

UL v. Carteret

27 Oct 1987

Plainsboro

Revised consent order draft + letter

9 pgs

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THE STATE UNIVERSITY OF NEW JERSEY  
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15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

October 27, 1987

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

Dear Roy:

Re: Plainsboro

Enclosed please find draft, revised Consent Order in connection with the above matter. Additions are indicated by underlining, deletions by brackets.

If you approve, the enclosed will be forwarded to Joseph Stonaker, Esq. Please telephone me with your comments.

Sincerely,



encls

cc/Payne, Mallach (w/encls)

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al.,

No. C 4122-73

Civil Action

Plaintiffs,

vs.

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

Defendants.

CONSENT ORDER

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

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 [have made it impossible] have called into question the Township's ability 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 the Internal Revenue Code are [no longer] not available on the same basis 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] expenditures for the 120 units [must be abandoned] have been held in abeyance.

Although the proposed number of low and moderate income units is less than formerly, [it will contain] the Agreement provides for more low income housing, the units will be dispersed throughout the community, more will be rental units and this Agreement will provide three bedroom units for the first time.

[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

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 made 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. \$10,000 shall be the minimum per unit cost necessary for rehabilitation as set forth at N.J.A.C. 5:92-11.5. 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 rental 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.] but no less than 35% of such units shall contain two bedrooms, no less than 15% of such units shall contain three bedrooms and no more than 20% of such units shall be efficiency units, in accordance with N.J.A.C. 5:92-14.1(a)1 et seq. The nonprofit corporation is to own and administer the rental of these units.

d) 40 moderate income sales units, representing % of total units, to be constructed by Linpro as a part of [their] its development of the balance of the McCarthy Tract.

e) 40 low and moderate income sales units, representing  
% of total units, to be provided as a part of the [conditional  
 use provision for] development of the Walker-Gordon Tract, Lot 5 and  
 Block 15, [tract] currently under option to Linpro.

f. 85 units of rental housing on one or more of the  
following three sites: (1) Millstone Apartment, Princeton Nurseries  
Tract; (2) \_\_\_\_\_ ; (3) \_\_\_\_\_ (manner in which units  
to be provided to be inserted); the Township, [shall keep] with the  
advice and consent of the Civic League of Greater New Brunswick,  
 [advised of the site selection] shall select the sites and shall  
 prior to [September] February 1, 1988 have the sites selected for 45  
 units and prior to [January] June 1, 1988 have the sites selected  
 for the remaining 40 units and prior to [June] January 1, 1989 have  
 the housing provided.

#### 4. 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. The covenants signed by Princeton University and Linpro will provide a minimum of \_\_\_\_\_ for the Fund.

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

6. 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).

7. FALLBACK MECHANISMS

In the event that the undertakings covered by paragraph 2 a), b), c), d), [and] e), and f) 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. 20% of the unmet portion of the Township's fair share as of the date of the motion referred to in subparagraph a shall be added to the Township's fair share as a deterrent to further delay in the provision of affordable housing. Thus, if 100 units remain unprovided at the time that motion is filed, if the motion is granted, the Township shall be required to provide 20 additional low and moderate income units.

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), and f) 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.



8. 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, 1988[9] 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.

9. 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.

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

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

Stonaker & Stonaker

Constitutional Litigation Clinic  
Rutgers Law School

Attorneys for the  
Township of Plainsboro

Attorneys for the Civic League of  
Greater New Brunswick

BY: \_\_\_\_\_  
Joseph L. Stonaker

BY: \_\_\_\_\_  
John M. Payne  
Barbara Stark

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_