

VL v. Cartoct (S. Plainfield)

Apr 3-9 (1984)

Letter from ~~Neisser~~ Neisser to Pat on 3 April 1984 re:

Stipulation

(7)

+ reply letter from Pat 9 April 1984 (2)

9 pgs

CAC00590L

# Patrick J. Diegnan, Jr.

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April 9, 1984

noted 4/12

Eric Neisser, Esq.  
Constitutional Litigation Clinic  
15 Washington Street  
Newark, NJ 07102

RE: Urban League vs. Carteret, et al.

Dear Eric:

Reference is made to your letter dated April 3, 1984. I will attempt to respond to particular items in the same order in which they were set forth in your correspondence.

I agree that our experts consider the regional and fair share methodology of the court appointed expert to be a reasonable one. However, I submit that it is obvious that it will be impossible for South Plainfield to meet the resulting fair share number. Accordingly, I believe that it would be appropriate to adjust the fair share number to realistically reflect the opportunity of the Borough to construct low and moderate income housing.

As to the specific items of stipulation, I agree with items 1-8 as set forth on page 2 of your letter.

Reference is made to pages 3-5 of your letter of April 3, 1984 and I will refer to each site as indicated:

- 1) Pomponio Avenue Site: It may be appropriate for the Borough to make a contribution at said site, however, I submit that it is an unreasonable request to expect the Borough to donate all of the land without cost based on a recent offer of \$1,200,000.00 by a developer. I believe that a more appropriate arrangement would be for the Borough to contribute towards improvements based on appropriate circumstances. By simply donating the land the Borough would assure a substantial profit to the developer but could not assure that low and moderate income housing would be more expeditiously constructed.
- 2) Frederick Avenue Site: I have reviewed this site with our planner and he believes that they are inappropriate for multi-family development based on the density of 100 feet.
- 3) Archdiocese Site: Although we have no overwhelming objection

to this site, I believe that it is useless to incorporate it into any potential settlement due to the fact that it will not be developed.

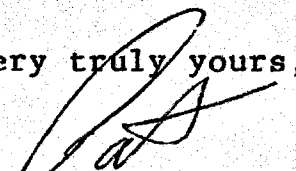
- 4) Morris Avenue Site: We consent to your proposal concerning this site.
- 5) Universal Avenue Site: We consent to your proposal concerning this site.
- 6) Elderlodge Site: We will of course include this in any proposal as previously discussed.
- 7) Coppola Farm: We agree to this proposal.
- 8) Harris Steel Site: We consent to your proposal concerning this site.

As to remedy, I believe that the appropriate stipulation would provide for 10 units per acre with a 20% mandatory set-aside.

As to paragraph 2 on page 5, I believe that it is contrary to sound planning and zoning to rezone all residential areas within a municipality for 5,000 square feet single family lots and 10,000 square feet two-family homes. The theory of Mt. Laurel is not that all zoning should be discarded but rather that zoning should on a rational basis encourage low and moderate income housing. To simply abolish the present zoning plan of the Borough of South Plainfield is a unacceptable proposal. If you would wish to limit your proposal to certain tracts, I would be more than happy to discuss same with our planner. The same principal applies to your proposal concerning existing structures on a three acre site. I believe that it is appropriate to consider each site as it becomes available rather than carte blanche state that any three acre site is automatically appropriate for multi-family development regardless of where same exists within the Borough. I have requested that John Graf send you the requested discovery information immediately.

Please review the proposal contained herein and possibly we can sit down and discuss same before the scheduled trial date of April 16, 1984.

Very truly yours,



PATRICK J. DIEGNAN, JR.

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April 3, 1984

Patrick F. Diegnan, Jr.  
2325 Plainfield Avenue  
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BY: EXPRESS MAIL

Re: Urban League v. Carteret,  
et al.  
C 4122-73

Dear Pat:

I received yesterday your letter of March 28 setting forth your proposal for a stipulation concerning the issues relating to South Plainfield. My co-counsel and I are grateful for the forthright and professional manner in which you have proceeded and agree with you that there appears to be a substantial possibility for avoiding all or most of a trial on the matters between plaintiffs and the Borough of South Plainfield. We thought it best to respond by setting forth our view of what a stipulation that would avoid a trial entirely would encompass in the hope that you could then determine precisely the position of your clients in this regard.

