

Monroe 1985

7/26/85

Proposed Order

lyz = 5

no P. i.

CA0003660

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

July 26, 1985

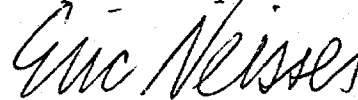
Judge Eugene D. Serpentelli
Assignment Judge
Ocean County Courthouse
CN 2191
Toms River, N.J. 08753

Dear Judge Serpentelli:

I am enclosing a proposed Order concerning Monroe Township prepared by John Payne in accordance with Your Honor's oral ruling of July 25, 1985. Although Your Honor stated that a written Order was not required since submission in accordance with the five-day rule would be difficult before the date that Monroe is to respond to your questions, we thought that circulation of a proposed Order would nevertheless help to identify for the Court and all the parties any differences of understanding that could be clarified before Monroe answers. Please note in this regard that Mr. Payne has inserted a specific date in paragraph 3 of the Order for Ms. Lerman to report her recommendations, should the Township's compliance plan be deemed inadequate, expanding on the Court's statement that she would be asked to report promptly.

In light of the possibility that Ms. Lerman may have to submit an independent recommendation concerning compliance, we would suggest that she not be required to submit a possibly moot report on the proposed compliance plan until after the situation has been clarified on August 2.

Respectfully submitted,



Eric Neisser
Co-Counsel for Urban League
Plaintiffs

cc: Monroe Service List

ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.
BARBARA J. WILLIAMS, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street, Room 338
Newark, New Jersey 07102
Attorneys for the Urban League
Plaintiffs on behalf of the
ACLU of New Jersey

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION -
MIDDLESEX (OCEAN) COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, Plaintiffs

v.

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARTERET,
et al., Defendants

No. C-4122-73

ORDER

[MONROE TOWNSHIP]

The Urban League Plaintiffs having moved for temporary restraints against final Monroe Township Council approval of the application of Union Valley Corporation for the 2400 unit, age-restricted planned retirement community (identified variously as the "Concordia Extension" and "Whittingham") pending the Master's and this Court's review of Monroe Township's plan for compliance with this Court's Order and Judgment of August 13, 1984, and having filed in support thereof the Affidavits of Alan Mallach and Barbara Williams, Esq., a Memorandum of Law in Support, and a proposed Order, and

The Court having heard John M. Payne, Esq., for the Urban League Plaintiffs, Douglas K. Wolfson, Esq., for Union Valley Corporation, Arnold Mytelka, Esq., for Plaintiffs Lori Associates and Habd Associates, Mario Appuzzo, Esq., for the Defendant Township of Monroe, and having received a written statement from Carl S. Bisgaier, Esq., for Plaintiff Monroe Development Corporation,

I T I S H E R E B Y O R D E R E D this ____ day of _____, 1985:

1. Subject to the remaining provisions of this Order, and the further Order of the Court, the motion for temporary restraints is granted, insofar as any approvals or permits issued by the Township of Monore to Union Valley Corporation shall be conditioned on the continuing rights of the Urban League Plaintiffs to seek a 5% Mount Laurel set-aside in the Planned Retirement Community to be called "Whittingham," without Union Valley Corporation acquiring any vested rights beyond those which it possessed on July 1, 1985, but the Township is not otherwise restrained from issuing approvals or permits to the Whittingham development.

2. The Township Committee of Defendant Monroe Township is hereby ordered to inform the Court, to be received in writing no later than twelve o'clock noon on Friday, August 2, 1985, its answers to the following two questions:

QUESTION ONE: If, after an opportunity is given to all the parties to be heard on the matter, the Court vacates the fair share obligation of Monroe Township as determined in the Judgment and Order of August 13, 1984, and

substitutes therefor a fair share obligation of 674 low and moderate income units, will the Township Committee publicly commit the Township of Monroe to voluntary compliance with the revised Order and Judgment of this Court, including a commitment not to challenge the Order and Judgment or the final Compliance Order on appeal?

QUESTION TWO: Does the Township Committee reaffirm its decision of July 1, 1985, granting development approvals to Union Valley Corporation without imposing as a condition thereof the 5% Mount Laurel set-aside specified in the Compliance Program submitted to the Court on March 15, 1985?

3. If, in accordance with QUESTION ONE, the Township Committee commits itself to voluntary compliance, the Court will hear, as expeditiously as possible, all parties in support of or opposition to a revision in the fair share number, and shall thereafter rule on the fair share number and on a motion to lift the restraints imposed by Paragraph 1 of this Order.

4. If the Township Committee does not agree to voluntary compliance in accordance with QUESTION ONE, and if it reaffirms its decision respecting Union Valley Corporation in accordance with QUESTION TWO, the March 15 proposed compliance plan now under review by the Master shall automatically be deemed to be insufficient to satisfy the Judgment and Order of August 13, 1984, and the Master shall be directed to submit her own recommendations concerning compliance to the Court no later than September 3, 1985. In connection therewith, the Master may hear the advice of interested parties, but shall not delay her submission for that reason. The restraints imposed by Paragraph 1 shall be continued until the Court has received the Master's report and has ruled thereon.

5. If the Township Committee does not agree to voluntary compliance in accordance with QUESTION ONE, but also does not reaffirm its decision respecting Union Valley Corporation in accordance with QUESTION TWO, the restraints imposed by Paragraph 1 shall be continued until the Court has received the Master's report on the March 15 proposed compliance plan and has ruled thereon.

6. If the Township Committee does not respond to both of the questions stated in Paragraph 2 above, it shall be deemed to have reaffirmed its July 1 decision respecting Union Valley Corporation and the procedure specified in Paragraph 4 above shall be implemented.

7. Individual members of the Township Committee shall not be subject to any punitive action in the event that they vote not to comply voluntarily or vote to reaffirm the July 1 decision respecting Union Valley Corporation, but the number of votes for and against each answer shall be stated in the written response to the Court.

EUGENE D. SERPENTELLI, A.J.S.C.