

UL v. Carteret

5 Oct 1987

Plainsboro

Plainsboro's proposed consent order w/
letter

9 pgs

CACOO 543P



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

October 5, 1987

VIA LAWYERS SERVICE


Mr. C. Roy Epps, President
Civic League of Greater New Brunswick
47-49 Throop Avenue
New Brunswick, NJ 08901

Dear Roy:

Enclosed please find a copy of Plainsboro's
proposed Consent Order.

Please telephone me with your comments as soon
as possible, since we are scheduled to appear in Court
in connection with the within Consent Order this Friday,
October 9, 1987.

Sincerely,



encls

cc/Payne, Neisser (w/encls)

STONAKER AND STONAKER
41 LEIGH AVENUE
PRINCETON, NEW JERSEY 08540

(609) 921-2155
ATTORNEY FOR

Defendant Plainsboro Township

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX/OCEAN COUNTY
Plaintiffs,	:	
v.	:	NO. C 4122-73
	:	<u>CIVIL ACTION</u>
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants.	:	CONSENT ORDER FOR PLAINSBORO TOWNSHIP

This matter having been brought to the Court by motion of the parties by their attorneys, who have signed a proposed Consent Order which the Court has reviewed and approved;

Now, therefore, it is this day of _____ 1987,
ordered and adjudged:

1. REASON FOR CHANGE IN 1985 CONSENT ORDER..

a) Plainsboro Township on July 30, 1985 agreed by Consent Order to provide 575 units of low and moderate income housing through 1990. Changes in the Internal Revenue Code and decisions on the legality of the Housing Trust fund, has

made it impossible to provide that number of units. The main thrust of the July 30, 1985 Consent Order was to provide the units without resort to the builders' remedy in a municipality that already had thousands of residential units. Plainsboro Township agreed to the 575 units because it had at the time means other than the builder's remedy to provide these units. It was contemplated 413 units would be constructed using private monies which because of changes in Internal Revenue Code are no longer available to fund the project.

In addition the Consent Order provided for 120 units of housing to be provided by funds from the Housing Trust Fund. At least two courts in New Jersey have held that the Housing Trust Fund is not legally enforceable. Therefore, the proposal for the 120 units must be abandoned.

Although the proposed number of low and moderate income units is less than formerly, it will contain more low income housing, the units will be dispersed throughout the community, more rental units and will provide three bedroom units.

b) The Council on Affordable Housing has assigned Plainsboro Township a Mount Laurel obligation of 117 units through 1993.

2. NON-COMPLIANCE AND FAIR SHARE.

a) Plainsboro Township's obligation to provide its fair share of low and moderate income housing needed through January 1, 1993 is 350 units.

3. SUMMARY OF REMEDIAL STEPS,

The Township's fair share shall be met as follows:

a) 40 low income units in the Tamarron section of Princeton Meadows. These units have already been constructed, and all 40 units have been sold to low income persons.

b) 20 units to be provided through rehabilitation of substandard units occupied by low or moderate income households. The Township will supplement whatever funds may be available from the Middlesex County Program with funds from the Housing Trust Fund to achieve this objective.

c) 125 low and moderate income units to be constructed on a ten-acre tract to be conveyed by Linpro to a nonprofit corporation created by the Township. This tract is a part of the larger tract known as Lot 12, Block 10 (also known as the McCarthy Tract). Linpro has agreed to take responsibility for site planning, approvals, and construction of these units, and will sell the completed units to the nonprofit corporation. These 125 units will be equally divided between low and moderate income, and will contain a representative mix of 1, 2, and 3 bedroom units, the 1985 order had no 3 bedroom units. The nonprofit corporation is to own and administer these units.

d) 40 moderate income units to be constructed by Linpro as a part of their development of the balance of the McCarthy Tract.

e) 40 low and moderate income units to be provided as a part of the conditional use provision for the (Walker-Gordon) Lot 5 and Block 15 tract currently under option to Linpro.

f) 85 units of rental housing on one or more sites ; the Township shall keep the Civic League of Greater New Brunswick advised of the site selection and shall prior to September 1, 1988 have the sites selected for 45 units and prior to January 1, 1989 have the sites selected for 40 units and prior to June 1, 1989 have the housing provided.