As you know, prior to addressing the question of sites developable for Mount Laurel purposes, the Court would have to resolve the issues of region, fair share methodology, and fair share obligation of each municipality and whether the municipality has substantially amended its zoning ordinance and land use regulations since the Judgment of July 9, 1976 to bring itself into compliance with its Mount Laurel obligations.

From our depositions and the expert reports in this case, it seems apparent that both the Urban League plaintiffs and South Plainfield consider the regional and fair share methodology of the Court-appointed expert to be a reasonable one and the resulting fair share number for South Plainfield to be an acceptable

definition of its Mount Laurel obligation. We also both recognize that the limited amount of vacant developable land remaining in South Plainfield precludes full satisfaction of the Mount Laurel obligation, however defined. If we could stipulate as to these points, we could move on to compliance.

With regard to compliance, the undisputed facts, as set forth in the interrogatory answers, the zoning ordinance, the 1978 Review of the Master Plan, the 1980 Addendum to that Review, and the depositions, establish that South Plainfield has not substantially amended its zoning ordinance to comply with its Mount Laurel obligation. If the Borough would not agree to stipulate directly that it has not substantially amended its ordinance to comply, then I suggest that we stipulate as to the following base facts, upon which plaintiffs could move for summary judgment on compliance:

(1) The zoning ordinance of South Plainfield does not now have, and has not at any time since July 9, 1976, had, a zone for multi-family housing.

(2) The only proposal for rezoning to permit more than two-family construction, which is set forth in the Planning Board's 1978 Review of the Master Plan, was rescinded by the Planning Board in its January 1980 Addendum No. 1 to the 1978 Review.

(3) The zoning ordinance of South Plainfield does not provide, and has not at any time since July 9, 1976 provided, any mandatory set-aside, density bonus, waiver of zoning requirements, or affirmative municipal assistance for construction of housing affordable by persons of low or moderate income.

(4) No multi-family housing has been constructed in the Borough since 1980.

(5) The only proposal for multi-family housing in the Borough since 1980 was rejected by the Board of Adjustment in April 1982; that decision of the Board of Adjustment has now been reversed and remanded for further consideration in Elderlodge, Inc. v. Borough of South Plainfield.

(6) None of the single family and two-family homes approved or constructed in the Borough since 1980 is affordable by persons of low or moderate income.

(7) The Borough has never provided for construction of any subsidized low or moderate income housing under any government subsidy program.

(8) The Borough has obtained Middlesex County Community Development funds for rehabilitation of only 33 housing units since 1976.

In terms of remedy, I think we have substantially agreed on which sites are appropriate for Mount Laurel development, although I note that the list in your March 28 letter does not include the Elderlodge project which was on your handwritten list. I set forth below the sites we would be willing to stipulate to, with an informal reference title and the greatest specificity of description available to me at this time. Please note that for this purpose I have subdivided the Pomponio Avenue site into two sites -- the second called the Frederick Avenue site -- because our expert considers them essentially separate development sites, although he agrees that it is possible that they might be developed together at one time. Plaintiffs would be agreeable to forego the firehouse site next to Shadyside, the westernmost tip of the municipally owned Pomponio site, and some other smaller sites, which we also consider appropriate for multi-family development, if the Borough is willing to make an appropriate contribution to the development of the remainder of the Pomponio site, the Frederick Avenue site, the Universal Avenue site, and, of course, the senior citizens project on the Morris Avenue site. I set forth under each site the contribution that we believe would provide a realistic opportunity that those sites would be developed for multi-family housing with a low and moderate income component.

Pomponio Avenue site

Block 448 Lots 2.01, 4.01

Block 427 Lot 1.01

This municipally owned site of approximately 25 acres is appropriate for multi-family development. The Borough would need to construct Pomponio Avenue from the northern tip of Kennedy Road west to Clinton Avenue and to donate all the land without cost to an appropriate developer.

Frederick Avenue site

Block 308 Lots 30.01, 34

The municipally owned site of 4 acres to the north of where the two-family homes are presently being constructed on Frederick Avenue and the privately owned site of 6.4 acres to the west are appropriate for multi-family development as a single project. The Borough would need to extend Sylvania Place and Frederick Avenue until they connect, in a manner appropriate to accommodate the multi-family development on the adjacent land, and would need to donate the Borough-owned land without cost to an appropriate developer. The remainder of Frederick Avenue, as presently mapped, need not be constructed.

Archdiocese site

Block 12 Lots 9, 16, 17

Although we understand that the Archdiocese might be thinking of using this 7 1/4 acre site for a cemetery, we consider it entirely appropriate for residential development as is, given its proximity to a school and a single-family neighborhood.

