges discriminatory and exclusionary practices, no particular instances of such practices are set forth; there is no recitation of times, dates, persons or agencies in connection with such practices. No connection whatever is made between any plaintiff's race, nationality or any other personal characteristic and the claims set forth in the complaint. There is no suggestion that any particular law of the Town of Penfield is discriminatory on its face; indeed, there is no mention of

AFFIDAVIT, JAMES M. HARTMAN

any specific local law.

9. Plaintiff Metro-Act of Rochester, Inc. has alleged no facts which would form a basis for standing in this action, or which indicate that it possesses any right or has suffered any injury which has anything whatever to do with the issues in this lawsuit. The complaint merely states that the main purpose of the organization is to alert citizens to problems of social concern and to inquire into the need for low and moderate income housing; and it apparently asserts standing in this case, not on the basis of any right or interest of its own which has been infringed, but rather on the basis of its social conscience and its role as a promoter of the social welfare.

AFFIDAVIT, JAMES M. HARTMAN

10. This is an inappropriate suit in which to bring a class action. First, a class under Rule 23 of the Federal Rules of Civil Procedure has standing only to the extent that the named parties representing it have standing. Second, the classes involved in this lawsuit are either not so numerous as to prevent joinder of all members of the class, or are so numerous and indefinable as to render it impossible to ascertain who belongs to the class and effectively to give notice to the members of the class. Finally, a class action is wholly unnecessary in this case. Because monetary damages are not allowable in a class action under Rule 23 (b)(2), the only relief which could be granted to these plaintiffs is declaratory and injunctive in nature. If the Zoning Ordinance of the Town of

AFFIDAVIT, JAMES M. HARTMAN

Penfield were declared unconstitutional, and if the defendants herein were enjoined to adopt a different zoning ordinance, the effect of such relief, both upon the named plaintiffs and those persons whom they seek to represent, would be exactly the same, whether or not this action takes the form of a class action. By converting this lawsuit into a class action, therefore, the plaintiffs achieve nothing, while running the risk of prejudicing those who are found to be members of the class.

WHEREFORE, deponent respectfully requests that this Court grant the defendants' motion in all respects.

/s/ James M. Hartman

Jurat omitted  
in printing

STATE OF NEW YORK  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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ROBERT WARTH, LYNN REICHERT, -  
VICTOR VINKEY, KATHARINE  
HARRIS, ANDELINO ORTIZ, -  
CLARA BROADNAX, ANGELEA  
REYES, ROSA SINKLER, each -  
individually and on behalf  
of all other persons -  
similarly situated, and  
METRO-ACT OF ROCHESTER, -  
INC., - Civil Action  
PLAINTIFFS, - No.  
1972/42

-vs-

IRRA SELDIN, JAMES O. HORNE, -NOTICE OF  
MALCOLM M. NULTON, ALBERT -MOTION  
WOLF, JOHN BETLEM as -  
members of the Zoning  
Board of the Town of -  
Penfield; GEORGE SHAW, -  
JAMES HARTMAN, JOHN D. -  
WILLIAMS, RICHARD C. -  
ADE, TIMOTHY WESTBROOK -  
as members of the Planning  
Board of the Town of -  
Penfield; IRENE GOSSIN, -  
FRANCIS J. PALLISCHECK, -  
DONALD HARE, LINDSEY  
EMBREY, WALTER W. PETER, -  
as members of the Town  
Board of the Town of -  
Penfield; and the TOWN  
OF PENFIELD, NEW YORK -  
Defendants, -



NOTICE OF MOTION

ROCHESTER HOME BUILDERS -  
ASSOCIATION, INC., -  
Applicant for -  
Intervention. -

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PLEASE TAKE NOTICE that upon the annexed Affidavit of Sanford J. Liebschutz, sworn to the 28th day of April, 1972, the undersigned will move this Court at a motion term thereof, to be heard at the Federal Building, in the City of Rochester, New York on the 8th day of May, 1972 at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Rule 24(b) of the Federal Rules of Civil Procedure for an Order permitting the Rochester Home Builders Association, Inc. to intervene in this action as a party Plaintiff.

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## NOTICE OF MOTION

LIEBSCHUTZ, ROSENBLOOM,  
& SAMLOFF  
Attorneys for Applicant  
for Intervention  
Office and Post Office  
Address  
101 Powers Building  
Rochester, New York  
14614

TO: ROBINSON, WILLIAMS, ROBINSON AND ANGELOFF  
Attorneys for Plaintiffs  
Office and Post Office Address  
700 Reynolds Arcade Building  
Rochester, New York 14614  
716-454-1990

HARRIS, BEACH & WILCOX  
Counsel to ANDREW V. SIRACUSE  
Attorneys for Defendants  
Office and Post Office Address  
2 State Street  
Rochester, New York 14614  
716-232-4440

ANDREW SIRACUSE, ESQ.  
Attorney for Defendants  
Office and Post Office Address  
601 Executive Office Building  
Rochester, New York 14614  
716-325-7700

STATE OF NEW YORK  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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Title  
Omitted  
In  
Printing

Civil Action  
No.  
1972/42

MOTION TO  
INTERVENE  
AS  
PLAINTIFF

---

Rochester Home Builders Association,  
Inc. moves for leave to intervene as a  
Plaintiff in this action, in order to  
assert the claim set forth in its proposed  
Complaint of which a copy is hereto  
attached, on the ground that there are  
common questions of law and/or fact  
between the claims of the Plaintiffs and  
the claim of this Applicant for Inter-

MOTION TO INTERVENE AS PLAINTIFF

vention.

