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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-
MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER NEW)
BRUNSWICK)
Plaintiffs)
v.)
MAYOR AND COUNCIL OF THE BOROUGH)
OF CARTERET, et al.,)
Defendants)

No. C 4122-73

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINTS

Unfortunately, the Urban League plaintiffs must once again seek the aid of this Court in preserving the status quo pending a final judgment, in this case against Monroe Township. In most branches of this multi-municipality litigation, such interim protection has not been necessary because the defendant governing body has been willing to preserve the status quo voluntarily until the Court has ruled. In Monroe, however, as previously in Old Bridge, Piscataway and South Plainfield, the township has acted less cooperatively and is now prepared to give final approval to a development under conditions which may materially affect the ability of the township to eventually come into compliance. Plaintiffs seek temporary restraint against further approvals for this site, and a notice procedure that will permit us to seek relief as to other sites if necessary.

STATEMENT OF FACTS

Background. This action was originally filed in 1974 and, after a judgment in plaintiffs' favor and an appeal to the Supreme Court, was remanded to this Court as part of the resolution of Southern Burlington Council, NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II). After an eighteen day trial in April and May, 1984, this Court on July 27,

1984, found Monroe Township to be in violation of Mount Laurel II and ordered it to submit a compliance plan within ninety days. Ms. Carla Lerman was appointed by the Court as Master to assist Monroe in its compliance effort.

The compliance process has not been smooth. The township's mayor has publicly and vigorously stated his opposition to compliance, to the point of instructing key township employees not to furnish any assistance to the Township Council in the compliance process. It has been necessary for this Court to address members of the Township Council in open court, exhorting them to initiate the compliance process without the mayor's cooperation, and it has also been necessary for the Court to order compensation for various professionals, including the court-appointed Master, when the mayor refused to honor their legitimate requests for reimbursement.

Despite all this, and after extended delays beyond the formal ninety day period, the Township Council on March 29, 1985, submitted a compliance plan prepared with the assistance of a professional planner, and that plan has since been under review by Ms. Lerman, who has advised the parties that her report to the Court is imminent. After Ms. Lerman's report has been received, and the parties given an opportunity to file comments thereon, the compliance phase of the Monroe Township case will be ready for hearing and final order of the Court.

The proposed compliance plan. Some knowledge of the proposed compliance plan is necessary in order to understand the difficulty that has now arisen. Two elements of the plan, each

involving new, age-restricted planned retirement developments, are as follows:

<u>Name</u>	<u>% lo/mod</u>	<u># lo/mod</u>	<u>total units</u>
Concordia	5%	100	2400
Extension			
Balantrae	18.5%	466	2510

The Concordia Extension, which is an expansion of the existing Concordia retirement community in Monroe, would be fully age-restricted. In the Balantrae PRC, however, the township proposes that only the market units be age-restricted; the low and moderate units, which would be a physically distinct portion of the development, would be designed for and available to households of all ages.

In addition to these two developments, the compliance plan proposes, inter alia, conventional Mount Laurel development with a 20% set-aside and no age restrictions for the Monroe Development Corporation site. Monroe Development is a plaintiff in this action seeking a builder's remedy as to that site. The Monroe Development site would produce 600 housing units, of which 120 would be for Mount Laurel households.

Recent developments. The Urban League Plaintiffs have experienced extraordinary difficulty in recent weeks establishing normal professional communication with the newly hired township attorney, and the information relied upon in seeking temporary restraints at this time is necessarily sketchy. From public records and newspaper accounts, however, as set forth in the

affidavit of Barbara Williams, Esq., attached, the plaintiffs have learned that the Monroe Planning Board has approved the Concordia Extension without requiring even the 5% Mount Laurel units that the compliance plan proposes. Final approval is scheduled to be considered by the Township Council at its August 5, 1985 meeting.¹

At the request of the Urban League Plaintiffs, Ms. Lerman inquired of township officials about these developments and was told that the township no longer feels bound by the compliance plan because of the recently-enacted Mount Laurel legislation, S.2046, signed into law by Governor Kean on July 3, 1985. Ms. Lerman's letter to Barbara Williams informing the Urban League of this position is attached as an exhibit to Ms. Williams' affidavit.

CL
letter
attached
to
affidavit

Believing that neither the legislation nor any other authority relieves the Township of Monroe from complying with Mount Laurel II, and that the interests of low and moderate

1 From the same sources, it appears that the Township Council has also introduced on first reading an amendment to the zoning ordinance that would create a PDO zone in which mixed residential/commercial developments would be permitted as an option, and that such a development has been proposed for a 400+ acre site on Forsgate Drive, a site not even mentioned in the compliance proposal. The zoning amendment does not require any Mount Laurel setaside.

Plaintiffs do not seek restraint against adoption of this zoning ordinance amendment, on the familiar principle that equity will not enjoin prospective legislative acts, although we believe that a case could be made for doing so under Mount Laurel II. If necessary, however, such a motion will be made at a later date if a specific application threatens the viability of the compliance process in Monroe, as we explain herein the Concordia Extension does.

income households will be irreparably harmed if the Concordia Extension is approved, plaintiffs now seek temporary restraint against this development in Monroe Township, to be continued until entry by this Court of a final compliance order respecting Monroe Township.

