

UL v Carteret

C. 1983 (2)

Pl: N. Bruns & Old Bse

12/15

draft

Letter w/ Affidavit attached

Pgs 7

CA 000237L

From the desk of ...

Eric Neisser

12/15

Alan

Janet, Bruce, John, Louie and John

Attached is a very rough draft of the first part of an affidavit ~~for~~ for a motion to include North Brunswick and Old Bridge. I would like to discuss them with you on Tuesday, when I hope that Alan will have concluded his analysis of the towns' ordinances for attachment. The remainder of the affidavit will state why it is in everyone's interest to have a joint trial on joint issues-- and suggest that we would be agreeable to a 2 or 3 week dealy in the joint trial if he thinks it only fair to the two new towns and that we are of course agreeable to do the complaince hearings on these two towns last.

Hope to speak with some or all of you on Tues.

Rutgers Constitutional Litigation Clinic

Eric

v.
CARTERET

ERIC NEISSER, being duly sworn, deposes and says:

2. I submit this affidavit in support of plaintiffs' Motion for a Trial on Remedy against the Townships of Old Bridge and North Brunswick and for a Joint Trial with the other seven defendant townships on the common issues of region, regional need and fair share allocation.

3. This action was originally filed on July 23, 1974
against 23 townships in Middlesex County, including
Old Bridge and North Brunswick. Those two towns/hips
have been defendants in this action since that date.

unduly burden plaintiffs and might impair the court's ability to design individual municipal remedies for a regional problem. However the court also concluded that certain proofs required individual treatment, in particular, proofs regarding the specific provisions of each ordinance being attacked." ~~and~~
South Burlington County NA.A.C.P. v. Township
of Mount Laurel, et al. 92 N.J. 158, ___, 456 A.2d 390, 485-486 (original emphasis).

FN74: If severance were granted, plaintiffs ~~xxx~~ would presumably have to proceed individually against each defendant municipality.

Judge Furman's denial of the motion for severance was never challenged or considered on appeal and thus remains the law of this case.

5. On May 4, 1976, after a two month trial involving all 23 defendants, including Old Bridge and North Brunswick, Judge Furman issued a written opinion. He ^{unconditionally} dismissed Dunellen as a "developed" community, conditionally dismissed the claims against 11 other communities based on an agreement with plaintiff at trial and found the zoning ordinances of the remaining 11 municipalities including Old Bridge and North Brunswick, to be in violation of the New Jersey Constitution.

6. Pursuant to this opinion, on July 9, 1976, Judge Furman entered a Judgment in this action which in Paragraph 15 ordered defendant "Township of Madison (Old Bridge)...to enact or adopt new zoning ordinances to accommodate their respective fair share allocation of low and moderate income housing" and ~~ordered defendant Township of North Brunswick &..~~ shall alternatively enact or adopt new zoning ordinances to accommodate their respective fair share allocation of low and moderate income housing ~~or shall~~ rezone all of their remaining vacant land suitable for housing in order to permit or allow low or moderate income housing on a ratio of 15% low and 19% moderate income housing units." ^{Finally} In addition, in paragraph 16 the Court ~~ordered~~ ^{that} "All of the various defendants shall cause the enactment or adopt of their respective zoning ordinance ~~amendment~~ ^{to be completed} within ninety (90) days of the entry of this Judgment," in paragraph 17 ~~ordered~~ that "This Court retains jurisdiction over the pending litigation for the purpose of supervising the full compliance with the terms and conditions of this Judgment" and in paragraph 18 that "Applications for special relief from the terms and conditions of this ~~XX~~ Judgment may be entertained by this Court." For the Court's convenience, a complete copy of the July 9, 1976 Judgment is attached hereto as Exhibit A.

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The docket sheet and files of this Court confirm that

7. ~~defendant~~ Townships of Old~~g~~ Bridge and

North Brunswick ~~has~~ did not appeal this Judgment, an order of dismissal or of have not ~~xxxxxx~~ obtained ~~xxxxxx~~ of compliance with this Judgment, and ~~xxx~~ have not obtained any special relief from the Plaintiffs' expert is prepared to testify terms and conditions of this Judgment, ~~xxxxxx~~ that they also have not enacted or adopted zoning ordinance amendments that would satisfy this Judgment.

8. In contrast to defendant Townships of Old~~g~~ Bridge and North Brunswick, ~~eight~~ ^{seven} Townships did appeal the Judgment and two Townships (Sayreville and Edison) did obtain Orders of Dismissal or Compliance ~~xx~~ from Judge Furman subsequent to the entry of the Judgment of ~~xxxxxx~~ July 9, 1976. Plaintiffs therefore are not seeking any further proceedings against the Townships of Sayreville and Edison.

