

U.L. v. Cateret, Old Bridge

1985

- Cover letter to Old Bridge Counsel re enclosed proposed language

encl: proposed language of reopener clause

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THE STATE UNIVERSITY OF NEW JERSEY
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TO: ALL OLD BRIDGE COUNSEL
RE: Urban League v. Carteret
FROM: John M. Payne
DATE: December 13, 1965

In response to concerns that were expressed at our meeting yesterday, I am enclosing proposed language to deal with the question of dispersal of the Mount Laurel units throughout the developments, and also language to deal with the possibility of reopening the Order and Settlement Agreement in light of subsequent legal developments.

Please let Eric or me have your comments at your earliest convenience.

REOPENER CLAUSE

Because this Order and Settlement Agreement is intended to govern the rights of the parties for a period of twenty years, the parties recognize that it is appropriate to provide for changes that would not be appropriate in a shorter agreement. Specifically, this section provides for possible modification of the Order and Settlement Agreement as a result of changes in the law generally applicable to Mount Laurel issues.

1. Motion to reopen. Beginning on January 1, 1992, any party may move the Court to reopen this Order and Settlement Agreement because of a new statute or a new rule of a state agency, of general applicability and dealing with Mount Laurel issues, which but for the existence of this Order and Settlement Agreement would govern the relationship of the parties concerning the subjects of this Order and Settlement Agreement. It is expressly intended that such a motion could result in either an increase or a decrease in the rights and obligations of the parties to this Order and Settlement Agreement.

2. Consensual modification. Upon such a motion, the parties shall first have thirty days to consult and to attempt to reach agreement on a modification of this Order and Settlement Agreement satisfactory to all parties. Upon application by any party and in its discretion, the Court may request the Master to assist the parties in these negotiations.

2. ~~Consent and modification.~~ The parties hereby agree that this Order and Settlement Agreement may be modified by the court as follows:

a. Upon submission of a proposed modification as specified in paragraph 2 above, the Master shall review the proposal and thereafter the Court shall consider the proposal and the Master's report and determine whether to permit the modification,

b. In the absence of a proposed consent modification, the Court shall amend the Order and Settlement Agreement if it appears appropriate and just to do so. In reaching its determination, it is the intention of the parties that the Court should consider, inter alia, the following factors:

i. Whether applicable principles of law normally permit or prohibit retroactive application of the type of new law or rule sought to be applied.

ii. The impact of the proposed modification on the "realistic opportunity" to construct lower income housing. Without limiting other forms of impact, the Court should consider the degree to which developments subject to this Order and Settlement Agreement have been economically and socially successful up to the date of the proposed modification and whether failure to modify may place these developments at a significant competitive disadvantage over the entire twenty-year period of this Order and Settlement Agreement.

iii. The degree to which the party or parties seeking modification have adhered in good faith to the existing provisions of this Order and Settlement Agreement.

iv. The degree to which any party or other affected person may be irreparably injured by modification because of legitimate reliance on the Order and Settlement Agreement as it presently exists,

4. Procedure. Before permitting any modification of this Order and Settlement Agreement, the Court shall permit all parties to be heard and to present such legal arguments and factual proofs as shall be appropriate. During the pendency of any motion to modify, the existing Order and Settlement Agreement shall remain in full force and effect unless the Court determines that to do so would cause irreparable injury to a party or other affected person, in which case the Order and Settlement Agreement shall be modified on an interim basis pending the outcome of the motion to the minimum extent possible.

5. No other modifications. Except pursuant to motions based on this provision, the parties hereby agree that there shall be no modification of this Order and Settlement Agreement.