U.L. v. Carteret

C.r.g 1983 (?) 12/15

pl: N. Brows & Old Roses

draft Letter Mathdant attached





From the desk of ...

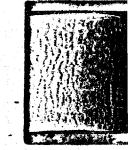
Eric Neisser

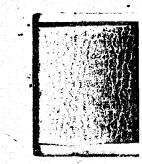
12/15

₹A**A**an Janet, Bruce, John, Louie and John

XA#tached is a very rough draft of the first part of an affidavit 「「「「「」」 for a motion to include North Brunswick and Old Bridge. I would like to discuss themwith you on Tuesday, when I hope that Adan 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 Clinice





URBAN LEAGUE

v. Carteret

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AFFIDAVIT

ERIC NEISSER, being duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in this action.

2. I submit this affidavit insupport of plaintiffs' Motion for a Trial on Remedity against the Thomships 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.

XXXXX

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

%xxRuxsuantxtexthisxepinien;xenxtuixxfxxidix such allegaions reguired the joint presence of all defendnedts. tundnet the trial court also concluded that a total severance would 74 undnet burden plaintiffs and might impair the court's ability to design individual municipal remedies for a regional problem. However the court also conlouded that certain proofs required individual treatment, in particular, proofs regarding the specific provisions of each ordinance being attacked."and the spe

(original emphasis).

FN74: If severance were granted, plaintiffs **RKH** would presumably have to proceed individual on rite t each defendent municipality Judge Furman's denial of the motion for severance was never cahllenged 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, unconditionally Judge Furman issued a written opinion. He/dismissed Dunellen as a "developed" community, conditionally dismissed the claims against 11 other cmmunities based on an agreement with plaintiff at trial and found the zoning ordinainces of the remaining 11 munipcalities including Oldge 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 inmome ordered defendant housing" and exerterxdergerad "Townshipof North Bruwwsick t.. shall alternatively enact or adopt new zoning ordinancesto accommodate their respective fair share allocation of 10 w and moderate income housing AEXEREXIXIXERIIY... Or RAIIX shall rezone all of their remaining vanant land suitable for housin in order to permit or allow low ormoderate inocme housing on a ration of 15% low and 19% moderate income housing units." In addittion, in pagagrpah 19 the Court that ordered "Allofthe Various defendants shall cause the enactment or adopt of their respective zoning ordinance an angroup to be completed xx to mple within ninety (90) days of the entry of this Judgment in paragraph 17 ordered that "This Court retains jursidiction oer thepending litigation for the purpose of supervising the full complaince with the terms and conditions of this Judgment," and in paragraph 18 that "Applications for specal relief from the terms and conditions of this XX Judgment may be enterained by this Court." For the Court's cownveneince, a complete copy of the July 9, 1976 Judgment is attached hereto as Exhibit A.

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INSERT TO pagagraph 6 of draft

FUrther, in paragraph 21, the Court ordered that %mmkxmf thmskdmfmmdantsrrrfmmmkhipxmfxMadismmf@ldxMridgm};rxxxx YawmskipxmfxNmrkkkRkmswiskmrx. In implement thes judgment the 11 municpalities charged with fair share allocations mustdo morethan rezone not to exclude the possibility of low and moderate income housing in the allocated amounts. Aprovals of multi-faily projducs.. should impose mandatory minimu of low and moderate income kmm units. Density incentives may be set. Mobile homes offer a realistic alternativellITHe 11 munivipaliteis should purse and cooperate in available Federa and sTe subjidy program for new housing and rehabilitioin of substandard housing..? -3-The docket sheet and files of this Court confirme that

7. defendants Townshipsof Oldgexs Bridge and

North Brunswick MEXE did not appeal this Judgment, an order of dimissal or of have not EXERTS obtained EXIMETERS Complaince with this Judgment, and wix have not obtained any special relief from the Plaintiffs' expert is preapred to testify terms and conditions of this Judgment, XANNIXENTE that they also have not enacted or adopted zoning ordinance amendments thatwould satisfy this Judgment.

