EXHIBIT Y

dated August 18th, 1970 and recorded in Monroe County Clerks Office in Liber 4072 of Deeds, at Page 124.

EGH CORP. to Dolomite Products Company, Inc., dated January 15th 1970 and recorded in Monroe County Clerks Office in Liber 4037 of Deeds, at Page 235.

The premises described in the above mentioned conveyance are more particularly described as follows: ALL THAT TRACT OR PARCEL OF LAND, situate in part of Lot 40, Township 13, Range 4, Town of Penfield, County of Monroe and State of New York; Beginning at a point on the easterly boundary of Five Mile Line Road the northwest division of Lot 40 where it is intersected by the north line of premises conveyed to the grantors herein by deed of Walter J. Holloran recorded in Liber 3920 of Deeds, at Page 343; thence (1) easterly along said north line to a point at its intersection with the easterly line of said premises; thence (2) southerly along said line to the northwest corner of premises conveyed to the grantors herein by deed of Rudolph R. Ostrowski and wife recorded in Liber 4072 of Deeds, at Page 124; thence (3) easterly along the north line of the premises conveyed by the aforesaid deed to a point where said line is intersected by a line running due north and south so as to include within the premises conveyed to the grantors by the aforesaid deed a total of exactly five (5) acres of land; thence (4) southerly along said north-south line to a point at its inter-

EXHIBIT Y

section with the northerly line of premises conveyed to the grantors herein by deed of Victor L. Schroven and wife recorded in Liber 4065 of Deeds, at Page 599; thence (5) easterly along the north line of said premises to a point at its intersection with the westerly boundary of Baird Road; thence (6) southerly along said boundary a distance of 1355.07± feet to a point at its intersection with the southerly line of premises conveyed to the grantors herein by deed of EGH CORP. recorded in Liber 4037 of Deeds, at Page 235; thence (7) westerly along said line making an interior angle of 90° 25' 22" with the last mentioned course, a distance of 1524.96± feet to an iron pin at the southwest corner of said premises, said iron pin also being the northeast corner of premises conveyed to the grantor herein by deed of Whalen Estates, Inc., recorded in Liber 4037 of Deeds, at Page 90; thence (8) southerly along the east line of said premises, a distance of 1325.27± feet to a point at its intersection with the northerly boundary of Whalen Road; thence (9) westerly, at right angles to the last mentioned course, along said boundary a distance of 1259.14± feet to a point at its intersection with the westerly line of said premises; thence (10) northerly along said line, making an interior angle of 90° 40' 30" with the last mentioned course, a distance of 1323.14± feet to a point six-tenths (0.6) feet north of a corner post according to a survey and shown on a Map of Property to be conveyed by Grace C. Warner prepared by Erdman and Anthony, Consulting Engineer's, dated August 17, 1965, said point being in the southerly

line of premises conveyed to the grantors herein by deed of Walter J. Holloran as aforesaid; thence (11) westerly along said line to a point at its intersection with the beforementioned easterly boundary of Five Mile Line Road; thence (12) northerly along said boundary to the place of beginning, comprising a total area of 163.7± across; together with all of the right, title and interest of the grantors herein to Whalen Road, Five Mile Line Road and Baird Road.

HEREBY CONVEYING and intending to convey all of the grantors interest in the above described property.

EXCEPTING AND RESERVING from the above described premises, ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Penfield, County of Monroe, New York, known as Township 13, Range 4, Town Lot No. 40, being more particularly described as follows: Beginning at a point in the northerly boundary of Whalen Road which point is 350.17 feet easterly of the southwesterly corner of the aforesaid premises conveyed to Whalen Estates, Inc., by deed recorded in Liber 3670 of Deeds at Page 216 and which point is also approximately 757.6 feet easterly of the center line of Five Mile Line Road; thence (1) northerly along a line making an angle of 90° 00' 00" with Whalen Road, a distance of 204.00 feet to a point; thence (2) westerly along a line making an interior angle of 90° 00' 00" with the preceding course, a distance of 145.18 feet to a point on a curve; thence (3) southwesterly and southerly along a curve having a radius of 570.00 feet, so

situated that a radial line to the aforesaid point makes an angle of 7° 27' 20" in the southeast quadrant with the preceding course, a distance of 74.17 feet to a point of tangency; thence (4) southerly along a line parallel to course No.1, a distance of 90.04 feet to a point of curvature; thence (5) southeasterly along a curve having a radius of 40.00 feet, a distance of 62.83 feet to a point of tangency in the northerly boundary of Whalen Road; thence (6) easterly along the northerly boundary of Whalen Road, a distance of 110.00 feet to the point of beginning comprising 0.6974 acres.

BEING AND HEREBY INTENDING to convey a part of those premises conveyed to the grantor herein by Executor's Deed from Donald Williams, Executor of the Estate of Gra e C. Warner, deceased, dated September 1, 1965 and recorded in the Monroe County Clerk's office on September 2, 1965 in Liber 3670 of Deeds at Page 216.

ALSO EXCEPTING THEREFROM, the premises conveyed by Carl Bernhard to John J. Lorson, Jr., and Peter Scorza by deed recorded in Monroe County Clerk's Office July 14, 1959, in Liber 3220 of Deeds at page 453.

ALSO EXCEPTING the following described premises: Beginning at a point in the center line of Baird Road, which point is situate 537.52 feet along said center line southerly from the northeast corner of the premises first above described; thence (1) running westerly on an included angle of 89° 44' formed with the center line of Baird Road a distance of 224.75 feet to an

iron pin; thence (2) running southerly on an included angle of 90° 16' formed with course No. 1 a distance of 180 feet to a point; thence (3) running easterly on an included angle of 89° 44' formed with course No. 2 a distance of 224.75 feet to the center line of the said Baird Road; thence (4) running northerly along the center line of said road a distance of 180 feet to the point or place of beginning.

-5-

ALSO EXCEPTING the following described premises: Beginning at a point in the center line of Baird Road, which point is situate 976.35 feet southerly along the said line from the northeast corner of the premises conveyed by Joseph R. Vasile and Horace P. Gioia to Russell Welkley by deed recorded in the Monroe County Clerk's Office on January 15, 1969, in Liber 3958 of Deeds at page 118, said point also being the southeast corner of said premises; thence (1) westerly on an included angle of 90° 25' 22" formed with the center line of Baird Road, a distance of 224 feet to a point; thence (2) running northerly on an included angle of 89° 34' 38" formed with Course No. 1 a distance of 158 feet to a point; thence (3) running easterly on an included angle of 90° 25' 22" formed with Course No. 2, a distance of 224 feet to a point in the center line of Baird Road; thence (4) running southerly along the center line of said road a distance of 158 feet to the point or place of beginning.