/s/ Sanford J. Liebschutz  
Liebschutz, Rosenbloom  
& Samloff  
Attorneys for Rochester  
Home Builders Association,  
Inc., Applicant for  
Intervention  
Office and Post Office  
Address  
101 Powers Building  
Rochester, New York 14614  
716-546-8240

STATE OF NEW YORK  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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|          |              |
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| Title    |              |
| Omitted  |              |
| In       | Civil Action |
| Printing | No.          |
|          | 1972/42      |
|          | AFFIDAVIT    |

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STATE OF NEW YORK)  
COUNTY OF MONROE ) SS:

SANFORD J. LIEBSCHUTZ, being duly  
sworn, deposes and says:

1. I am a member of the firm of  
Libeschutz, Rosenbloom & Samloff,  
attorneys for Rochester Home Builders  
Association, Inc., Applicant for Inter-  
vention, and I submit this affidavit in  
support of Applicant's motion pursuant  
to Rule 24(b) of the Federal Rules of  
Civil Procedure for permission to

AFFIDAVIT, SANFORD J. LIEBSCHUTZ

intervene in this action as a party plaintiff on the ground that there are common questions of law and/or fact between the claims of the Plaintiffs and the claim of the Applicant for Intervention.

2. Plaintiffs bring this action individually and as a class action against the Town of Penfield, New York, and various officers and agencies thereof, pursuant to Title 42, United States Code, Sections 1981, 1982, 1983 and 1984 and pursuant to Title 28, United States Code, Section 2201 as well as the First, Ninth, and Fourteenth Amendments to the Constitution of the United States. This action attacks the zoning laws and practices of the Defendants on the ground they are discriminatory and exclusionary. The relief sought is a judgment declaring

AFFIDAVIT, SANFORD J. LIEBSCHUTZ

the zoning ordinance of the Town of Penfield null and void under the afore-said statutes and the Constitution of the United States; enjoining the afore-said Defendants from enforcing same; compelling the Defendants to enact a non-exclusionary ordinance, and granting damages in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) to Plaintiffs.

3. The Rochester Home Builders Association, Inc., in the Complaint annexed hereto, asserts similar and common claims. As a trade association and representative of its members, the Rochester Home Builders Association allege that they have been subject to the same discriminatory and exclusionary zoning practices as alleged in Plaintiffs' Complaint, and as a result thereof have

AFFIDAVIT, SANFORD J. LIEBSCHUTZ

been unable to construct housing and provide same for all of the metropolitan Rochester area population which is entitled to the opportunity to purchase such housing, and that specifically members of the Rochester Home Builders Association have been denied relief from such zoning ordinances permitting them to construct such housing.

4. By examination of the Complaint of the Plaintiffs and the Complaint of the Application for Intervention, it will be seen that the basic thrust of both actions is to declare null and void the zoning ordinances and the exclusionary zoning practices of the Town of Penfield and direct that a new ordinance be prepared. Since the members of the Applicant for Intervention have constructed substantially all of the sale and rental, single family



AFFIDAVIT, SANFORD J. LIEBSHCUTZ

and multi-family housing units in the Town of Penfield as well as the Metropolitan Rochester area over the past 15 years, they represent a party who would be most affected by the continuing exclusionary zoning practices of such Town as well as any reformation of such pract

WHEREFORE, deponent respectfully requests that this Order grant Applicant's motion in all respects.

/s/Sanford J. Liebschutz  
Sanford J. Liebschutz

Jurat  
omitted  
in  
printing

STATE OF NEW YORK  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

ROCHESTER HOME BUILDERS -  
ASSOCIATION, INC., -  
Plaintiff, -

-vs-

IRA SELDIN, Chairman, JAMES - COMPLAINT  
O. HORNE, MALCOLM M. NULTON, -  
ALBERT WOLF, JOHN BETLEM, -  
as members of the Zoning -  
Board of the Town of Penfield; -  
GEORGE SHAW, Chairman, -  
JAMES HARTMAN, JOHN D. -  
WILLIAMS, RICHARD C. ADE, -  
TIMOTHY WESTBROOK, as mem- -  
bers of the Planning Board -  
of the Town of Penfield; -  
IRENE GOSSIN, Supervisor, -  
FRANCIS J. PALLISCHECK, -  
DONALD HARE, LINDSEY EMBREY, -  
WALTER W. PETER, as members -  
of the Town Board of the Town -  
of Penfield and the TOWN -  
OF PENFIELD, NEW YORK, -  
Defendants. -

Plaintiff, above named, by its  
attorneys, Liebschutz, Rosenbloom &  
Samloff, as and for its Complaint against  
the Defendant, alleges:

INTERVENOR COMPLAINT

FIRST: This is an action for declaratory judgment, injunctive relief and money damages pursuant to Title 42 USC 1981, 1982, 1983 and pursuant to Title 28 USC 2201, and for damages and other relief based upon certain pendant and ancillary common law and statutory causes of action. Jurisdiction is conferred upon this Court by Title USC 1331, 1343 and 2201. In addition the Court has pendant and ancillary jurisdiction over several causes of action herein contained.