8. In contrast to defendant Townships of Oldgm Bridge seven and North Brunswick, gight Townships did appeal the Jdggment and two Townships(Bayreville and Edison) did obtain Orders of DIsmissal or Compliance mm from Judge Furman subsequent to the entry of the Judgment of MMEMMER 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 on August 18-20,1976 here. Initially eight defendants appealted--Crmanbury, East Brunswick, Montroe, Piscataway, Plaintboro, Sayreville, South Brunsick and Bouth 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 Oldgm Bridge, North Burunswick and Edison which had not appealed. Plaintiffs' appeal challenged Judge Furman's under judgment as not requiring sufficient steps to insure a realistic opportunity fortax lww 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 1979, (A The Appellate Division, in & its opinion of August the granted the appeal of the seven reamining appealeing towns, pellate ivision in reversed Judge Furman's order and dismissed esponse to aintiff's the action against them. The Appellate Division's opinion did not seaprately address plaintiffs' appeal because it concluded that ppeal. He Appelalte Division refused the judgment, insofar as it went was in error, with antikan x and reversal o permit Oldg Breidge to and dismissal of the case was necessary. brief ile itsxsppest because it

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was a untimely. Why of - Hadled an Enhimit

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texx The plaintiffs petitioned the New Jersey Supreme Court for certification, and served notice of that upon 12 townships, including 01d Bridge and North Burunswick. Attached as Exphibit_____ is the a copy of the plaintiffs' Certificate of Service

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The Courts regioniting ortification sentidly les Hak NIN Kenelle Jinsigh the Only

Notice of Petition for Certification. Apparently because the plaintiffs were appeling the adverse ruling of the Appellate Division on the seven towships' appeal of Judge Furman;s Judgment and because only those seven twowns filed briefs and REXXE 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 towhships, the Supreme Court made clear that "On remand there need be no trial concerning non-compliance with the Mount Laurel axagian obligation ... All that is at issue is the determination x of region, faire share and allocationa dn, thereafter, revision of the land use ordainc es and adoption of affirmative measures to affrd the realistic opportunity for the requisite lower income housing" 92 N.J. at ____, 456 A.d at 489-490. It is clear, however, that the Court anticipated further modeling Judgment 40 ruclust attion to enforce the integrat against the non-appealing towns such as Old Bridge and Noth Brunwsick because Workingaphs (1) in discussing proceedings on remand, the Court stated that the trial court, in determining fair share, misut take into account kkak areas within particular municipatileis aver of non-growth areas Court added "We believe that Plainsboro, The Czanubry, South Brunwscik, North Burnwsick, East Brunsiwkc and MOnroe all contain some non-gorwh as well as garowth areas.: Id at ___, 456 A.Zd at 490 fraplacis adMer /

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11. With regard to further triad proceedings, x 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 Bebruary X, 1977. ON may 20, 1987, after extensive review of additional materials, plaintiffs submitted a 7-page letter to Judge Furman setting and forth plaintiff's reasons for opposing dimsisal of North Brunswick. The Judge never ruled on the town's motion. The last matter in plaintiffs' file concernin that mation is a letter form plaintiff's cousnel to North Burnswick'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 Appelalte Division revesed Judge Furman's order on Apetmeber 1979.

12. Because the Townships of Old Bridge and North Burunswick neverappealxed the Judgment against them, never aobtained a modifiaction of the Jdugment, and never obtained an order of dismissla or complaince with the Judgment the only remaining question is whether they have in fact somplied with the judgment since its entry. Asxthexattached Both Townships have in fact amended their ordinances since the Supreme Court's deicion on Janaury 20, 1983. However, asxthex in the opinion of plaintiffs and their expert witness, Alan Mallach, the Tawaskipsxhawax Zoning ORdiance adopted MAy -- 1983 by the Township of _____ and the ORdinance adopted_____ 1983 by the Township of Old Bridge, fail xx in many signficiant respects fa to comply with Judge Furmans' orer 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 Noth Burunswick, inte which is a Supplement to Appendix B of his Rpeort previously filed with the Court, is attached heretwoas Exhibit ____.

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