Intending to convey a portion of the premises conveyed by deed recorded in Monroe

EXHIBIT Y

County Clerk's Office on March 26, 1945, in Liber 2237 of Deeds at page 11.

THIS CONVEYANCE IS MADE AND ACCEPTED subject to convenants, easements, and restrictions of record affecting the above described premises, if any.

SECTION 2. This amendment is conditioned upon the following:

a) The modification of the plan for the Planned Unit Development to conform to the density limitations contained in the Planned Unit Development Ordinance, as amended.

b) The execution of an agreement between the developer and the TOWN OF PENFIELD which defines (1) the responsibilities of the developer, the owners and occupants of the developed lands, and the TOWN OF PENFIELD in the improvement, operation and maintenance of common properties and facilities including private streets, drives, service and parking areas

and recreation and open-space areas, and (2) the guarantee by which performance will be insured.

c) Payment of a sanitary sewer entrance fee for each unit in an amount to be determined by the Town Board and which will reflect the development at a greater density of PUD than the average density of a residential development and which will also reflect the need for additional sewerage capacity before the approval of the site plan for development of the planned fourth stage.

d) The filing of a satisfactory letter of credit in an amount sufficient to cover the estimated costs as determined by the Town Engineer of roads, gutters, sidewalks, sewers and sewer systems, drains and drainage systems, lighting systems, water systems, landscaping, and sewer en-

trance fees.

e) The securing of a site plan approval in accordance with all provisions of the Zoning Ordinance with respect to a Planned Unit Development District and the execution of any agreements between the developer and the TOWN OF PENFIELD required by the Planning Board to insure the construction of the development according to the site plan and in the chronological order of planned construction.

SECTION 3. This amendment shall take effect immediately upon posting and publishing as required by law.

/s/ Earl Rapp
TOWN CLERK OF PENFIELD,
N.Y.

EXHIBIT Z

LEGAL NOTICE

NOTICE OF PUBLIC HEARING,
PENFIELD PLANNING BOARD

PLEASE TAKE NOTICE, That a Public Hearing will be held at the Penfield Town Hall on Monday, June 12, 1972, at 8:00 P.M., Eastern Daylight Time by the Penfield Planning Board to consider the following matters:

#1 The application of Oscar DeBree, 1200 Penfield Road, Rochester, N.Y. 14625, for a recommendation to the Town Board for Top Soil Removal Permit, under Sec. 24-3 of the Code of the Town of Penfield. The proposed top soil side of Five Mile Line Road approximately 3200' north of Plank Road, A/C #753-000.

#2 The application of Standco Developers Inc., 40 Wildbriar Road, Rochester, N.Y. under 29-11.23 F of the Code of the Town of Penfield, for final approval of detailed site plans for a proposed Planned Unit Development on the properties owned by Penfield Estates Inc. The proposed Planned Unit Development to be located on 103.49 acres at, or near, 2041 Penfield Road, A/C #63-100.

A Public Hearing will be held at the Penfield Town Hall on Monday, June 12, 1972 at 8:00 P.M. Eastern Daylight Time, at which time all persons in favor or opposed to said applications will be heard.

Earl Rapp
Town Clerk

EXHIBIT AA

VOTE OF THE BOARD

George Shaw, "AYE"
James Hartman, "AYE"
John D. Williams, "AYE"

Upon the motion, all of the Board Members present, having voted "AYE", the resolution was declared adopted.

ITEM # 3. The application of Zurick Development Corp. (Phillip Prinzi), 2255 Lyell Ave., Rochester, N.Y. 14606 for a recommendation from the Planning Board to the Town Board for the rezoning of Sections 3 and 4 of the Independence Ridge Subdivision, Account #922-000 from Residential "AA" to Residential "A".

Samuel Santandria appeared on behalf of the application. He stated that the developers intention was not to change the lot size from the required by Residential "AA" Zoning but to build a smaller house. The lots would be sold to Domus Homes who would build the houses. William Wackerman of Domus Homes identified himself as the builder of the homes in Domus East Subdivision and Baird Rd. Estates. He stated that the building of the same type of home was contemplated as had been built in these subdivisions. Wackerman offered pictures illustrative of the type of home about which he was

EXHIBIT AA

speaking, adding the comment that these were in the $25-$30 thousand dollar range. John Williams inquired as to whether these homes had "built in" expansion areas. Wackerman replied that they had not but some expandable homes might be offered if a market developed for these. Lawrence Dawson inquired as to the location of the proposed development. Wackerman replied, "in the Scribner - Embrey Rd. area." Elizabeth Brennan asked if the homes would have basements; the answer was, "Yes".

No one else wished to be heard on this matter and a motion was made by John D. Williams and seconded by George Shaw that the following resolution be adopted:

RESOLVED, that the application of Zurick Development Corp., (Phillip Prinzi), 2255 Lyell Ave., Rochester, N.Y. 14606 for a recommendation from the Planning Board to the Town Board for the rezoning of Sections 3 and 4 of Independence Ridge Subdivision, Account #922-000 from Residential "AA" to Residential "A" be, and the same hereby is DENIED, not withstanding the Board's interest in the concept but upon the grounds that sewer capacity is unavailable at present.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE" James Hartman, "AYE

EXHIBIT AA

Upon the motion, all of the Board Members present having voted "AYE", the resolution was declared adopted.

ITEM # 3. The application of Angelo Castronova, 1766 Empire Blvd., Webster, N.Y., 14680 for an interview with the Board concerning possible resubdivision of account #824-000. Approximately 30 ft. by 92 ft. of this account to be added to account #882-845 for the purpose of an addition to present building at 1766 Empire Blvd.

Angelo Castronova appeared for the application. He stated the proposed addition would comply with all set back requirements; the addition would be 30 ft. by 50 ft.; the total area of the building would be 50 ft. by 100 ft.; there would be no additional water used in the building.

No one appeared in opposition to this application and a motion was made by John D. Williams and seconded by James Hartman that a letter by sent to the applicant advising him that the Board viewed this application with favor.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE"

Upon the motion, all of the Board Members present having voted "AYE", the Clerk

was so directed.

ITEM # 4. The application of Angelo Castronova, 1766 Empire Blvd., Webster, N.Y. 14580 for an interview to obtain the Board's view on a possible rezoning of two (2) acres of land on the west side of Creek St., account #824-000 from Commercial to Apartment House and Multiple Dwelling.