SECOND: Now and at all times hereinafter mentioned, Plaintiff was and is a corporation organized under the Not-for-Profit Corporation (formerly Membership Corporation) of the State of New York. The purposes for which it was formed were, among others, to be a non-profit trade association, representative of those per-

INTERVENOR COMPLAINT

sons and companies engaged in construction, development and maintenance of residential housing in the County of Monroe and adjacent and surrounding counties, and those persons, firms and corporations engaged in ancillary occupations thereto; to foster and promote the housing industry; to effect civic development and procure even and just taxation; to promote and encourage provision for adequate housing for all members of the community. Plaintiffs office is located in the City of Rochester, New York.

THIRD: Over 110 members of Plaintiff are engaged directly in the business of construction of sale and/or rental housing to the public at large in Monroe County and approximately 10% of its members are presently or in the recent past engaged in construction of, sale and/or rental housing in the Town of Penfield.

## INTERVENOR COMPLAINT

During the past 15 years, over 80% of the single family homes, and 90% of the multi-family housing units constructed in the County of Monroe, exclusive of units built by governmental or allied housing units, have been constructed by Plaintiff's members. During the past 15 years, over 80% of the private housing units constructed in the Town of Penfield have been constructed by members of Plaintiff.

FOURTH: Now and at all times hereinafter mentioned, the Defendants Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf and John Betlem are and were the members and do now constitute the Zoning Board of the Town of Penfield as constituted and existing pursuant to Chapter 29 of the Town Code of the Town of Penfield, New

INTERVENOR COMPLAINT

York, adopted by the Town Board of said Town on the 5th day of May, 1962 and subsequently, and the Defendant Ira Seldin is now and was at all times hereinafter mentioned the Chairman of said Zoning Board and as such said Defendants are and were in charge of and/or had authority over the administration of a certain zoning ordinance of said Town of Penfield, all as is more fully hereinafter set forth and of granting variances and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they and their predecessors participated in and were responsible for the activities, actions, events and circumstances hereinafter set forth.

FIFTH: Now and at all times here-

INTERVERNOR COMPLAINT

inafter mentioned, the Defendants, James Hartman, John D. Williams, Richard C. Ade and Timothy Westbrook are and were the members and do now constitute the Planning Board of the Town of Penfield, and the Defendant George Shaw is now and was at all times hereinafter mentioned the Chairman of said Planning Board and as such said Defendants and their predecessors in office are and were in charge of and/or had authority over the processing, administration, and approval of certain low and moderate income housing applications in the Town of Penfield, all as is more fully set forth herein, and of granting planning approval and exercising other administrative and/or discretionary duties with respect to said

INTERVENOR COMPLAINT

ticipated in and were responsible for the activities, actions and events and circumstances hereinafter set forth.

SIXTH: Now and at all times hereinafter set forth, the Defendants, Irene Gossin, Supervisor, Francis J. Pallischeck, Donald Hare, Lindsey Embrey, and Walter W. Peter are and were members of and do constitute the Town Board of the Town of Penfield, Monroe County, New York, and as such they and their predecessors in office have passed and have continued to maintain and refused to alter a certain zoning ordinance in said Town, and they individually and/or through their agents and/or employees have participated in the actions, events, activities and helped cause and create the circumstances hereinafter set forth and complained of.



INTERVENOR COMPLAINT

SEVENTH: Now and at all times hereinafter mentioned, the Defendant Town of Penfield is and was a municipal corporation organized and existing pursuant to the laws of the State of New York and existing within the State of New York and County of Monroe and lying contiguous to the territorial boundaries of the City of Rochester, New York.

EIGHTH: Pursuant to state enabling legislation, the Defendants Gossin, Pallischek, Hare, Embrey and Peter and/or their predecessors in office constituting the Town Board of the Town of Penfield, New York on the 5th day of May, 1962, adopted the zoning ordinance of said Town being and constituting of Chapter 29 of the Town Code of the Town of Penfield of which Sections 29-1 through 29-29 relating to zoning are attached hereto as Exhibit A

INTERVENOR COMPLAINT

and made a part hereof.

NINTH: Said ordinance, both as enacted and/or as administered by the Defendants aforementioned is violative of the Constitution of the United States<sup>and</sup>/in particular, without intending to limit, the First, Ninth and Fourteenth Amendments thereof, and is further violative of the statutory law of the United States, and, in particular, without intending to limit, 42 USC 1981, 1982, 1983 and 1984.

TENTH: That said ordinance as enacted and/or administered by the Defendants or their predecessors in office, has as its purpose and effect, and in fact, effects and propagates exclusionary zoning in said Town, with respect to excluding moderate and low income single family and multiple unit housing, and as such tends to exclude low income and

INTERVENOR COMPLAINT

moderate income persons from the purchase and/or rental of housing in said Town. The result of such exclusionary zoning is to prohibit Plaintiff's members from constructing and offering for sale or rental, housing to all segments of the community which require housing, particularly those persons of low and moderate income.

ELEVENTH: That said exclusions and/or deprivations accomplished as aforesaid and/or hereinafter stated were caused, created and/or perpetuated by the individual Defendants and others whose identities are presently unknown, acting under color of said zoning ordinance, the New York State enabling statute, and the custome and usage of the State and has subjected the Plaintiff's members to be deprived of certain rights, privileges

INTERVENOR COMPLAINT

and immunities secured by the Constitution and laws of the United States.

TWELFTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual Defendants, and their predecessors in office, have arbitrarily and capriciously and continuously, for a period of over 15 years last past:

A. Administered the provisions of said zoning ordinance by refusing to grant variances, building permits and by use of special permit procedures and other devices, so as to effect and propagate the exclusionary and discriminatory plan, policy, and/or scheme, heretofore referred to; and

B. Have failed to amend, modify or alter or waive the provisions of said

INTERVENOR COMPLAINT

ordinance, including amending, waiving, altering and/or modifying the provisions of the zoning map, the requirements pertaining to setback, minimum lot size, population density, use density, floor area, utilities, traffic flow, and other requirements, so as to effect and propagate the exclusionary and discriminatory policy plan or scheme hereinabove and hereafter referred to; and

c. Refused to grant necessary tax abatement or otherwise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with and assist and accommodate applications by Plaintiff's members and others for construction of low and moderate income single family and multiple unit housing in the Town of Penfield; all so as to neglect and

INTERVENOR COMPLAINT

ignore the minimum housing requirements of the population of the Town of Penfield and the metropolitan Rochester area considering the location and movement of local industry, commercial establishments, population, population growth, fluidity and density in the metropolitan Rochester area, and have thereby (a) prevented Plaintiff's members from development, sale and/or rental of housing to all those members of the metropolitan Rochester area who might require housing, and (b) deprived Plaintiffs of substantial business opportunities and profits.

THIRTEENTH: That pursuant to the exclusionary and discriminatory plan, policy and/or scheme heretofore referred to, Defendants have arbitrarily, capriciously and illegally refused Plaintiff's members

## INTERVENOR COMPLAINT

and others, legislative and administrative relief from the various provisions of the ordinances, laws and codes of the Town of Penfield heretofore referred to which would have permitted them to proceed with construction for rental or sale of low and moderate income housing, all in violation of the rights of Plaintiff's members and the Constitution and laws of the United States hereinbefore referred to, as a result of which Plaintiff's members have sustained substantial and irreparable harm and damage.

FOURTEENTH: That said ----- ordinance, scheme, act administration, practices and procedures, are violative of the Ninth and Fourteenth Amendments to the Constitution of the United States in that they deny Plaintiff's members as well as all other citizens of the metro-

INTERVENOR COMPLAINT

politan Rochester area, the inalienable rights retained by them as citizens of the United States as well as due process and equal protection of the law;

FIFTEENTH: That said ordinance and regulation and the enforcement and administration thereof, bear no substantial relationship to the requirements of public health, safety, morals and general welfare of the community at large.

SIXTEENTH: That there is no legal basis under the Constitution and laws of the United States for said ordinance and the actions, activities, plans and schemes hereinbefore set forth.

SEVENTEENTH: That one or more officials of the Town of Penfield have attempted to coerce Plaintiff's members to prevent Plaintiff from bringing this action, and have threatened Plaintiff's



INTERVENOR COMPLAINT

members that if this action were brought, Plaintiff's members would be prevented from doing business in the Town of Penfield and/or would be given great difficulty in obtaining necessary approvals, cooperation and/or appropriate treatment by government officials of said town, which would thus prevent them from carrying out their ordinary and necessary business in due course in said town. As a result of said action, Plaintiff's members are threatened with irreparable harm and damage.

EIGHTEENTH: That by reason of said ordinance and all of the acts, actions, activities on the part of the Defendants and their predecessors in office hereinbefore set forth, Plaintiff's members have been damaged in the sum of seven Hundred Fifty Thousand Dollars (\$750,000.00).

INTERVENOR COMPLAINT

WHEREFORE, Plaintiff respectfully asks this Court for a judgment and Order:

A. Declaring that the housing and land use laws and policies of the Town of Penfield, as embodied in their zoning regulations, building codes, master plan, and all other related ordinances and regulations, and as enacted, enforced and administered by the Defendants to be unlawful, and null and void, as contrary to the statutory Constitution and laws of the United States of America.

B. Enjoining the Defendants and their successors in office from administering and/or enforcing said zoning ordinance, master plan, building code and other regulations.

C. Ordering and directing the Defendants to repeal such laws and enact and administer new laws, ordinances and

INTERVENOR COMPLAINT

regulations, which shall be non-exclusionary in nature, and shall repair and/or alleviate the conditions and effects heretofore complained of.

D. Ordering and directing the Defendants to permit and encourage participation of the Plaintiff and its attorney in the development and completion of said new laws, ordinances and regulations.

E. Ordering and directing Defendants to submit such new laws and regulations to this Court for this Court's approval within a reasonable period of time from the date of entry of the Court's Order herein.

F. Granting Plaintiff damages actual or exemplary in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00).

G. Temporarily and permanently enjoining the Defendants, and all other

INTERVENOR COMPLAINT

officials of the Town of Penfield from interfering with the normal business operations of Plaintiff's members during the pendency of this action and thereafter, and affirmatively directing Defendants and all other officials of the Town of Penfield to cooperate with and provide all necessary approvals, cooperation and appropriate treatment, to Plaintiff's members in conjunction with their ordinary and usual business conducted in said town.

H. Directing Defendants to pay Plaintiff's reasonable attorneys fees, costs and disbursements of this action.

I. Retaining jurisdiction of this action for a period of time after the adoption of the new ordinances and regulations to ensure equitable and reasonable enforcement thereof, and

J. Granting Plaintiff such other and

INTERVENOR COMPLAINT

further relief as the Court may deem appropriate.

