ML v. Carteret 4/18 (1986)

~~Not.~~ Certification of Allan Mallach
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THE STATE UNIVERSITY OF NEW JERSEY
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S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

April 18, 1986

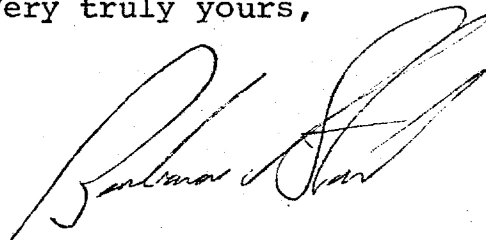
Glenn S. Pantel, Esq.
Shanley & Fisher
95 Madison Avenue
Morristown, NJ 07960

Re: Urban League, et al. vs. Carteret, et al.

Dear Mr. Pantel:

Enclosed please find, pursuant to your request, Notice of Motion, Certifications of Alan Mallach and John Payne, Esq. in support thereof, and proposed form of Order.

Very truly yours,



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Counsel: Frank Askin-Jonathan M. Hyman (Administrative Director) - Eric Neisser-Barbara Stark

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CERTIFICATION

(Monroe)

Alan Mallach, of full age, certifies as follows:

1. I am a professional planner and have frequently testified at the Court's request in _Mount Laurel_ matters. I am fully familiar with the facts and circumstances of this case. I submit this certification in support of the Urban League's motion for the Imposition of Conditions on Transfer.

2. In his opinion in May 1976, Judge Furman, using a one-county region and a 10-year need estimate, determined that the fair share of Monroe Township through 1985 was 1356. He found that Monroe permitted multi-family units only in its retirement communities, that it prohibited mobile homes, and that it was substantially overzoned for industrial uses. (check)

3. The state Supreme Court affirmed Judge Furman's holding of unconstitutionality and remanded for determination of fair share and remedy.

4. After an 18-day joint trial in April-June 1984, this Court determined that Monroe's fair share through 1990 was only 776 lower income units. Monroe did not present an expert at the trial to dispute the evidence that its ordinance failed to satisfy its fair share. I testified at that time that the Township's fair share should be significantly higher because of

the substantial development in the form of retiremenet communities developed at seven units to the acre authorized by the Township in the portion of the limited growth area nearest the small sliver of growth area on the western part of town and the single family and retirement community developments further in the limited growth and in the agricultural zone. The Court's letter-opinion of July 23, 1984 determining the Township's fair share using the SDGP's growth area definition did not directly address the point, but implicitly rejected the proposed modification for Monroe.

5. On March 29, 1985, after extensive hearings and meetings with the Court-appointed Master, the Monroe Township Council voted 3-2 to submit to the Court its Compliance Plan. The Court immediately directed the Master to prepare comments on the report.

6. Monroe's compliance plan included 100 lower income units to be provided through what was said to be a 5 percent mandatory set-aside on the Whittingham project, which is a 2400-unit extension of the Concordia Planned Retirement Community. Compliance Plan at page 25. Both the existing Concordia PRC and the Whittingham extension encompass at least 400 acres, as required by the zoning ordinance, all of which land is located well within the limited growth area as designated on the SDGP. Upon learning of the Planning Board and Township Council's approval, the Urban League plaintiffs immediately filed and served on all parties by mail on Friday, July 19, 1985 a notice of motion on short notice seeking appropriate restraints.

7. On Monday, July 22, 1985, the then Township Attorney Mario Apuzzo had the Council President William R. Tipper___ sign the resolution concerning Whittingham. His later affidavit to the Court stated that he did so prior to opening his mail in which he found the plaintiffs' moving papers. However, on Friday morning, plaintiffs had described and discussed their motion extensively with Douglas Wolfson, the attorney for Whittingham, who indicated he would be seeking an extension of the return date because of his vacation schedule. He also indicated that he would be in touch with Mr. Apuzzo concerning the matter.

8. At the hearing on July 25, 1985, this Court orally ordered that the Township would have two choices: either to impose a 5 percent set-aside upon the Whittingham project or to agree to accept and comply voluntarily a fair share of 100 units less than imposed by the Judgment of August 13, 1984. If the Township did neither, the Court would hold the Township's compliance plan void and order the Master to propose a compliance plan for the Township.