Angelo Castronova appeared on behalf of the application. (See verbatim).

Mr. Shaw asked about density; Mr. Castronova said he would cooperate; Elizabeth Brennan said she was glad to see a trend from Commercial to dwelling units; she said that she would like to see single homes. Castronova th townhouses might be possible.

No one appeared in opposition to this application.

A motion was made by John D. Williams and seconded by James Hartman that a letter be forwarded to the applicant stating that the Board does not view this application with favor because of the unavailability of sanitary sewer capacity.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE"

The Clerk was so directed-

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	* AFFIDAVIT * Civil Action * No. 1972-42

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

CHRISTIAN G. KLING, ALAN J. TADDIKEN and RICHARD C. FARLEY, being duly sworn according to law, depose and say:

1. CHRISTIAN G. KLING, individually alleges: I am a private citizen residing at 40 Sandringham Road, Rochester, New York 14610. I am a part time teacher at the University of Rochester Evening School, Department of Economics, and a part time teacher at St. John Fisher College,Rochester, New York. I hold a Phd. in Urban Planning

from the University of Michigan and teach urban planning, environmental planning and new community planning at the University of Rochester and urban planning and environmental planning at the St. John Fisher College. In my professional and teaching duties, I have occasion to study zoning and its effect on the development of urban plans new communities and environmental planning. In my courses, I particularly consider zoning in the context of the planned unit development concept. My approach to the topic of zoning is that zoning should foster a variety of housing types in order to meet the current needs of housing in urban communities.

2. Alan J. Taddiken, individually alleges: I am a private citizen residing at 70 Highland Pkwy., Rochester, New York.

AFFIDAVIT, KLING, TADDIKEN & FARLEY

I am a senior research analist for the Rochester Center for Governmental and Community Research, Inc. I have held this position from 1968. One of my major involvements in my work with the Center has been the development of research projects, reports and consultations concerning housing needs, urban development and land use controls in Rochester, Monroe County and the eight county regional planning area. The specific studies for which I have borne the major responsibility include Housing in Monroe County, New York (1969); Planned Communities for the Rochester Area (1969); Scattered Site Developments (Low and Moderate Income Housing) (1969); A Planned Unit Development Article for a Town Zoning Ordinance (1970); Housing in the Genesee/Finger Lakes

Region: An Interim Report (1971); Senior Citizen Housing: Survey: Preliminary Report (1971); Public Controls and Housing (1971).

3. Richard C. Farley, individually, alleges: I am a private citizen residing at 86 Arvine Heights, Rochester, New York. I am an associate urban designer for the City of Rochester. In this capacity, I have constant contact with questions of city design involving the appropriateness of structures for space and the effective utilization of space. My profession necessarily involves me in considering basic questions of zoning. My educational background is a B.A. degree in architecture. I have had three years of actual experience in this field in architectural firms both in the United States and England; I have had five years' experience in urban

design in city planning offices both in Rochester and Detroit, Michigan.

4. We submit this affidavit in support of the plaintiff's opposition in the above noted lawsuit to the motion to dismiss the complaint. As we understand it, this lawsuit alleges among other points, that the Town of Penfield, by its zoning laws and policies and practices, incidental to the zoning laws effectively excludes the building of rental and/or purchase units of housing in the Town of Penfield which are accessible in price to persons of low and moderate income.

5. In this connection, our examination of the zoning ordinance of the Town of Penfield discloses that it is virtually impossible to develop new housing in the Town of Penfield for low and moderate

income households (housing which sells for under $20,000.00 per unit or rents for under $175.00 per unit) without higher governmental intervention (for example, intervention by an agency such as the New York Urban Development Corporation which has power to overrule local zoning restrictions). The Penfield zoning ordinance[1] and allied regulations (for example, sub-division regulations) significantly reduce and even deny the opportunity to build housing for low and moderate income households without any sufficient reason relating to public health, safety, and welfare.

6. Nor does the Penfield zoning ordinance reflect any efforrs to plan comprehensively for the growth of the town- either considered by itself or as a part of the Rochester Monroe County metro-

politan community. Indeed, Penfield's current zoning controls are an obstacle to any solution to the well-documented housing shortage in the Rochester-Monroe County area.[2]

ANALYSIS OF PENFIELD ZONING ORDINANCE REQUIREMENTS

7. Similar to most zoning ordinances, the Penfield zoning ordinance largely represents a collection of arbitrary regulations intended to control the physical development of their jurisdiction. Most of the provisions of the Penfield zoning ordinance are "arbitrary" insofar as they have not been determined scientifically, but rather merely represent preference and, occasionally, customary local practices. There are few provisions within the ordinance

which can be clearly identified as having a direct bearing on public health, safety and welfare. Furthermore, even when certain provisions can be so identified, such provisions frequently go far beyond the protection of public welfare into the realm of the protection of certain special interest - economic social class, and racial.

8. The following analysis reviews the requirements of the Penfield zoning ordinance and certain effects of these requirements on various housing types and development approaches, all of which have a potential for housing low and moderate income households - but a potential which is largely denied by the Penfield zoning ordinance.

9. The following housing types and

development approaches are reviewed: single-family detached; multi-family (including townhouses); mobile homes; and planned unit developments. This analysis primarily concerns zoning requirements which have a substantial impact on the cost of a housing unit: e.g., set-back, lot size, lot width, minimum floor area, or habitable space.

SINGLE-FAMILY DETACHED HOUSING

10. Single-family detached housing on small lots (under 10,000 square feet) with reasonable lot widths (under 50 feet), setbacks (under 40 feet), and floor area requirements (not more than 800 square feet) offers potential housing for low and moderate income households. However, the Penfield zoning ordinance has only two zones specifically permitting

single-family detached housing: Section 29-8 (Residential AA District) and Section 29-9 (Residential A District). Basically, Residential AA requires, at a minimum, 20,000 square foot lots, a lot width of 100 feet and a minimum floor area of 1,500 square feet.[3] Basically, Residential A requires, at a minimum, 15,000 square foot lots, a lot width of 100 feet and a minimum floor area of 1,300 square feet (two-story house). In both cases, 53-78 foot set-backs are required from road right-of-way.[4] These are the minimum requirements governing the development of single-family detached houses in all areas of Penfield - whether such areas receive all municipal services (e.g., water, sewers) or not. Thus, areas with public water

and sewers, which could support more moderate lot sizes and dimensions, (e.g., 7,500 square foot lots, a lot width of 40 feet, and a setback of 35 to 40 feet), offering a wider choice of housing prices typical of well designed urban settings, are mandated to be developed as if they received only rural rather than full urban services.