LIEBSCHUTZ, ROSENBLOOM &  
SAMLOFF  
Attorneys for Plaintiffs  
Office and Post Office  
address  
101 Powers Building  
Rochester, New York 14614  
716-546-8240

\* \* \* \* \*

\* \* \* \* \*

Exhibit A

to

Intervenor Complaint,

Copy of Chapter 29 of the Town Code  
of the Town of Penfield, Sections  
29-1 through 29-29 is reproduced  
as Exhibit A to the original com-  
plaint and is omitted here.

\* \* \* \* \*

STATE OF NEW YORK  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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ROBERT WARTH, 265 Castlebar Road, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,  
LYNN REICHERT, 224 Seneca Parkway, Rochester, New York, 14613, Individually and on behalf of all other persons similarly situated,  
VICTOR VINKEY, 134 Nunda Boulevard, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,  
KATHARINE HARRIS, 108 Garson Avenue, Rochester New York, Individually and on behalf of all other persons similarly situated,  
ANDELINO ORTIZ, R.D. 1 Wrights Road, Box 202, Wayland, New York, Individually and on behalf of all other persons similarly situated,  
CLARA BROADNAX, 87 Jefferson Avenue, Rochester, New York Individually and on behalf of all other persons similarly situated,  
ANGELEA REYES, 378 Scio Street, Rochester, New York, Individually and on behalf of all other

MOTION  
AND  
NOTICE  
of  
MOTION

Civil  
Action No.  
1972-42

MOTION AND NOTICE OF MOTION

persons similarly situated,  
ROSA SINKLER, Apartment 5-F,  
10 Vienna Street, Rochester,  
New York, Individually and  
on behalf of all other per-  
sons similarly situated,  
METRO-ACT OF ROCHESTER, INC.  
277 Goodman Street, North,  
Rochester, New York

Plaintiffs

-vs-

IRA SELDIN, Chairman, JAMES  
O. HORNE, MALCOLM M. NULTON,  
ALBERT WOLD, JOHN BETLEM, as  
members of the Zoning Board  
of the Town of Penfield;  
GEORGE SHAW, Chairman, JAMES  
HARTMENT, JOHN D. WILLIAMS,  
RICHARD C. ADE, TIMOTHY  
WESTBROOK, as members of the  
Planning Board of the Town of  
Penfield; IRENE GOSSIN,  
Supervisor, FRANCIS J.  
PALLISCHECK, DR. DONALD  
HARE, LINDSEY EMBREY,  
WALTER W. PETER, as members  
of the Town Board of the Town  
of Penfield, and the TOWN OF  
PENFIELD, NEW YORK,

Defendants.

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Upon the annexed affidavit, plaintiffs      po  
above-named, by their attorneys, Robinson,      of



MOTION AND NOTICE OF MOTION

Williams, Robinson and Angeloff, move the Court for an Order making the Housing Council in the Monroe County Area, Incorporated, a party plaintiff herein and directing the issuance of service of process upon it, and for grounds therefor shows:

1. This an action for declaratory and injunctive releif and for money damages;

2. This action challenges the legality and constitutionality of certain actions of the defendants herein, including the adoption and enforcement of certain zoning ordinances of the Town of Penfield, New York;

3. Housing Council in the Monroe County Area, Incorporated, (hereinafter "Housing Council") is a non-profit corporation organized pursuant to the laws of the State of New York, and its principal

MOTION AND NOTICE OF MOTION

office is located in the City of Rochester, New York; therefore, Housing Council is subject to the jurisdiction of this Court as to service of process and can be made a party plaintiff herein without depriving the Court of jurisdiction;

4. Housing Council's claim in this action arose out of the same transactions and occurrences, and raises the same questions of law and fact, as are already before this Court;

5. That the interests of Housing Council are or may not be adequately represented by the parties to this action.

PLEASE TAKE NOTICE that the within Motion will be heard at the U.S. District Courthouse, Rochester, New York, on the 12th day of June, 1972 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard.

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MOTION AND NOTICE OF MOTION

/s/ Emmelyn Logan-Baldwin  
Robinson, Williams,  
Robinson and Angeloff

TO: HARRIS, BEACH AND WILCOX  
Counsel to Andrew V. Siracuse, Esq.  
Attorney for Defendants

STATE OF NEW YORK  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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Title  
Omitted  
In  
Printing

AFFIDAVIT

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STATE OF NEW YORK)  
COUNTY OF MONROE ) ss:  
CITY OF ROCHESTER)

JOHN C. MITCHELL, being duly sworn,  
deposes and says:

1. He is the Executive Director of  
the Housing Council in the Monroe County  
Area, Incorporated (hereinafter "housing  
Council"), and is familiar with its his-  
tory, composition and purpose.

2. Housing Council is a not-for-  
profit corporation organized in 1971  
pursuant to the laws of the State of New  
York, and maintains its principal office  
at 121 North Fitzhugh Street, Rochester,

AFFIDAVIT, JOHN C. MITCHELL

New York.

3. Housing Council was organized in response to a recommendation contained in a 1970 study prepared by the Rochester Center for Governmental and Community Research and entitled "Housing in Monroe County, New York". This study was prepared for the Metropolitan Housing Committee, which was appointed jointly by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. The study recommended, inter alia, that a housing council be established, composed of representatives of relevant agencies, institutions and groups interested in housing in order to channel the fragmented and uncoordinated housing efforts in the community into meaningful action.

