UL v. Carteret (North Brunswick) 1/23 (1986

Letter discussing the North Brunswick Affordable Housing Ordinance, changes made in sited that were not discussed

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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

January 23, 1986

Judge Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
CN 2191
Toms River, N.J. 08754

RE: Urban League v. Carteret
No. C-4122-73
(North Brunswick)

Dear Judge Serpentelli,

I write with respect to the North Brunswick Affordable Housing Ordinance, which was introduced on first reading by the North Brunswick Township Council on January 20, 1986, as part of its compliance with this Court's Consent Order of September 10, 1984. The ordinance is to be considered by this Court at the North Brunswick compliance hearing on January 24, 1986. Unfortunately, the Ordinance as introduced on first reading departs in four instances from the text of the ordinance agreed to by the Urban League after extensive negotiations between the parties and we object to those four provisions. I should note that two of these changes were never discussed in any manner prior to their unilateral insertion by the Council, and that the other two had been clearly rejected during the process of negotiation.

1) The Council seeks to insert a provision in IV(D)(4) on page 6 of the Ordinance providing: "Preference shall be given to qualified Township residents." The entire theory of Mount Laurel is that towns through a housing region must not only meet their indigenous need for affordable housing but also their fair share of the entire region's need. This was reflected in Paragraph 2 of this Court's Consent Order which specified that of North Brunswick's fair share of 1250 housing units, only 182 were indigenous need. Naturally, we have no objection to giving preference to residents in need. We thus would have no objection to the current language if at the end was added: "who currently

live in substandard housing." Giving preference to residents already in adequate housing would simply lead to hopscotching in which lower income families would move out of uncontrolled units into controlled units, thus diminishing rather than expanding the pool of affordable housing.

2) The Council wants to impose in IV(E) on page 8 a fee for the Affordable Housing Agency to review developer calculations of lower income unit prices and information concerning mortgage financing. These are the responsibilities of the Township. In most towns, waiver of all municipal fees as to lower income units is a standard part of settlement. We note, moreover, that in his State of the Township Message on January 6, 1986, Mayor Matacera explained that one of the benefits of the Mount Laurel settlement to the Township was that "we... obtained commitments for 4,000,000 sq. ft. in non-residential development to add to our ratable base to help pay the bill." (Emphasis added)(copy attached). The Township shouldn't be able both to gain the benefit and not pay the bill.

More importantly, the Urban League is concerned lest any fee be needlessly cost-generating, thus inhibiting construction of lower income housing. If the Court felt any fee were appropriate, we would suggest a maximum of $100 for review of any development application.

3) In the same vein, the Township seeks to add a fee for hardship exemptions and exempt transactions in the very next paragraph. This proposal is aggravated by applying it not simply to developers but also to "subsequent owners" meaning lower income families. We oppose the application of that fee to "subsequent owners" who will be seeking exemptions because of difficulty in selling the unit to another lower income family or because of a death or divorce in the family.

4) Finally, we object, as we clearly informed the Township Attorney and Planner in advance of the Council meeting, to the sentence in IX(E)(3) on page 18 which directs that: "The Agency shall first utilize surplus funds for the purpose of funding operating expenses of the Agency." Not only are the Agency expenses properly Township obligations, which it has taken care of through development of commercial ratables, but the surplus funds at issue only arise upon default and foreclosure by a lower income family. In such case, the foreclosed unit is decontrolled forever. The funds, derived from selling at the then market price, should be used to create, through rent subsidies or otherwise, a new unit to replace the lost one. They should not be used to ease the minimal administrative burdens on the Township.

We submit that the Court should find the North Brunswick Affordable Housing Ordinance compliant except for these four provisions and should condition its compliance order upon appropriate amendment within 30 days of these four provisions. We note that the period of repose is 6 years from July 2, 1985 pursuant to Section 22 of the Fair Housing Act, for cases such as this settled prior to its effective date.

Respectfully submitted,

Eric Neisser
Urban League Co-Counsel

cc: North Brunswick Service List

Mayor Matacera gave his third annual State of the Township Message.

This is the third opportunity I have had, as Mayor under our new form of government, to speak to the State-of-the-Township - to take a brief look back at 1985 to highlight our accomplishments as well as our frustrations, and to look ahead to the new year - to outline our priorities as I see them and to set goals for ourselves in the public interest.

It is a pleasant chore. I enjoy it. I am now at mid-term as Mayor and, as I reviewed my two earlier Annual Messages in preparation for these remarks, I noted with pleasure that we have been able to keep virtually all the promises we have made. The only exceptions were those areas where we must depend upon other levels of government, as in the case of the re-alignment of the Route 1-130 traffic circle, where progress depends upon the priciti zation and the bureaucracy of the state and federal governments.

I should point out that, though we would prefer that this essential project would have been completed "yesterday" with that terrible traffic safety and congest problem finally solved, progress is being made. We have seen the DOT's tentative plans, impact studies are underway now and, although we have seen no definite construction timetable, we expect the construction work to get underway after the second quarter of 1987.

We have learned that one of the major responsibilities as well as one of the significant frustrations of local government is to open and maintain channels of communication with elected and appointed officials at the state and county levels. Indeed, in at least three major areas I will describe in a moment, we will be working closely with them. We will, in fact, become lobbyists. We will grind our ax and agitate for our point of view in the Court House and in the State House. All of us-your seven elected officials as well as the appointed leaders of our local government accept as a major part of our responsibilities the need to carry our message effectively outside the walls of our local municipal building.

Last year at this time, I spoke about the so-called Mt. Laurel "horror story" its potential impact upon us and the settlement we achieved ending the several lawsuits against us. I proudly commended that settlement as being in the best interests of the Township under the circumstances.

Since that time, many of our sister communities have suffered the fate of no-win litigation, of the builders remedy and the absence of negotiations. Also since that time, the ligislature and governor have created the Fair Housing Council and the Supreme Court has agreed to hear the appeals of several communities desiring to get out of court and in front of the Council.

These developments have prompted some to believe we should re-open our case, cast aside our settlement and take our chances, once again, in the courts. It simply is not possible for me to disagree more strenuously with this point of view.

It is essential that we recall several basic facts:

1. North Brunswick was not alone with its Mt. Laurel dilemma. More than 200 communities shared our fate.

2. Our original mandate was for 1,508 low and moderate income housing units which translates into nearly 7550 new homes when the "Builders Remedy" is applied.

3. We settled for about 60% of that total and successfully negotiated for 2/3 moderate, 1/3 low income rather than the 50-50 impact imposed upon most communities.

4. Unlike any other community, we negotiated for a 20-year phase-in, rather than 6-year, and obtained commitments for 4,000,000 sq. ft. in non-residential development to add to our ratable base to help pay the bill.

5. We also negotiated for up to $500,000 in off-site improvements to Finnegans Lane and have the ability for further negotiations when other developers approach us for approvals. We will get all the law will allow us to get.

6, and perhaps most important, if we were to abrogate our agreement, we would face a disgruntled court, an indifferent Housing Council and antagonized plaintiff The Court and Council have only one mandate - low and moderate income housing. They don't care a whit for non-residential development, ratables or offsite improvements. Our work - as a Township - would mean little more than lip service and we would surely lose all that we successfully negotiated for. We would deserv no fair consideration from the Court or the Council. We would again confront our original "fair share allocation" as a starting point and would not even have our word as a bargaining chip.

The fact is we have realized one of the best settlements in the state. The Fair Housing Council does not exist for us and would do us no good. I call upon those who advocate a re-opening to think it through again. Most assuredly, such a effort will not have my support or, I believe, the support of the majority of the Township Council.