11. Using generally accepted rules of thumb concerning residential development/building costs, the above Penfield zoning requirements force the price of single-family detached housing far out of reach of low and moderate income households. For example, the Residential AA District requirements have the following effect on housing cost:

	Zoning Requirement	Development Cost Factor	Approximate Cost
Lot Width:	100 ft.	$63/foot	$6,300.00
Setback:	65 ft.	$15/foot	975.00
Floor area:	1,500 sq.ft	$16.80/sq. ft.	25,200.00
(Total Cost of House)			$32,475.00

The Residential A District requirements have the following effect:

	Zoning Requirement	Development Cost Factor	Approximate Cost
Lot Width:	100 ft.	$63/foot	$ 6,300.00
Setback:	65 ft.	$15/foot	975.00
Floor Area:	1,300 sq. ft.	$16.80/sq. ft.	21,840.00
(Total Cost of House)			$29,115.00

Obviously these residential districts do not allow a wide choice in selecting modestly priced housing. The only allowable single-family detached housing is priced out of the reach of virtually all low and moderate income households.

12. Not only are these residential zones excessively restrictive (and costly in effect on housing development) of themselves, but they govern housing development in approximately 96.5 percent of the town (93.9 percent is Residential AA and 2.6 percent is Residential A). Thus, virtually all opportunity to build housing in Penfield is restricted to building for middle to upper income households. Eighty-one percent of the residentially zoned land is vacant (this represents 98 percent of all the vacant land in the town). Thus, 98 percent of all vacant land in Penfield is unavailable for the construction of low and moderate income housing.

MULTI-FAMILY HOUSING

13. Just as the smaller lot single-family detached house offers housing

opportunities for the low and moderate income household, so too does the multi-family structure. But just as the smaller lot single-family detached house is virtually impossible to build today in Penfield, moderately priced rental units and, for that matter, rental units at any price, are also very difficult or even impossible to construct. Multi-family housing is difficult or impossible to build because the Penfield zoning ordinance has provided for only 126 acres (or 0.5 percent of the town's total acreage) where such development can occur. Furthermore, the ordinance allows a maximum density of 12 units per acre - a density far below that considered necessary in order to allow moderate rentals (i.e., a density of at least 16 to 20 per

acre is considered desirable). Other arbitrary requirements of the ordinance which unnecessarily increase the cost of this housing are the requirements of two parking spaces per apartment unit and an enclosed garage for every unit. Of available vacant land, only 64 acres or 0.3 percent is zoned for multi-family housing.

14. In terms of townhouses, another housing type offering potential opportunity for low and moderate income households, the Penfield zoning ordinance requires a minimum of 1,200 square feet of floor area per unit. Such high minimum floor area requirements in combination with density requirements (of nine units per acre) have a significant impact on unnecessarily increasing housing costs and

diminishing housing opportunities.

MOBILE HOMES

15. Mobile homes offer a significant potential for providing high quality, low cost housing for low, moderate, and even higher income households. Typically, mobile homes occur on either individual lots or in so-called mobile home parks. The Penfield zoning ordinance excludes mobile homes from individual lots (outside of mobile home parks). While the Penfield zoning ordinance provides for mobile home parks, only 118 acres are so zoned, and of those, only 33 are still vacant (or 0.1 percent of the total vacant town land). It should also be noted that the acreage zoned for mobile home parks is restricted to one isolated corner of the town. Furthermore

mobile home parks or subdivisions are not provided for in any other districts, including the planned unit development district. It is apparent that mobile homes are given a very second class treatment in the Penfield zoning ordinance - and deny yet another opportunity for low and moderate income housing.

PLANNED UNIT DEVELOPMENTS (PUD)

16. The PUD approach allows, in theory, excellent opportunity to provide for all income levels within a residential project. Even the Penfield zoning ordinance (Section 29-11.22(A)) states that "This article specifically encourages innovations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design, and

siting of dwellings and by the conservation and more efficient use of land in such developments." The objectives of the PUD section of the zoning ordinance also assert the need to meet the needs of residents at all economic lelves (Section 29-11.20(B)). Unfortunately, the zoning ordinance does not follow through on its excellent stated intent and objectives. Rather, in Section 29-11.21 (General Requirements for Planned Unit Development), the zoning ordinance establishes a series of rigid, and frequently excessive, use, dimensional and density requirements which essentially compromise its stated intent and objectives. Instead of encouraging the provision of housing for all economic levels and innovative land use and residential design, the ordinance specifies the percentage of housing types

permitted, specifies minimum floor areas, height, setbacks, and allowable densities, etc. The effect of these requirements is to prohibit, rather than encourage, the development of low and moderate income housing, as well as to discourage and/or prevent improved residential design.

CONCLUSION

17. Overall, the residential control aspects of the Penfield zoning ordinance must be classified as highly restrictive - essentially disallowing the construction of any new housing for low and moderate income individuals. Furthermore, in terms of public health, safety and welfare, there is no apparent justification to support the highly restrictive requirements of the residential (housing) provisions of the Penfield zoning

ordinance. The zoning ordinance is not based on any current comprehensive plan[5] and its provisions (for large lots, etc.) are neither explained nor justified within the ordinance nor within any planning document (known to these reviewers).

The Penfield zoning ordinance is basically an inflexible control mechanism which has the effect of producing economically and racially stratified housing arrangements without apparent regard for the housing needs either of its own citizenry or for the citizenry within the larger metropolitan community.

/s/Christian G. Kling
CHRISTIAN G. KLING

Jurat
Omitted
In
Printing

/s/ Alan J. Taddiken
ALAN J. TADDIKEN

Jurat
Omitted
In
Printing

/s/ Richard C. Farley
RICHARD C. FARLEY

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FOOTNOTES

[1]Zoning, Chapter 29 of the Penfield Town Code.

[2]See the following reports, several of which specifically analyze zoning as an obstacle to building needed housing:

Genesee/Finger Lakes Regional Planning Board, Regional Housing Analyses (January, 1972); Public Controls and Housing (Regional Housing/An Innovative Study), (February, 1972); Senior Citizen Housing Survey: Preliminary Report (October, 1971).

Monroe County Planning Council, Toward a Positive Housing Program: An Initial Assessment of Housing in Monroe County, New York (February, 1970); Summary of Housing Needs (May, 1971)

Rochester Center for Governmental and Community Research, Inc., Housing in Monroe County, New York (April, 1970); Housing in Monroe County, New York: Summary of Research Staff Findings and Recommendations (April, 1970); Town Zoning and the Shortage of Moderate and Low Income Housing in Monroe County, New York (April, 1970).