4. Housing Council's purposes are

## AFFIDAVIT, JOHN C. MITCHELL

set out in Article II of its Constitution,  
which reads as follows:

The Corporation shall be organized and operated exclusively for the purpose of receiving, maintaining, or administering one or more funds of real or personal property, or both, and using and applying the whole or any part of the income and principal thereof for the charitable purpose of **combating** community deterioration, eliminating racial and economic prejudice and discrimination in housing and lessening the burdens of government in Monroe County are of New York by:

Section A. Promoting studies of and giving leadership to community planning concerning the problems of:

1. eliminating racial and economic discrimination in housing;
2. reversing community deterioration;
3. increasing the supply of decent safe and sanitary housing in a quality living environment throughout the County and Metropolitan Rochester area for all persons, especially those with low and moderate income;

Section B. Seeking:

1. to coordinate the efforts of governmental, public and private organizations which plan to engage in or are presently engaged in construction, rehabilitation or develop-

AFFIDAVIT, JOHN C. MITCHELL

ment of adequate housing in the Monroe County area for all persons, especially those with low and moderate incomes and;

2. to assure that such organizations consider methods of pursuing their housing activities which will lead to elimination of racial and economic discrimination and will tend to reverse community deterioration in the Monroe County area; and

Section C. Providing or facilitating technical assistance to governmental, public and private organizations which plan to engage in or are presently engaged in planning, constructing, rehabilitating, or developing adequate housing for all persons, especially those with low and moderate incomes; particularly concerning methods of eliminating racial and economic discrimination and reversing community deterioration.

5. The Housing Council's membership is comprised of some seventy-one (71) public and private organizations having an interest in housing. A copy of the charter membership list is annexed hereto as Exhibit "1".

AFFIDAVIT, JOHN C. MITCHELL

6. At least seventeen (17) of the charter member groups have been involved, are involved, or hope to be involved directly in the development and construction of low and middle income housing; each such organization is indicated on Exhibit "1" by a check mark before its name.

7. Upon information and belief, at least one such group, viz. Penfield Better Homes Corporation, is and has been actively attempting to develop moderate income housing in the Town of Penfield, but has been stymied by its inability to secure the necessary approvals from the defendants in this action.

8. Several of the charter member groups, including the Monroe County Department of Social Services and City of Rochester's Department of Urban Renewal



AFFIDAVIT, JOHN C. MITCHELL

and Economic Development, and Urban Renewal Agency, are government agencies which have a direct concern with and interest in the provision of low and middle income housing in the County of Monroe and the City of Rochester.

9. The large majority of the charter member groups themselves have membership which are made up primarily of low and moderate income whites and non-whites, and therefore directly represent the interests of such people.

10. Because of the interests of these constituent groups, Housing Council has a special interest in this litigation and is in a unique position to represent the interest of its members.

11. Housing Council has no objection to being made a party plaintiff in this action.

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AFFIDAVIT, JOHN C. MITCHELL

/s/ John C. Mitchell  
John C. Mitchell

Jurat  
omitted  
in  
Printing

EXHIBIT "1"

Page Seventeen

HOUSING COUNCIL IN THE MONROE COUNTY  
AREA, INC.

CHARTER MEMBER LIST

1. Action for a Better Community, Inc. (ABC)
2. American Association of University Women, Rochester, New York Branch
3. Asbury First United Methodist Church Housing Committee
4. Association for the Blind of Rochester and Monroe County, Inc.
5. ✓ Better Rochester Living, Inc.
6. Bishop Sheen Housing Foundation
7. Brockport Action Task Force on Housing (BATH)
8. ✓ The Build Your Own House Club
9. Center for Community Issues Research
10. The Church of the Incarnation. Episcopal, Vestry
11. Church Women United in Rochester and Vicinity, Inc.
12. Citizens Planning Council of Rochester & Monroe County, Inc. (CPC)
13. Community Interests Inc.
14. ✓ Community Volunteers of Rochester, Incorporated
15. Cooperative Extension Association of Monroe County
16. ✓ FIGHT
17. Four Downtown Churches of Rochester, New York, Housing Department of ACCT
18. Frederick Douglass League
19. Genesee Rapids Neighborhood Association
20. Genesee Settlement House
21. Greece Residents Organized to Act (GRO-Act)

## EXHIBIT "1"

22. Holy Name of Jesus Parish, Human Development Task Force
23. Housing Opportunity Program Enlistment Incorporated (H.O.P.E.)
24. ✓I.C. Housing Development Fund Company, Inc.
25. The Junior League of Rochester, Inc.
26. Ladies Association for Community Enrichment (L.A.C.E.)
27. Lake Avenue Friendship Corporation
28. League of Women Voters of the Rochester Metropolitan Area
29. Metro-Act of Rochester, Inc.
30. ✓Model Neighborhood Council
31. Monroe County Bar Legal Assistance Corp.
32. Monroe County Department of Social Services
33. Monroe County Planning Council
34. Montgomery Neighborhood Center, Inc.
35. 19th Ward Community Association, Inc.
36. National Council of Jewish Women, Rochester Section
37. New Rochester
38. North East Area Development, Inc. (NEAD)
39. Northeast Property Upgrading Association (NEPUA)
40. ✓Northeast District Council, Inc. (N.E.D.C.)
41. Northwest Housing Task Force
42. Office of Human Development
43. Olean Townhouses
44. Penfield Action for a Creative Tomorrow (PACT)
45. ✓Penfield Better Homes Corporation
46. Penfield Christian Landlords, Inc.
47. Priests Association of Rochester, Social Action Committee

