VL v. Carteret (Old Bridge) (1985)

memo in support of VL ~~P/S~~ π's motion for a court imposed remedy

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URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs, v. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - MIDDLESEX COUNTY No. 4122-73 (Old Bridge)

MEMORANDUM OF LAW IN SUPPORT OF

URBAN LEAGUE PLAINTIFFS' MOTION FOR

A COURT-IMPOSED REMEDY

Nine years ago, on July 6, 1976, this Court directed the Township of Old Bridge to enact a constitutional zoning ordinance within 90 days. The Township chose not to appeal that Judgment, thereby forfeiting the 6 1/2 year stay of enforcement afforded by the Appellate Division, but also chose not to comply with the Judgment. One year ago, on July 13, 1984, this Court held that its 1983 zoning ordinance revision was unconstitutional, relying on the Township's stipulation to that effect, and ordered it to agree with plaintiffs on a compliant ordinance within 45 days or to have a Court-appointed Master recommend such an ordinance within 45 days of appointment. On November 13, 1984, this Court appointed such a Master and directed submission of recommendations for ordinance revision within 45 days. On January 13, 1985 that deadline was extended to January 31. Five additional months of negotiation have now led to an impasse. Plaintiffs submit that nine years of noncompliance and one year of intensive efforts at voluntary agreement at compliance are enough. It is time to give the low income plaintiffs their remedy, terminate litigation, and commence construction.

The Township of Old Bridge has already been given more than its fair share of extensions under the most liberal reading of the State Supreme Court's mandate in Mount Laurel II. The Court stated that:

> If the trial court determines that a municipality's zoning ordinance does not satisfy its Mount Laurel obligation, it shall order the defendant to revise it.... The trial court shall order the revision to be completed within 90 days of its original judgment against the municipality. For good cause shown, a municipality may be granted an extension of that time period.
>
> To facilitate this revision, the trial court may appoint a special master to assist municipal officials in developing constitutional zoning and land use regulations....
>
> The master will work closely not only with the governing body but with all those connected with the litigation, including plaintiffs, the board of adjustment, planning board and interested developers. He or she will assist all parties in discussing and negotiating the requirements of the new regulations, the use of affirmative devices, and other activities designed to conform to the Mount Laurel obligation...At the end of the 90 day period, on notice to all the parties, the revised ordinance will be presented in open court and the master will inform the court under oath, and subject to cross-examination, whether in his or her opinion that ordinance conforms with the trial court's judgment....
>
> ...if no revised ordinance is submitted within the time allotted, the trial court may issue such orders as are appropriate...

92 N.J. 158, 281-85, 456 A.2d 390, 453-56 (1983).

In going on to explain the appropriateness of direct court action, the Supreme Court discussed the very town before this Court on this motion:

> It is now five years beyond Madison. The direct orders we issued to the municipality then, 72 N.J. at 553, may appropriately now be issued by trial courts initially and with complete specificity. And that which we intimated in Madison might be the ultimate outcome after so many years of litigation -- adoption by the trial court of a master's recommendations to achieve 'compliance', id. at 553-54, -- may now be the appropriate initial judicial remedy at the trial level.

Id. at 286, 456 A.2d at 456.

It is hard to know whether the "initial judicial remedy at the trial level" in this case was the Judgment of July 9, 1976, the Order and Judgment of July 13, 1984 or the Order of November 13, 1984. Indeed, with regard to this Township the "initial judicial remedy" may have been Judge Furman's order in 1971 invalidating Old Bridge's 1970 zoning ordinance in Oakwood at Madison, Inc. v Township of MAdison, 117 N.J. Super 11, 283 A.2d 353 (Law Div. 1971). Whether the Court considers us to be approaching the fourth, fifth or sixth remedy, it is entirely clear that the State Supreme Court has explicitly held that this Court's adoption of a master's recommendations to achieve compliance in this municipality is appropriate.

There can be no doubt that this remedy is now also necessary. The Township Council has already rejected two specific compliance plans worked out by the parties with the assistance of the Master, without proposing viable alternatives. The Township Council appears to have approved at one point a compliance package, although the contradictory statements by the Township Attorney now leave us uncertain as to whether the Township Council did what we were told it was doing or knew what it was apparently doing. (Neisser Affidavit Paras. 6,7, and 11 and Exhibit F.) In any case, it is clear that further discussion and negotiation, even with the assistance of the able and tireless Master, will not produce compliance, because, as the last 15 years of litigation demonstrate, the Township is fundamentally opposed to the concept of Mount Laurel compliance and therefore

cannot or will not negotiate realistically. To give the Township now a further chance to propose a compliance plan, with the inevitability of further delays, and then have a compliance hearing on that proposal would give Old Bridge the opportunity to swallow whole the fruits of the Urban League's victory, instead of having the one bite at the apple to which it is entitled under Mount Laurel II.

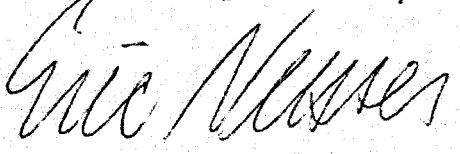
Clearly the parties should be allowed to submit now their compliance proposals free of the constraints of settlement. And clearly the Court should have the Master's recommendations on those proposals as well as her own recommendation for compliance, if different, before proceeding to entry of a remedy. But because all the parties and the Master are intimately familiar with the specific housing market and infrastructure needs in Old Bridge and with all the previous proposals and objections thereto, there is no longer a need for delay. The Urban League plaintiffs are prepared to submit their proposals for compliance now. The Township Council has met frequently on the subject and has only recently decided to hold weekly meetings on Mount Laurel for the immediate future. The other parties have been able to produce extensive and detailed reports and proposals on relatively short notice in the past, most recently on July 15. Thus, we see no reason why the parties cannot submit their proposed compliance plans to the Master within 10 days of the decision on this motion and why the Court cannot reasonably ask the Master to submit her recommendations for compliance to the Court within 20 days

thereafter. If either the Urban League plaintiffs or the Township object to her recommended compliance plan,[1] then we would ask the Court to set the matter down for a compliance hearing at the earliest date consistent with this Court's already heavy schedules of hearings concerning compliance by municipalities with their constitutional obligations.

Put simply: "The obligation is to provide a realistic opportunity for housing, not litigation." 92 N.J. at 199, 456 A.2d at 410.

Dated: July 25, 1985

Respectfully submitted,



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1 Because it is the Urban League which is seeking a remedy and because the new statute may place some limits on the Court's ability to provide a remedy at this time to the builder-plaintiffs, we believe that a compliance hearing would be necessary only if either we or the Township objected to the Master's recommendations.