[3]Minimum floor area for a two-story house (which is generally represented to be the most economical type of single-family detached house to build - and therefore is used in this example).

[4]Since the setback requirement starts at the road right-of-way line, a house would actually be set back an additional 10 to 14 feet from the street pavement.

[5]A master plan was completed for Penfield in May, 1966 by the staff of the Monroe County Planning Council. This plan lacks detailed housing consideration and analysis, and does not reflect either local or metropolitan housing needs.

UNITED STATES DISTRICT COURT
Western District of New York

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKE, Individually and on behalf of all other persons similarly situated, KATHARINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC.,

Plaintiffs

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chariman, JAMES HARTMAN, 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

CIVIL 1972-42

Robinson, Williams, Robinson & Angeloff
700 Reynolds Arcade Building
Rochester, N.Y. 14614
Attorneys for plaintiffs
(Frank A. Alor & Emmelyn Logan-Baldwin, of counsel)

Andrew V. Siracuse, Esq.
Rochester, N.Y.
Attorney for defendants
(Harris, Beach & Wilcox, and James M. Hartman, of counsel)

Sanford J. Liebschutz, Esq.
101 Powers Building
Rochester, N.Y. 14614
Attorney for Rochester Home Builders Association, Inc.

This is an action wherein the plaintiffs seek a declaratory judgment adjudging that the Town of Penfield Zoning Ordinance is unconstitutional and in other respects illegal; they seek to enjoin its administration and a judgment awarding damages, both compensatory and exemplary.

By notice of motion with attached affidavit filed April 6, 1972, James M. Hartman as a member of the firm of Harris, Beach & Wilcox, counsel to Andrew V. Siracuse, attorney for defendants, moves to dismiss the complaint on grounds specifically stated and, in the alternative, for an order for a more definite statement and for an order determining that the action has been improperly instituted as a class action. The motion was argued orally and the respective parties have filed written memoranda in support of their positions.

The plaintiffs Warth, Vinkey, Reichert and Harris, property owners and taxpayers of the City of Rochester, have suffered no measurable or particular direct financial injury occasioned by

the activities complained of. These plaintiffs are not taxpayers of the Town of Penfield. They are not attacking a spending measure of the Town of Penfield. The alleged causal connection between Penfield's zoning laws and the resulting tax burden on residents of Rochester is speculative, remote and indirect. They have no standing to sue. Doremus vs. Board of Education, 342 U.S. 429.

The plaintiffs Ortiz, Broadnax, Reyes and Sinkler have alleged no injury suffered as a result of the Penfield Zoning Ordinance or its administration. These plaintiffs have asserted no provision of the Penfield zoning ordinance nor any act of any defendant which violates the constitution or any federal statute. They have set forth no injury in fact. They have shown no connection between their grievances and the Penfield zoning ordinance or its administration. They have no standing to sue. Data Processing Service, Inc. vs. Camp. 397 U.S. 150.

The plaintiff Metro-Act of Rochester has alleged no facts to show its standing to sue. Sierra Club vs. Morton, 405 U.S. 727 (1972).

The plaintiffs have stated no claim or claims upon which relief can be granted under the equal protection clause or the due process clause of the Fourteenth Amendment. Euclid vs. Ambler Realty Co., 272 U.S. 365; Dandridge vs. Williams, 397 U.S. 471; James vs. Valtierra, 402 U.S. 137.

The plaintiffs have stated no claim or claims upon which relief can be granted under the First Amendment or the Ninth Amendment.

The plaintiffs have asserted no valid claim or claims for which relief can be granted under 42 U.S.C. Sections 1981, 1982 or 1983. They are not entitled to declaratory, injunctive, or monetary relief under those sections.

This suit should not be treated as a class action.

The plaintiffs have moved to add as a party plaintiff Housing Council in the Monroe County Area, Inc. Housing Council has no standing to sue. Sierra Club vs. Morton (supra).

Rochester Home Builders Association, Inc. has moved to intervene. This organization has no standing to sue. It has alleged no injury in fact. Even if it did have standing to sue, this court should, in the exercise of discretion, deny intervention because to allow intervention would unduly delay or prejudice the adjudication of the rights of the original parties and would confuse the trial with collateral issues. Accordingly it is hereby

ORDERED that plaintiffs' motion to add as a party plaintiff Housing Council in the Monroe County Area, Inc., is denied. The motion of Rochester Home Builders Association, Inc. to intervene is denied. This action was improperly instituted as a class action. The complaint is dismissed for the reasons herein stated, with costs.

/s/ HAROLD P. BURKE
United States District Judge

December 27, 1972.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 139, 144—September Term 1973.

(Argued November 27, 1973 Decided April 18, 1974.)

Docket Nos. 73-1748
73-1749

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKEY, Individually and on behalf of all other persons similarly situated, KATHERINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC.,

Plaintiffs-Appellants,

v.

IRA SELDIN, Chairman, JAMES 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 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-Appellees.

Before:

MOORE, HAYES and TIMBERS,

Circuit Judges.

Appeal from orders entered in the United States District Court for the Western District of New York, Harold P. Burke, *Judge,* granting motion to dismiss complaint for lack of standing and failure to state a claim upon which relief could be granted and denying motion of Rochester Homebuilders Association, Inc., to intervene as plaintiffs.

Affirmed.

EMMELYN LOGAN-BALDWIN, Rochester, New York (Frank A. Aloi, Robinson, Williams, Robinson & Angeloff, Rochester, New York, on the brief), *for Plaintiffs-Appellants Warth, Reichert, Vinkey, Harris, Ortiz, Broadnax, Reyes, Sinkler, and Metro-Act of Rochester, Inc.,*

MICHAEL NELSON and RICHARD WESLEY, on the brief, *for Plaintiff-Appellant Housing Council in the Monroe County Area, Inc.,*

SANFORD J. LIEBSCHUTZ, Rochester, New York (Liebschutz, Rosenbloom & Samloff, Rochester, New York, on the brief), *for Intervenor-Appellant Rochester Homebuilders Association, Inc.,*

DOUGLAS S. GATES, Rochester, New York (Harris, Beach & Wilcox, Rochester, New York, on the brief), *for Defendants-Appellees,*

THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING (Norman C. Amaker and Mollie W. Neal, Washington, D.C., on the brief), filed a brief as amicus curiae urging reversal.

