

UL v. Carteret, Monroe

3/20/86 (1986)

Certification (Monroe), Eric Neisser,  
in support of UL's motion for the  
imposition of conditions on transfer

6 pgs

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SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION  
 MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER  
 NEW BRUNSWICK, et al.,  
 Plaintiffs,

(Mount Laurel)

vs.

C 4122-73

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

CERTIFICATION  
 (Monroe)

Eric Neisser, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and co-counsel for the Urban League plaintiffs and the class of lower income households in the housing region in which Monroe is located. 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.

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. Alan Mallach testified at that time that the Township's fair share should be significantly higher because of the substantial development both in the form of retirement communities developed at seven units to the acre 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 area and in the agricultural zone. The Court's letter-opinion of July 27, 1984 which established the Township's fair share by using the SDGP's growth area definition in accordance with the AMG methodology did not directly address the point, but implicitly rejected plaintiffs' 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. Monroe Compliance Plan, at 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. In June and July 1985, the Monroe Planning Board and Township Council approved the 2400-unit Whittingham project without any set-aside. Upon learning of the Planning Board and Township Council's approval, the Urban League plaintiffs immediately filed and served on July 19, 1985 a notice of motion on short notice seeking appropriate restraints.

7. 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 with 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.

8. The Court also directed that The Township Attorney to submit a written statement to the Court by August 2, 1985 indicating 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 subsequent 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.

9. 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.

10. 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 which authorized development of 700 market units without any set-aside or contribution to the Mount Laurel obligation.

11. On October 2, 1985, this Court denied Monroe's transfer motion and denied a stay pending appeal, which rulings were embodied in an Order entered on October 11, 1985.

12. 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.

13. 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 but the most minor development in the Township should be barred.

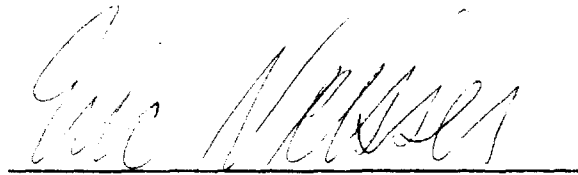
14. Monroe has limited sewerage treatment capacity remaining. As a result, a consortium has been formed to increase the capacity by 5 million gallons. Unless the Municipal Utilities

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.

15. 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.

Dated: March 20, 1986

A handwritten signature in cursive script, appearing to read "Eric Neisser", written over a horizontal line.

ERIC NEISSER