

Monroe

1986

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Letter to Judge re: Town's failure to pay

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June 4, 1986

Honorable Mark A. Sullivan, Justice
Supreme Court of New Jersey
Monmouth County Court House
South Wing, Second Floor
Freehold, New Jersey 07728

RE: Urban League of Greater New Brunswick, et al.
Vs. The Mayor and Council of the Borough of Carteret, et al.
Docket No. A-4020-85T7

Dear Justice Sullivan:

This will acknowledge receipt of your Honor's notice of preargument conference for June 23, 1986 at 9:30 a.m. We represent one of the respondents in this matter, Mr. Carl Hintz.

The notice requires that Respondent's counsel shall file a concise statement of issues involved and such additional information as counsel may deem helpful, at least 48 hours before said conference. Please accept this letter in lieu of a more formal document providing such statement and additional information.

The appeal in question relates to the involvement of the Township of Monroe in the litigation which has come to be known collectively as "Mt. Laurel."

By letter opinion dated July 27, 1984 (which is not here appealed from) the Honorable Eugene D. Serpentelli, J.S.C., ruled that the land use regulations of the Township of Monroe were invalid under the guidelines set forth by the Supreme Court in the decision commonly referred to as "Mt. Laurel II."* The Township was ordered to revise its land use regulations within 90 days of the filing of that opinion. By resolution of January 28,

* Southern Burlington County NAACP, et al. v. Township of Mt. Laurel, et als., 92 N.J. 158 (1983). One of the consolidated appeals in that decision was Urban League of Greater New Brunswick, et al. v. Borough of Carteret, et als., No. A-4; See: 92 N.J. at 339 - 350.

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1985, my client's firm, Hintz-Nelessen Associates, P.C. was retained as a planner and their hourly rate of compensation was fixed. My client commenced to provide professional planning services for the Township and completed a compliance package which he submitted to the Township Council. Unfortunately, payment for his services rendered was not forthcoming. On or about April 4, 1985 the then-Township attorney, Thomas R. Farino brought a motion to compel payment of my clients fees, as well as Mr. Farino's own fees and those of Carla Lerman, the court appointed master, for services rendered to Monroe Township. On May 13, 1985, the Honorable Eugene D. Serpentelli entered an order and judgment compelling the Township to pay those individuals for their services. That is the order and judgment which is appealed from here. The court should note that the order was initially appealed on July 29, 1985 (Docket No. A-5394-84T1) but that appeal was dismissed on motion December 13, 1985.

The issue, as raised by the Appellant, is a simple one, i.e., whether the trial court had the authority to order the Township of Monroe to pay for the professional services rendered. The Township contends that no money was budgeted for such services, and no appropriation for such services was made before they were engaged. It is our position that N.J.S.A. 40A:4-53 permits a unit of local government to authorize special emergency appropriations to pay a consultant for the preparation of a master plan or plans, when required to conform to the planning laws of the state. By affidavit of April 8, 1985, William R. Tipper, then-President of the Monroe Township Council (copy attached) it was made evident that the Council would make such an emergency appropriation upon order of the court. It is clear from Essex County Board of Taxation v. City of Newark, 139 N.J. Super 264 (1976) that an appropriation is not necessary before incurring a liability, but only before actual disbursement of municipal funds.

Accordingly, Judge Serpentelli clearly had the authority to enter the order he did, and the Township is bound by that order to make payment for services rendered.

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I trust this brief statement of the issues involved satisfies the requirements of your Honor's notice. If your Honor has any additional questions prior to the conference, please do not hesitate to contact this office.

Respectfully,

GROSS & NOVAK, P.A.

WILLIAM P. ISELE

WPI/sn

Encl.

cc: Mr. Carl E. Hintz
cc: Mario Apuzzo, Esq.
cc: Thomas Farino, Esq.
cc: Ms. Carla Lerman
cc: Eric Neisser, Esq.

CERTIFICATION

WILLIAM R. TIPPER, residing at 338N Narragansett Lane, Jamesburg, New Jersey, hereby certifies as follows:

1. I am the President of the governing body of the Township of Monroe and I am fully familiar with the facts of this lawsuit involving Mt. Laurel II.

2. Following the trial in this matter in which the Court adjudged the Zoning Ordinances of the Township of Monroe to be violative of Mt. Laurel II guidelines, Mayor Peter P. Garibaldi reaffirmed his position to defy the Order of the Court and, in addition, directed all municipal professionals to include the Township Attorney, Township Engineer and Township Planner to refrain from assisting the governing body in its deliberations aimed at re-zoning to comply with the Order of the Court.

3. The governing body of the Township of Monroe by resolution dated September 24, 1984, resolved to undertake a re-zoning, UNDER PROTEST, so as to preserve the Township's right to appeal the Order of the Court.

4. The governing body of the Township of Monroe then directed the Municipal Attorney, to provide legal counsel to the governing body during its deliberations aimed at producing a compliant Zoning Ordinance.

5. By resolution dated January 28, 1985, the governing body of the Township of Monroe authorized the retention of Carl E. Hintz, Professional Planner, for the purpose of preparing the Township's compliance package for submission to the Court regarding this Mt. Laurel litigation.

6. Carla Lerman, Court-appointed Master, has attended most all of the special meetings conducted by the governing body and has continued to assist the governing body in its re-zoning efforts.

7. Carla Lerman previously presented to the Monroe Township Council her billing statement representing the Township's proportionate share of the trial expenses associated with her planning services as Court Master.

8. By resolution of the Monroe Township governing body dated September 16, 1985, the Township authorized payment to Ms. Lerman in the amount of \$1,869.55.

9. Upon presentation of the aforesaid billing statement and authorizing resolution to the Mayor, he indicated that same would not be honored nor paid by the Department of Administration and payment has not been forthcoming.

10. Thomas R. Farino, Jr., Carl Hintz, and Carla Lerman have recently submitted their billing statements for professional services rendered in connection with Township's compliance efforts following the judgment of non-compliance by the Court. Copies of these billing statements are attached to this certification.

11. During the municipal budget preparation process, Mayor Garibaldi reaffirmed his intentions to authorize no payments for professional services in connection with Mt. Laurel litigation. Accordingly, no monies were placed in the Mayor's budget presented to the Council for Mt. Laurel expenses.

12. It is the position of the Monroe Township Council that upon authorization of the aforesaid professional fees by Order of the Court, the Council will initiate efforts to bring about an emergency appropriation to cover this expenditure

13. By order of this Court dated March 1, 1985, the governing body of the Township of Monroe has been authorized to retain professional legal, engineering and planning services and to incur expenditures associated therewith and accordingly, the governing body of the Township of Monroe hereby requests an Order of this Court in order to effect payment for these authorized professional services.

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.


WILLIAM R. TIPPER

DATED: April 8, 1985.