HAYS, *Circuit Judge:*

Appellants brought this suit as a class action against the appellees, the Town of Penfield, New York, and the members of its Town Board, Town Planning Board, and Zoning Board. The complaint alleged that the town's zoning laws, on their face and as applied, violated appellants' rights under the first, ninth, and fourteenth amendments to the Constitution of the United States and 42 U.S.C. §§ 1981, 1982, and 1983. The district court dismissed the complaint for lack of standing and failure to state a claim upon which relief could be granted and denied appellants class action status. The court also denied a motion by the Rochester Homebuilders Association, Inc., to intervene as a plaintiff.

We affirm on the ground that appellants lack standing.

I. FACTS

Accepting appellants' factual allegations as true, as we must, we find the following facts relevant. The Town of Penfield is a suburb of Rochester. Its zoning laws are fairly typical for a suburban community. The town has zoned 90% of all vacant land for single family detached housing. The ordinance also fixes minimum lot sizes, floor areas, lot widths, and setbacks for dwellings. Where the ordinance

does permit multi-family dwellings, it limits density to twelve units per acre, limits the portion of the lot which may be occupied by the dwelling, and requires a minimum number of garage and unenclosed parking facilities for each unit.

The ordinance provides for Planned Unit Developments (PUD), which may contain a mixture of single-family and multi-family units. A substantial part of each PUD must be reserved for single-family dwellings with specified minimum acreages.

Appellants' complaint goes beyond the face of the town's zoning laws and further alleges certain affirmative acts which it claims deprived them of their rights. These acts involve various proposals by builders for multi-family housing in Penfield. One Joseph Audino on several occasions proposed a PUD for a site known as Beacon Hills. The Town Planning Board first denied the proposal, then accepted it with certain modifications which reduced the permissible density. The Town Board first accepted the proposal with the modifications, then rescinded the necessary rezoning. The town apparently claims that sewer facilities in the district are inadequate to serve the proposed development. The builder now plans to pump sewage to another district. Neither the builder nor anyone associated with him is a plaintiff in this action.

Penfield Better Homes, Inc., has proposed a project known as Highland Circle for "low moderate income housing." In September 1969 the Planning Board denied the proposal on a number of grounds. The corporation is not a plaintiff nor associated with any plaintiff in this action.[1]

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1 Penfield Better Homes is a member of appellant Housing Council in the Monroe County Area, Inc. However, this does not suffice to give Housing Council standing. See discussion of Housing Council, infra. Appellants also allege that one director of Penfield Better Homes is a member of appellant Metro-Act of Rochester. This even more clearly fails to confer standing. See discussion of Metro-Act, infra.

A proposal by O'Brien Homes, Inc., to build apartment housing was originally denied. The Planning Board has yet to act on a modification of the same proposal.

Appellants also refer to several other proposals for apartment housing which have met with little success. They claim that only two proposals for PUDs have passed the first stage of the necessary three stages of approval. In no case do appellants allege any involvement in these proposals.

Appellants argue that the Penfield zoning laws, on their face and as applied, violate their rights in a number of ways. First, appellant taxpayers of Rochester claim that because of Penfield's zoning laws the City of Rochester must assume more than its "fair share" of low income, tax abated housing property, thereby shrinking Rochester's tax base and forcing property owners in Rochester to pay higher property taxes.[2] Second, appellants claim that Penfield's zoning practices unconstitutionally bar low and middle income persons, especially members of racial minority groups, from residing in Penfield.[3] Intervenor-appellant Rochester Homebuilders Association, Inc. claims that the town's zoning practices have deprived its members of the opportunity to construction housing for low and middle income persons, thereby harming the association's members financially.

Appellants seek a declaratory judgment that Penfield's zoning practices are illegal, an injunction against enforcing the zoning ordinance, an injunction compelling enactment of an acceptable ordinance, and monetary damages.

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2 These appellants also claim that appellees deprive them of a fair share of their federal tax dollars by refusing to permit federally financed housing in the town.

3 Appellants also claim that appellees' practices violate their right to travel under the first, ninth, and fourteenth amendments and their right of peaceable assembly under the first and fourteenth amendments.

II. Standing

Although the Supreme Court has discussed standing to sue on many occasions, certain aspects of the doctrine continue to present difficulties. Moreover, during the last few years the Court has revolutionized the law of standing. In *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U.S. 150 (1970), and *Barlow* v. *Collins,* 397 U.S. 159 (1970), the Court announced a two-pronged test of standing: the plaintiff must allege an "injury in fact," and must seek to protect an interest "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Data Processing,* supra, at 152-153. However, the Court has not explained what constitutes an "injury in fact." See Dugan, *Standing to Sue: A Commentary on Injury in Fact,* 22 Case W. Res. L. Rev. 256, 258 (1971). Moreover, reliance on precedents is especially hazardous in this area. As the Court remarked in *Data Processing,* "[g]eneralizations about standing to sue are largely worthless as such." 397 U.S. at 151. The Court has laid down some rules in certain areas, such as taxpayer, competitor, and environmental suits. Except for appellants who claim standing as taxpayers, however, these rules are not very helpful here.[4]

Standing is an element of justiciability, "surrounded by the same complexities and vagaries that inhere in justiciability." *Flast* v. *Cohen,* 392 U.S. 83, 98 (1968).

The gist of the question of standing is whether the plaintiff has "alleged such a personal stake in the outcome of

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4 In *Data Processing* the Court acknowledged the limited authority of standing cases from one area in relation to cases in other areas:

> "*Flast* was a *taxpayer's* suit. The present is a *competitor's* suit. And while the two have the same Article III starting point, they do not necessarily track one another." 397 U.S. at 152 (emphasis in original).

the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). See also *O'Shea* v. *Littleton*, —— U.S. ——, 94 S. Ct. 669, 675 (1974); *Flast* v. *Cohen*, supra, at 99.

A. *Appellant Taxpayers of Rochester*

Appellants Vinkey, Reichert, Warth, and Harris own land within the city of Rochester. They claim that the Penfield zoning laws exclude low and moderate income persons, thereby requiring Rochester to permit more than its "fair share" of tax-abated housing projects. This shrinks the tax base of Rochester, which then must impose higher tax rates on appellants and others similarly situated in order to meet its fiscal needs.

As a general rule the interests of a federal taxpayer in federal expenditures are too "minute and indeterminable . . . fluctuating and uncertain" to provide a basis for standing. *Frothingham* v. *Mellon*, 262 U.S. 447, 487 (1923). The rule applies equally to state taxpayer suits in federal courts. *Doremus* v. *Board of Education*, 342 U.S. 429 (1952). In *Flast* v. *Cohen*, 392 U.S. 83 (1968), the Court created an exception to the rule: a federal taxpayer may contest measures alleged to violate "specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power." Id. at 103.