9. The appellate proceedings can be briefly summarized here. Initially on August 18-20, 1976 eight defendants appealed--Crmanbury, East Brunswick, Montroe, Piscataway, Plainboro, Sayreville, South Brunswick and South Plainfield. On August 31, 1976 plaintiffs cross-appealed against those eight townships and filed a Notice of Appeal against ~~the~~ 14 other townships--the 11 which were conditionally dismissed and Old~~g~~ Bridge, North Brunswick and Edison which had not appealed. Plaintiffs' appeal challenged Judge Furman's ~~xxxx~~ judgment as not requiring sufficient steps to insure a realistic opportunity for ~~xxx~~ low and moderate income housing

and for rejecting the Housing Act claim of racial discrimination.

The Township of North Brunswick filed a brief and appeared at oral argument in the Appellate Division, in its opinion of August 1979, granted the appeal of the seven remaining appealing towns, reversed Judge Furman's order and dismissed the action against them. The Appellate Division's opinion did not separately address plaintiffs' appeal because it concluded that the judgment, insofar as it went was in error, ~~xxxxxxxxxxxxxxxxxxxx~~ and reversal and dismissal of the case was necessary.

He Appellate Division refused to permit Oldg Breidge to file its ~~xxxxxx~~ because it

was untimely. *Exhibit 87*

attached as exhibit

~~2 (CONF??)~~
~~or in the~~

10. ~~xxx~~ The plaintiffs petitioned the New Jersey

Supreme Court for certification, and served notice of that upon 12 townships, including Old Bridge and North Brunswick. Attached as Exhibit ~~is~~ ~~xxx~~ a copy of the plaintiffs' Certificate of Service of the Notice of Petition for Certification. ~~However~~ Apparently

because the plaintiffs were appealing the adverse ruling of the Appellate Division on the seven townships' appeal of Judge Furman's Judgment and because only those seven towns filed briefs and ~~xxx~~ appeared at oral argument in the Supreme Court, 92 N.J. at 158---

456 A.2d at 390, 407-09, the Supreme Court considered only those seven townships to be "now before this Court." Id. at ___, 456 A.2d at 489. In reversing the Appellate Division ~~xxx~~ with regard to those seven townships, the Supreme Court made clear that "On remand there need be no trial concerning non-compliance with the Mount Laurel ~~xxx~~ obligation... All that is at issue is the determination of region, fair share and allocation and, thereafter, revision of the land use ordinances and adoption of affirmative measures to afford the realistic opportunity for the requisite lower income housing" 92 N.J. at ___, 456 A.2d at 489-490.

It is clear, however, that the Court anticipated ^{such} further proceedings ~~to include~~ Judgment ~~to include~~ ~~action~~ to enforce the ~~judgment~~ against the non-appealing towns such as Old Bridge and North Brunswick because ^{two paragraphs}

in ^{the} discussing proceedings on remand, the Court stated that the trial court, in determining fair share, must take into account ~~xxx~~ areas within particular municipalities of non-growth areas. ^{and} The Court added "We believe that Plainsboro, Cranbury, South Brunswick, North Brunswick, East Brunswick and Monroe all contain some non-growth as well as growth areas."

Id. at ___, 456 A.2d at 490 (emphasis added).

The Court's
regranting
certification
specifically
describes
the
docket
#A33-76
which was
by appeal
from the
Appellate
Division
2 copy of
the order
granting
certification
is attached
1 Exhibit
C-101

11. With regard to further trial proceedings, in trial court, Old Bridge never made any application to Judge Furman after the Judgment. In Contrast, the Township of North Brunswick moved ²³ for an Order of Dismissal on February 2, 1977. On May 20, 1987, after extensive review of additional materials, plaintiffs submitted a 7-page letter to Judge Furman setting forth plaintiff's reasons for opposing dismissal of North Brunswick. The Judge never ruled on the town's motion. The last matter in plaintiffs' file concerning that motion is a letter from plaintiff's counsel to North Brunswick's counsel, dated _____ 1979, asking the latter to schedule a date for the motion. Attached as Exhibits ____ and ____ are the plaintiffs May 20, 1977 and _____ 1979 letters. Apparently North Brunswick took no further steps because the Appellate Division reversed Judge Furman's order on September 1979.

12. Because the Townships of Old Bridge and North Brunswick never appealed the Judgment against them, never obtained a modification of the Judgment, and never obtained an order of dismissal or compliance with the Judgment the only remaining question is whether they have in fact complied with the judgment since its entry. ~~As a result of the decision~~ Both Townships have in fact amended their ordinances since the Supreme Court's decision on January 20, 1983. However, ~~as a result of the decision~~ in the opinion of plaintiffs and their expert witness, Alan Mallach, the ~~Township of Old Bridge~~ Zoning Ordinance adopted May -- 1983 by the Township of ____ and the Ordinance adopted ____ 1983 by the Township of Old Bridge, fail in many significant respects to comply with Judge Furman's order and the Supreme Court's decision. Primarily, they fail to require mandatory set asides for lower income housing. A copy of Alan Mallach's analysis of the ordinances of Old Bridge and North Brunswick, ~~which~~ which is a Supplement to Appendix B of his Report previously filed with the Court, is attached hereto as Exhibit ____.

John [unclear]