## EXHIBIT "1"

48. Rochester Area Committee for Open Housing (RACOH)
49. ✓ Rochester Area Council of Churches Development, Inc. and Rochester Area Council of Churches Housing Development Fund Co. Inc.
50. Rochester Jaycees
51. ✓ Rochester Housing Authority (RHA)
52. Rochester Management, Inc.
53. ✓ Rochester Neighbors, Inc.
54. Rochester Soul Christian Leadership, Inc.
55. ✓ Rochester Urban Renewal Agency and City of Rochester, Dept. Urban Renewal & Econ. Development
56. ✓ Rochester United Settlement Houses (RUSH), Housing Development Fund Company, Inc. (Harris Park Project)
57. Senior Citizens Action Council Inc. of Monroe County, State of New York (SCAC)
58. ✓ Sisters of St. Joseph, Social Concerns Committee
59. South East Area Coalition, Inc. (SEAC)
60. South Area Welfare Rights Group (SEWRG)
61. South Side Seniors (Citizens)
62. St. Thomas Episcopal Church, Christian Social Action (STECCSA)
63. Teen League of Rochester (TL)
64. ✓ Temple B'Rith Kodesh, Social Action Committee
65. Third Presbyterian Church, Session
66. ✓ Unitarian Housing Committee (First Unitarian Church)
67. WEDGE
68. ✓ Webster Council of Churches Housing Committee
69. Webster Human Relations Council
70. ✓ Western Monroe Community Project, Inc.
71. Young Womens' Christian Association of Rochester and Monroe County (YWCA)

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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|                        |   |              |
|------------------------|---|--------------|
| ROBERT WARTH, et al    | * |              |
| Plaintiffs             | * |              |
| vs.                    | * | AFFIDAVIT    |
| IRA SELDIN, et al, and | * | Civil Action |
| THE TOWN OF PENFIELD   | * | No.          |
| Defendants             | * | 1972-42      |
|                        | * |              |

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STATE OF NEW YORK)  
COUNTY OF MONROE ) SS:  
CITY OF ROCHESTER)

ROBERT J. WARTH, being duly sworn,  
according to law, deposes and says:

1. I am a private citizen residing  
at 265 Castlebar Road, Rochester, New  
York. I am the duly elected president

the above noted lawsuit.

2. Metro-Act of Rochester, Inc. is a non-profit organization organized pursuant to the membership corporation law of the state of New York. Among its stated purposes are 1) to achieve democracy for all irrespective of race, religion or national origin; 2) to encourage the Rochester community to provide better housing, better education, greater employment opportunities and to secure human and civil rights for all its residents.

3. Metro-Act was founded in 1965 as Friends of Fight, Inc. The 1964 race riots in Rochester had vividly brought home to the Rochester metropolitan community the dangers of policies and practices which result in an inner city composed of a concentrated black and other minority population who have no other choices in living except in squalid housing, sending their

## AFFIDAVIT, ROBERT J. WARTH

children to inferior schools and educational facilities, being subjected to reduced employment opportunities and inferior community services. Following the Rochester riots, the black community in Rochester formed a special action group called FIGHT; Friends of Fight, Inc. (now Metro-Act) was originally composed of white Rochesterians who formed to organize support from the white community of the programs and efforts of FIGHT in the black community. In December of 1968, Friends of Fight became Metro-Act of Rochester, Inc. with the role of Metro-Act being expanded to deal with issues beyond those with which FIGHT and the black community might be concerned. Metro-Act of Rochester, Inc. continues to work in ad hoc coalitions with FIGHT and other social action groups on specific issues.



AFFIDAVIT, ROBERT J. WARTH

4. Membership of Metro-Act is presently composed of approximately 350 individuals. The Metro-Act members live in all sections of the Rochester metropolitan area; about 9% of the Metro-Act members live in the Town of Penfield. Members are persons who are dedicated to achieving social justice and an open society for persons of all races and economic levels.

5. The Metro-Act membership works through task forces to deal with problems of pressing concern to the membership and to the Rochester metropolitan area. Presently, active issues with Metro-Act include housing, environment, tax reform, media responsibility, national priorities, individual freedoms, Community Chest, education and membership. Task forces and committees are established from time to time

## AFFIDAVIT, ROBERT J. WARTH

as particular needs arise.

6. Metro-Act is working for open housing in the suburbs because, in part, only by providing maximum choice in housing can Metro-Act members and their children be spared an eventual repeat of ghetto confrontations and riots. Metro-Act supports quality, integrated education. Metro-Act members believe that it is to their own children's benefit to learn early in life to come to healthy terms with different races and ethnic groups. Metro-Act is working for tax reform; its membership are the people who must bear much of the burden of increased taxes resulting from large amounts of tax exempt property. Metro-Act's concern over national priorities in opposition to the Southeast Asian war is based partly on the membership's own tax money being used for causes they consider

destructive, unworthy, or of low priority. Metro-Act's work in the area of media responsibility in reporting is based partly on the membership's own self interest. It wants to avoid thought conditioning by the media and avoid the making of judgments from misrepresentation of news. Metro-Act is working for protection of civil liberties and fair treatment of minorities because the loss of one group's freedom threatens each individual's freedom.

7. Since it was organized in late 1965, Metro-Act (originally Friends of Fight) has been involved in working for better housing policies and has been advocating zoning changes which would make decent housing available to all persons, regardless of race or income level. In 1966, Metro-Act compiled a fact sheet outlining the population changes in Rochester

center city and the urgent need for the construction of low income housing in Rochester. The study, attached hereto and made a part hereof as Exhibit A, demonstrated that in terms of relative population, Rochester was far behind other upstate New York cities in providing public housing.