Appellants do not allege a violation of a "specific constitutional limitation" on taxing and spending. Indeed, they do not even allege that Rochester's taxes or expenditures are unconstitutional. They allege only that certain acts of appellees which do not involve taxing or spending have operated to raise their taxes.

In *Flast* the Court stated that its decision was "consistent with the limitation upon state-taxpayer standing

in federal courts in *Doremus* . . . ." 392 U.S. at 102. Certainly if taxpayer standing was not justified in *Doremus* because plaintiff's interest was too remote, standing cannot be found here, where there is such an attenuated line of causation between the allegedly illegal acts (Penfield's zoning laws) and the injury of which appellants complain (higher property taxes). A great variety of actions taken by a state or a municipality might arguably affect the rate of taxation in other states or towns. This hardly gives taxpayers in the affected states or towns standing to contest all such actions.[5]

B. *Individual Appellants Claiming Standing on Other Grounds*

Appellants Broadnax, Sinkler, and Reyes are blacks and Puerto Ricans of low income who reside in Rochester. Each has sought but failed to obtain housing in Penfield. They allege that Penfield's zoning laws effectively bar low income housing within the town and therefore exclude them and persons similarly situated from living in Penfield. Appellant Ortiz lives in Wayland, New York, and works in Penfield. He makes the same allegations as appellants Broadnax, Sinkler and Reyes, and in addition claims as injury the commuting expenses he incurs because he cannot live in Penfield.

None of the appellants claims that anyone has refused to sell or lease housing or property to him. Indeed, appellants concede that they cannot afford any existing housing within the town. They do not claim to have any interest in land within the town or any connection with any plan to construct housing for them within the town.

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5 Appellants also base a claim of standing on their status as federal taxpayers. See note 2, supra. This claim does not attack a spending measure of Congress and is not based on a specific constitutional limitation on spending. The claim therefore fails.

The Supreme Court has not established guidelines as to what constitutes an injury in fact for purposes of standing in this area. Nor have the lower federal courts, in this circuit or otherwise, considered the specific issue raised here. Appellants cite several federal cases in which a party was held to have standing to challenge zoning on civil rights grounds. In most of these cases the party attacking zoning had an interest in land.[6] A few cases in other circuits have taken a short step beyond this. In *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972), and *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), developers contested zoning which

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6 In *Kennedy Park Homes Ass'n, Inc.* v. *City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971), the Diocese of Buffalo had committed itself to sell thirty acres of land it owned in Lackawanna to Kennedy Park Homes for low-income housing. Both the Diocese and the Association clearly had an interest in land.

In *Township of River Vale* v. *Town of Orangetown*, 403 F.2d 684 (2d Cir. 1968), this court held that plaintiff town had standing to sue defendant town which had rezoned property adjoining plaintiff on the allegation that the zoning was arbitrary and capricious and would injure plaintiff by reducing its revenues. We held that plaintiff need not be a resident of the town whose zoning practices were challenged. Id. at 686. We did not abandon the requirement, which plaintiff clearly met, that a party have a personal stake in the outcome. The holding reflects the obvious point that landowners may be affected by the zoning of adjoining properties, and that this interest suffices to confer standing. Cf. 3 K.C. Davis, Administrative Law Treatise § 22.16 at 283 (1958).

Neither *Boraas* v. *Village of Belle Terre*, 476 F.2d 806 (2d Cir.), prob. juris. noted, 94 S. Ct. 234 (1973), nor *Norwalk CORE* v. *Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968), involved the kind of standing issue presented here. In *Boraas* we granted standing to unrelated persons living together in an apartment to challenge an ordinance limiting the right of unrelated persons to live in the same dwelling. In *Norwalk CORE* persons displaced by urban renewal had standing to challenge the city's procedures in relocating them. In each case plaintiff's personal stake was clear.

In most of the civil rights challenges to zoning in other circuits plaintiffs also had some interest in land sufficient to warrant standing. See *Southern Alameda Spanish Speaking Org.* v. *City of Union City*, 424 F.2d 291 (9th Cir. 1970); *Sisters of Providence* v. *City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971); *Crow* v. *Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd, 457 F.2d 788 (1972) (per curiam).

prevented them from building low income housing projects on parcels of land which they owned. In both cases the court permitted potential residents of the proposed projects to join as plaintiffs. Without deciding whether we approve these holdings, we note that the standing of potential residents in these cases presents an issue very different from the one presented here. The focusing of the controversy on a particular project asures "concrete adverseness." The concrete possibility of obtaining new and better housing gives potential residents a personal stake in the outcome. The relief requested is not hypothetical.

The requirement of standing helps to insure that "the questions will be framed with the necessary specificity . . . to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution." *Flast* v. *Cohen*, 392 U.S. 83, 106 (1968). See also *Barlow* v. *Collins*, 397 U.S. 159, 167, 171 (1970) (Brennan, *J.*, concurring). In the instant case appellants cannot establish this specificity and the necessary "concrete adverseness."

The doctrine of standing also turns on whether the party in question has a "personal stake in the outcome of the controversy." *O'Shea* v. *Littleton*, —— U.S. ——, ——, 96 S. Ct. 669, 675 (1974); *Sierra Club* v. *Morton*, 405 U.S. 727, 732 (1972); *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). Appellants lack such a personal stake. The essence of their complaint is that the zoning practices of the appellees are unfair. However true that charge may be, absent a showing that appellants themselves have suffered from these practices they lack standing to challenge them. Their dispute with appellees reflects primarily a political disgruntlement. They indicate no benefit which a judgment favorable to them would produce. They allege neither

capability nor intent to construct housing for themselves on any land which the court might order rezoned as an element of relief.

Indeed, appellants' prayer for relief demonstrates their lack of personal stake in the outcome and their lack of standing. They request equitable relief in the form of a declaration that the Penfield zoning ordinance is unconstitutional, an injunction against enforcing it, and an injunction requiring enactment of a new ordinance. Granting this relief would not clear roadblocks to currently planned housing which appellants hope to occupy. It would not benefit appellants in any way in the foreseeable future. The prayer for relief also illustrates the lack of specificity. Appellants request neither zoning of any particular parcels nor approval of any specific projects.