9. The Court also directed that The Township Attorney to submit a written statement to the Court by August 2, 1985 indicating whether the decisions of the Township Council on these two matters and the vote of the Council on each. On August 2, 1985, the Township submitted a written statement that the Council refused to reconsider the Whittingham approval or to accept voluntarily the lower fair share number. At the August 30, 1985 hearing, the Court ordered the Township's compliance plan voided

and directed the Master to prepare a compliance plan for the Township. Written orders incorporating these rulings were ultimately signed by the Court on August 30, 1985.

8. On May 13, 1985, pursuant to a motion of Thomas Farino, the Township Attorney until April 1, 1985, this Court entered an order directing payment by the Township to the Master, the Township-retained planning consultant and the Township-retained attorney. The Township did not seek a stay of that order at any time and has not, to date, complied with it. The Township did not seek leave to appeal that interlocutory order nor did it file a notice of appeal within the 45 day period provided by the rules for orders appealable as of right. On December 13, 1985, pursuant to the motions to dismiss filed by the Urban League plaintiffs and the planning consultant, the Appellate Division dismissed the Township's appeal for lack of jurisdiction.

9. In August 1985, after the court hearings and rulings concerning the Whittingham project, the Township Council adopted an amendment to the zoning ordinance providing a Planned Development Option within the general commercial zone. This option was proposed, drafted by, and adopted for the Forsgate project, sponsored by Randall Hack. In November 1985, despite the objections of the Civic League, the Planning Board granted the Forsgate project general development approval (check) which authorized development of 700 market units without any set-aside or contribution to the Mount Laurel obligation.

10. On October 2, 1985, this Court denied Monroe's transfer motion and denied a stay pending appeal.

11. In November 1985, the Township renewed its motion for a stay of all trial court proceedings pending determination of the Township's appeal of the denial of the transfer motion. The Court heard oral argument but did not rule on the motion, but rather wrote the Master, Carla Lerman, inquiring as to when her compliance plan report could be expected. The Supreme Court's opinion was received prior to Ms. Lerman's reply, and thus the Court never ruled on the stay.

12. In addition to the Whittingham and Forsgate project, Monroe has approved in the last few years a substantial number of commercial/industrial and some residential development projects. Many of these have approved development within the limited growth and agricultural zones as defined in the SDGP. There may well be insufficient remaining land in the designated growth areas for Monroe to satisfy its proper fair share obligation. Plaintiffs are seeking discovery on these issues to insure that the Court has complete and up-to-date information before ruling on this motion for conditions. Until this Court has had the opportunity to evaluate this data, all further development in the growth area should be barred.

13. Monroe has limited sewerage treatment capacity remaining. As a result, a consortium has been formed to increase the capacity by 5 million gallons. Unless the Municipal Utilities Authority is required to reserve some capacity for future Mount

Laurel developments, there will be insufficient sewerage capacity to accommodate any reasonably foreseeable fair share obligation.

14. Plaintiffs also seek discovery with regard to sewage treatment capacity so that appropriate restraints may be imposed to ensure the preservation of this scarce resource.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

3/18

JOHN -

As usual, an A+ on content, organization, style, and typing. You have, however, far exceeded even normal expectations in your closing prayer. Accordingly, I nominate you for Chief Justice of Outer Space.

Seriously I have only a few points that need discussion -- we need to clear up what Alan is willing to say on Piscataway -- I would love to leave the points you make in the brief; we need to make consistent our position on who is bound by what stipulations when and where -- see pp. 11 and 32; we need to clarify (this is just a language problem) what we are asking for right now; we need to agree upon (and ask Alan for) a development limit for Monroe and how much reference to known plans for Monroe MUA to add; we must decide what documents to attach to brief. I'd also like to add a sentence about why keeping zoning in place is <u>less</u> drastic than restraining all development for several years. I think you did marvelously on Site 3.

Speak to you in the morning -- as always.

ERIC

P.S. Joe Murray is sending us a copy of his Warren Twp conditions motion. Steve Eisdorfer is still preparing his for Denville and Randolph. He will also send us a copy of the background paper he gave Al Slocum, from which Al drew his brief presentation yesterday, but which Al will submit in full to the Council now.

cc: Barbara S., J.

P.29 is of historic proportions!