LEGAL ARGUMENT

To state the facts as above is virtually to demonstrate the necessity of entering a temporary restraining order. Monroe Township, by word and deed, has shown that it will not abide the Court's resolution of this litigation, even though its Mount Laurel obligation is clear and has already been adjudged by the Court.

The status of competitive projects. As noted by the plaintiffs' expert, Alan Mallach, and as recognized by this Court in connection with previous TRO motions, a critical factor in assuring that a compliance plan affords a realistic opportunity for the provision of low and moderate income housing, see 92 N.J. 221, is that the economic viability of the Mount Laurel projects not be undercut by similar developments that have no Mount Laurel components.

Applying this premise to the Concordia Extension, it is obvious that at some point there is a limit to the short-term market for age restricted housing. It is therefore logical that a non-Mount Laurel development such as Concordia could gain a price advantage that would adversely affect the Balantrae proposal, which would rely on the age restricted market housing

to subsidize the appurtenant Mount Laurel units.² As Mr. Mallach explains in his affidavit, it is also possible that the two projects will ultimately prove not be competitive, depending upon the details of financing, amenities, infrastructure and so forth. Prior to the compliance hearing, however, it is impossible to resolve these questions, and it is therefore essential that the status quo be preserved until that hearing can be conducted.

Mount Laurel II, 92 N.J. at 259-60, does allow a municipality to zone without regard to Mount Laurel considerations once its fair share has been provided for. It does not, however, allow a municipality to take advantage of this language before compliance has been determined. As explained above, allowing the non-Mount Laurel developments to proliferate would make a realistic opportunity virtually impossible to achieve, even in housing markets that are a lot stronger than Monroe's.

It is irrelevant in any of this that the proposal^d compliance plan has, as yet, no formal legal status, not having been passed on by the Court. It is manifestly clear that any compliance plan, whether volunteered by the township or imposed by the Court

2 In seeking to "protect," in a sense, either the Balantrae development or any other element of the proposed compliance plan, the Urban League plaintiffs should not be understood to be endorsing that plan, as to which we have some serious reservations. The Township, however, is allowed considerable latitude under Mount Laurel II to select its own compliance mechanisms, and our focus at the compliance hearing will be on those features of the plan which we believe do not create a realistic opportunity for lower income housing. Even if Monroe's choices would not be our own, moreover, the Urban League Plaintiffs are certainly entitled to have the township act consistently with its own proposal, and it is to this end that we seek to preserve the status quo.

after recommendation by the Master, will have to include new construction with a mandatory set-aside. Given the amount of high density development allowed in recent years, Monroe cannot successfully argue against further building on planning grounds, and given that much of Monroe's vacant land is in limited growth and agricultural zones, it cannot profligately use up the growth area tracts that remain without feeling the effects of doing so.

The Legislation. S.2046 by its terms, sec. 28, exempts this litigation from its moratorium provisions, since the Urban League originally filed this action almost nine years before the January 20, 1983 cut-off date in the statute. The Urban League Plaintiffs are therefore entitled to pursue their remedies against Monroe Township, which can include rezoning of specific sites with mandatory set-asides if necessary.

Remedy. Because the proposed compliance plan has, as yet, no legal force, plaintiffs do not argue that it must be preserved intact, although we do note that the township's manifest willingness to disregard it must call into serious question the ability to implement even those parts of it not jeopardized by the pending actions. Nor do we take the position that some portion of the Township's Mount Laurel obligation must be satisfied in age restricted developments, and we recognize that the retirement community market is separate and distinct from the general housing market. Therefore, in the absence of the township's proposed compliance plan, we would not oppose the

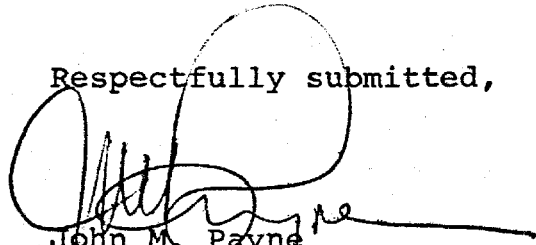
Concordia Extension approval.

However, the Balantrae development is obviously the centerpiece of the compliance proposal, since it is to supply 466 of the 774 Mount Laurel units required, and market-rate, age-restricted housing is the key to subsidizing the Mount Laurel housing in this development. Moreover, this Court has made clear on numerous occasions that the municipality will be given only one opportunity to devise its own compliance plan. To the extent that Monroe is now abandoning its own plan, it cannot be heard to argue that other compliance mechanisms are possible. Any such fall-back solutions are for the Master and the Court, and the plaintiffs are surely entitled to have the status quo maintained until it can be determined what contribution, if any, the Concordia development should make to the overall compliance package.

For all of the foregoing reasons, therefore, the Urban League Plaintiffs respectfully submit that the defendant municipality should be restrained pending further order of this Court from granting any further approvals with respect to the Concordia Extension. In keeping with procedures developed on prior restraining orders, and in order to minimize the burden on the non-party developer of the property, we have framed the proposed order to allow the granting of any further approvals except building permits if such approvals clearly indicate on their face that they are granted subject to the rights of the

Urban League in this litigation. We also request, in view of the manifest lack of cooperation on the part of the Township, that the attorneys for the Urban League Plaintiffs receive timely notice of any other pending development actions, so that further protective orders may be sought if necessary.

Respectfully submitted,



John M. Payne
Attorney for the Urban
League Plaintiffs,
On Behalf of the ACLU
Of New Jersey