8. The study of need for low income housing was followed by the publication of a survey of land in the City of Rochester owned by the City of Rochester which would be suitable for new housing. The study included a review of land suitability, the availability of sewer and transportation facilities. Copies of the study and relevant correspondence and news articles are attached hereto and made a part hereof as Exhibits B,C and D. At this same time Metro-Act joined as a member of a coalition

AFFIDAVIT, ROBERT J. WARTH

to press for zoning changes in the City of Rochester. The coalition was composed of approximately forty (40) Rochester organizations.

In response to a growing awareness that the City of Rochester could not solve its housing problem in isolation from the rest of the county of Monroe, Metro-Act along with its member organizations, at that time, expanded its efforts to focus on the need for the suburban communities of the Rochester metropolitan area, Monroe County, to provide low income housing. In February of 1969, Metro-Act representatives met with various town supervisors and submitted a proposal, Exhibit E attached hereto and made a part hereof, that the suburban towns become involved in a rent subsidy leasing program under Section 23 of the

United States Housing Act of 1937. Low income families could have been benefited by the involvement of the suburban towns in such a program and low income families would thereby have had a greater choice of housing accommodations made available to them in the Rochester metropolitan area.

9. In April of 1970 the Metropolitan Housing Committee, chaired by the late Joseph C. Wilson published its report, Housing in Monroe County, New York. (The summary report is attached hereto and made a part hereof as Exhibit F.) One of the major recommendations of this report was the petitioning of the Rochester City Council, the Monroe County Legislature and the Town and Village Boards for their express public support and adoption of a public policy establishing the 1970's as the decade during which decent housing and

a suitable living environment would be provided to meet the needs of every individual and family in the Rochester-Monroe County area.

10. In response to the Metropolitan Housing Committee's recommendation for a housing council (see page 27 [A 309] of the Summary Report) composed of representatives from interested agencies, institutions, and groups (including, of course, non-profit housing corporations) Metro-Act of Rochester pressed for the formation of such a group. The Housing Council in Monroe County Area, Inc. was formed in summer of 1971 and is presently composed of the organizations and bodies set forth in Exhibit G attached hereto and made a part hereof.

11. Further, Metro-Act of Rochester, Inc. initiated the formation of the

Political Action Committee on the Housing Council. This committee has pressed the Monroe County Legislature for the county to take the responsibility for housing the county. Correspondence in connection with this effort by Metro-Act and the resulting resolutions of the Monroe County Legislature are attached hereto and made a part hereof as Exhibits H, I, J, K, L, M & N. Through the pressures of the Housing Council Political Action Committee on housing, the Rochester City Council as well as the Monroe County Legislature recognized the report of the Metropolitan Housing Committee, "Housing in Monroe County, New York", and the Rochester City Council and Monroe County Legislature respectively pledged their continuing efforts to meet the report's objectives and goals. (Attached hereto and made a



AFFIDAVIT, ROBERT J. WARTH

part hereof as Exhibits O through P are copies of release and resolution in connection with the Rochester City Council's recognition of the Metropolitan Housing Committee report.)

12. The report of the Metropolitan Housing Committee , Housing in Monroe County, New York, confirmed for the Rochester metropolitan area the pattern of concentration of non-white population in the Rochester center city and the disbursement of the white, upper class population in the Rochester suburban towns. In 1964, for example, 96.6% of all non-whites lived in Rochester (page 10 [A 276] of Summary Report). The report went on to note that while there is great need for low and moderate income housing,

AFFIDAVIT, ROBERT J. WARTH

"The community is left with a special category of housing demand: a demand for equal housing opportunities for non-whites. The complete rejection by the suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many community groups and agencies - as well as individual citizens - have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles to blocking the construction of low moderate income housing where it is needed."

13. The Metropolitan Housing Committee specifically found that the sites available for the construction of low or moderate income housing were available in the towns. [A 294])  
(Summary Report, page 19/ At the same time, the Metropolitan Housing Committee found insufficient the present land use control mechanisms employed by suburban towns.  
(Summary Report, page 17[A 290])

14. Even before actually undertaking this serious and tremendous step of initiating a lawsuit against the Town of Penfield, members of the Metro Act Housing Task Force and officers of Metro Act spoke specifically with Penfield town leaders of the Metro Act concern for the practices, policies and laws which lead to the fact of exclusionary zoning. All during the month of December 1971 and early January 1972, various discussions were conducted between town leaders and Metro Act members. The discussions centered on the precise complaints the Metro Act Task Force members had with the Town of Penfield zoning ordinance with regard to its effect on the construction of low, moderate income housing in the Town of Penfield. In early January, Metro Act members met with town leaders personally. Town leaders suggested that Metro Act

AFFIDAVIT, ROBERT J. WARTH

members submit a concrete proposal for change in the Town of Penfield; Metro Act members accepted this suggestion and submitted a proposal, as a basis for discussion, a copy of which is attached hereto and made a part hereof as Exhibit Q. A date was set for a **meeting** with the full town board of Penfield for January 18, 1972. At the request of the Town of Penfield officials, the January 18th meeting was cancelled. I, as Metro Act president, thereafter, talked with Irene Gossin, chairman of the Penfield Town Board, about arranging for a new meeting date and time with the Penfield Town Board to discuss approval and implementation of Metro Act's suggestions. I suggested a meeting at the town board's convenience at any time and at any place. Chairman