3. HOUSING TRUST FUND.

a) The Township adopted on December 30, 1985 a Mount Laurel Housing Trust Fund ordinance a copy of which is attached hereto. Municipal ordinances substantially the same as that ordinance have been declared legally invalid by the Courts of New Jersey. Plainsboro Township has been able to negotiate with two major developers (Princeton University and Linpro) covenants not to sue (a copy of which is attached hereto and made a part hereof). and will attempt to get other developers to sign such Covenant. The Township will use these funds to provide money for construction of new units, subsidize rental units, rehabilitation of substandard units, and write down the cost of units from moderate to low income.

4. The Township adopted an Affordable Housing Ordinance (a copy of which is attached hereto).

5. The Township adopted an ordinance requiring that in any residential development subsequently approved by the Township that permits a gross density of 4 or more units per acre, whether pursuant to a zoning amendment, conditional use, variance, or otherwise, 10% of all housing units in such development must be affordable to households of low income and

10% must be affordable to households of moderate income, as defined in the Affordable Housing Ordinance (a copy is attached hereto).

6. FALLBACK MECHANISMS.

In the event that the undertakings covered by paragraph 2 a), b), c), d) and e) above are not completed by the dates specified, this paragraph provides the required alternate mechanism for remedying the unmet portion of the Township's fair share obligation.

a. This paragraph shall be invoked by motion to the Court. Upon a finding that an undertaking covered by paragraphs 2 a), b), c), d) and e) above has not been completed by the date specified, the Court shall immediately order alternate remedies as a means of achieving the unmet portion of the Township's fair share obligation. The Court shall in its discretion first refer the case to a Master for his or her recommendation, but in no event shall the issues of fair share number or of initial noncompliance be reopened in these proceedings.

b. Under appropriate circumstances, the Master shall first attempt to recommend a solution which preserves the remedial approaches set forth in this Order, but the Master shall not be required to do so. In particular, the Master is not bound to recommend senior citizen housing, or publicly assisted financing of new construction, or use of the Housing Trust Fund, if those approaches are unfeasible. The Master is specifically authorized to recommend appropriate

rezoning of any additional land in Plainsboro Township with a 20% set-aside for low and moderate income housing, in his or her discretion.

c. Should any of the mechanisms provided in this paragraph be invoked, the distribution of low and moderate income units within an alternate housing development shall be such that, as nearly as practicable, an overall proportion of fifty percent low income and fifty percent moderate income within Plainsboro's fair share is maintained.

7. Plainsboro Township shall report in writing to the Court and to the Civic League of Greater New Brunswick or its designee when each of the actions specified in this Consent Order has been taken. In addition, the Township shall report annually in writing to the Civic League or its designee, on January 1, 1989 and thereafter on January 1 of each year, the number of low and moderate income units being subsidized or otherwise provided as specified in this Order, with such supporting information as shall permit monitoring of the Township's continuing compliance.

8. Provided that all actions required as of January 1, 1988, shall have been taken and certified as provided in paragraph 6 above, Plainsboro Township is hereby found to be in compliance with the requirements of the Constitution of the State of New Jersey as construed in Mount Laurel II. This finding shall be valid and binding until January 1, 1993.

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

We hereby consent to the form, substance and entry
of this Consent Order.

Stonaker & Stonaker

Attorneys for the
Township of Plainsboro

BY: _____
JOSEPH L. STONAKER

DATE: _____

Constitution Litigation
Clinic, Rutgers Law
School

Attorneys for the Civic
League of Greater New
Brunswick

BY: _____
JOHN M. PAYNE
BARBARA STARK

DATE: _____

SCHEDULE OF ACTION DATES

<u>DATE</u>	<u>ACTION TO BE TAKEN</u>
January 1, 1988	Rezone McCarthy Tract to provide for 10 acre tract for 125 units on balance of tract Application for funding of 125 unit development of McCarthy Tract Execution of Consent Not to Sue by Princeton University & Linpro
March 1, 1988	Rezone Walker-Gordon Tract to provide for 40 units Identify units for rehabilitation
May 1, 1988	Begin construction of 125 unit development Begin construction of 40 units on McCarthy Tract
September 1, 1988	Selection of site for 45 units of rental housing Begin rehabilitation
January 1, 1989	Selection of site for 40 units of rental housing
June 1, 1989	Begin construction of 85 units of rental housing