In *O'Shea* v. *Littleton,* —— U.S. ——, 94 S. Ct. 669 (1974), plaintiffs brought suit alleging that defendants, various judicial and law enforcement officials of Alexander County, Illinois, were administering the county's criminal justice system in a discriminatory manner so as to deprive all black and some white citizens of a variety of constitutional rights. The Supreme Court held that plaintiffs had failed to state an Article III case or controversy. 94 S. Ct. at 675. The Court's opinion noted that the complaint "allege[d] injury in only the most general terms" and that "[n]one of the named plaintiffs is identified as having himself suffered any injury in the manner specified." Id. at 676. The threat of injury to the named plaintiffs was too "abstract," "conjectural," and "hypothetical" to give them a "personal stake in the outcome." Id. at 675.

Here we have a similar case. Appellants alleged that appellees' zoning practices deprive low income minority groups of equal protection. However, none of the named plaintiffs has suffered from any of the specific, overt acts

alleged. Thus appellants' personal connection with these practices is too abstract, conjectural, and hypothetical to establish an Article III case or controversy.

C. *Metro-Act of Rochester, Inc.*

Appellant Metro-Act of Rochester, Inc., is a non-profit corporation whose main purpose is "to alert ordinary citizens to problems of social concern." Low income housing is one area to which the organization has directed its attention. Appellant claims standing on a number of grounds, none of which is adequate.

First, appellant claims standing because of its "special interest" in housing matters. The Supreme Court's decision in *Sierra Club* v. *Morton*, 405 U.S. 727, 735-40 (1972), rejected this as a basis for standing.

Second, Metro-Act claims standing as a taxpayer of the city of Rochester. This approach fails for the same reasons stated above with respect to individual taxpayer appellants.

Third, appellant claims standing as representative of its low income members who seek housing in Penfield Since we have decided that these individuals lack standing, the organization cannot derive standing from them.

Fourth, Metro-Act claims standing on the ground that one director of Penfield Better Homes is one of its members. We have decided that membership of Penfield Better Homes in Housing Council does not suffice to confer standing. (See discussion, infra.) It follows that membership of a director in Metro-Act certainly cannot confer standing.

Finally, relying on *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), Metro-Act claims standing as representative of its members who live in Penfield.[7] In *Trafficante* the plaintiffs, tenants of an apartment complex, challenged the allegedly discriminatory rental practices of their landlord. They claimed as injury the loss of social, business, and professional benefits of living in an integrated community and embarrassment of being stigmatized as living in a "white ghetto." They based their claim of standing on section 810(a) of the Civil Rights Act of 1968, 42 U.S.C. § 3610(a), which gives standing to "[a]ny person who claims to have been injured by a discriminatory housing practice . . . ." The Supreme Court held that plaintiffs had standing.

Trafficante is distinguishable from the present case. We have emphasized that generalizations about standing are largely useless. This is especially true of a case which focused on the peculiarities of one piece of legislation. The Court in *Trafficante* looked to the legislative history and administrative interpretation of section 810(a). 409 U.S. at 210. The Court also considered the practical difficulties of enforcing the Act and concluded that Congress must have intended persons in plaintiffs' position to be able to sue as private attorneys-general. Metro-Act has presented us with no similar factors in this case.

The concurring opinion of Justice White, joined by Justices Blackmun and Powell, further suggests that the holding of *Trafficante* should apply only to cases under the Civil Rights Act of 1968. Justice White expressed doubt that. in the absence of section 810(a), the suit would present an Article III case or controversy. 409 U.S. at 212. The six remaining justices explicitly declined to consider

7 Appellants' complaint did not include residents of the Town of Penfield as a class which they purported to represent. Metro-Act has, however, made this claim on appeal.

whether plaintiff might also have standing under 42 U.S.C. § 1982. 409 U.S. at 209 n.8. The reasoning of the majority opinion and the explicit statement of the three concurring justices strongly indicate that a majority of the Court would not find standing for Metro-Act on this basis.

D. *Housing Council in the Monroe County Area, Inc.*

Housing Council in the Monroe County Area, Inc., is a non-profit corporation whose purpose is to "combat community deterioration through the elimination of racial and economic discrimination in housing." Its membership includes public and private agencies and organizations seeking to improve the housing of persons of low and moderate income. Plaintiffs below moved to add Housing Council as a party plaintiff. The district court held that Housing Council lacked standing. We agree.

Housing Council alleges no injury in fact to itself. To the extent that it bases standing on representation of various groups of residents in the metropolitan Rochester area, its claim fails for the same reasons given in our discussion of other appellants.

Housing Council also claims standing because Penfield Better Homes Corp., one of its members, has been denied approval of a specific housing project proposal. We note first that if this allegation conferred standing on appellant it would confer only that standing which its member would have had. Housing Council has not indicated that it limits its suit to the dispute over the proposal of Penfield Better Homes. Rather it joins in the more general and abstract claims of other appellants.

We think that Housing Council lacks standing to vindicate even the more limited claims which Penfield Better Homes might have against appellees. It is highly doubtful that an organization has standing to represent its mem-

bers in most cases under the Civil Rights Act. See *Aguayo* v. *Richardson*, 473 F.2d 1090, 1098-1101 (2d Cir. 1973), cert. denied, 94 S. Ct. 900 (1974). Certainly the special circumstances favoring organizational standing in cases like *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 458-60 (1958), and *NAACP* v. *Button*, 371 U.S. 415, 428-29 (1963), are absent here. Alleged specific harm is limited to a single member. There is no reason why Penfield Better Homes cannot assert its own rights as well as or better than Housing Council.

Housing Council therefore lacks standing.

E. *Rochester Homebuilders Association, Inc.*

Rochester Homebuilders Association, Inc., is a nonprofit trade association of persons and companies engaged in various phases of the residential construction industry in the metropolitan Rochester area. In the court below the association moved, pursuant to Fed. R. Civ. P. 24(b), to intervene as plaintiffs in this action. The district court denied the motion on the grounds that the association lacked standing and that its intervention would create undue delay or prejudice. We agree that the association lacked standing and do not reach the Rule 24(b) issue.

As we noted above, an organization may have standing to assert the rights of its members where there are special circumstances. The rule applies to trade associations as well as to other organizations. *National Motor Freight Traffic Ass'n* v. *United States*, 372 U.S. 246 (1963) (per curiam). We find no such special circumstances here.

Moreover, as we noted above with respect to appellant Housing Council, an organization seeking to assert rights of its members has only that standing which its members would have had. Rochester Homebuilders has not tied its claim of standing to specific acts of appellees which have

affected its members. Instead it makes the same claims as other appellants. The members of the association would not have standing to raise these claims. The association cannot derive such standing from them.

Affirmed.