Morris Avenue site

Block 111 Lots 1-4

Block 112 Lots 1, 2.01

Block 113 Lots 1.01, 2, 4, 5.01

Block 115 Lots 1, 2, 2.01 3

This municipally owned site of approximately 10 acres is appropriate for the senior citizen housing project proposed by the Borough. We believe that a total of 150 units is feasible on this site. The Borough would have to contribute the land and provide necessary financial support, potentially including seed money (start-up funds) and tax abatement as provided by state law.

Universal Avenue site

Block 255 Lots 14, 33, 34

The first parcel is the 18.27 acre site we examined together. The two neighboring sites, including the vacant back of the occupied middle site, Lot 34, might be appropriate for extension of the project and for access. The Borough would need to construct the necessary road extension to provide appropriate access to the developed site, as determined by the Borough's planners and engineers.

Elderlodge site

Block 259 Lots 5, 6A, 6B, 7, 12

We believe the site is appropriate for a 100-unit multi-family development.

Coppola Farm

Block 528 Lot 44

This privately owned site of 27 acres next to Shadyside is appropriate for multi-family development as is.

Harris Steel site

Block 459 Lot 1; Block 460 Lot 1; Block 461 Lots 1-3; Block 462, Lot 2; Block 465 Lot 1; Block 466 Lot 1; Block 467 Lots 1, 3, 4, 5, and 21.

This privately owned site of approximately 84.8 acres on New Brunswick Avenue across from the multi-family developments in Piscataway is appropriate for such development as is.

As I perceive it, the stipulation on remedy would state:

(1) The specified sites are appropriate for multi-family development at a density of 12-15 units per acre with a 20 percent mandatory set-aside, and

(2) If the specified sites were rezoned by the Court for multi-family development at a density of 12-15 units per acre with a 20 percent mandatory set-aside, the Borough would make the specified contributions or improvements when an appropriate developer applied. In addition, we would request a stipulation that it would be appropriate to rezone all residential areas of town for single family homes on 5,000 square foot lots and two-family homes on 10,000 square foot lots, and that modular or manufactured homes meeting the state building requirements are permitted uses in all residential areas. As to the former, smaller minimum lots are important both because of the cost factor and because of the many small parcels that remain in the Borough. As to the latter, I recognize that pursuant to state law the Borough currently permits modular or manufactured homes meeting the state building codes, but it is important that this policy be expressly embodied in the Borough's zoning ordinance, to encourage its use. Further, we would expect a stipulation that, if all existing structures on a lot of more than 3 acres either in a residential area or immediately adjacent to a residential area are destroyed or demolished by act of God or otherwise, the lot would be appropriate for multi-family development. Finally, we would expect a stipulation, such as you proposed, that the Borough will apply for all available federal, state, and county funds for rehabilitation of existing housing units.

Once a stipulation is signed, plaintiffs could move for summary judgment urging the Court, directly or upon further advice from a master, to enter an order in line with the stipulation.



In light of the limited number of appropriate parcels in the Borough, it is important that I reiterate plaintiffs' request for immediate supplementation of the interrogatory answers to inform us of any new or pending application, proposed Board of Adjustment or Planning Board action, or bid or offer of purchase with regard to the specified parcels. As I indicate previously, plaintiffs would be glad to have their expert, Alan Mallach, who is very familiar with financing alternatives for affordable housing, sit down with the Borough's Administrator or other involved personnel to assist in developing a solid financing proposal for the senior citizen development on Morris Avenue. I should note, in addition, that I would be happy to draft the formal stipulation once we have reached agreement.

### Outstanding Discovery

Although we are hopeful that most if not all issues can be resolved without an evidentiary hearing, given the state of our discussions and the closeness of trial, I am sure you can understand my need to insist on the few remaining outstanding discovery requests. To the best of my knowledge we are still awaiting the following:

(1) An update of the Planning Board and Board of Adjustment action lists, set forth in your letters of February 13 and 17, to the present time as well as an amendment of the existing Board of Adjustment list to reflect the denial of the Elderlodge project.

(2) The litigation materials, including most importantly Judge Serpentelli's remand decision, in Elderlodge, Inc. v. Borough of South Plainfield. All I have at the present are the minutes of the Board of Adjustment from 1982.

(3) The 1983 denial resolution by the Board of Adjustment concerning the Bayberry Construction proposal.

(4) The applications forms for Cases 81-4V Baker Dev. Corp. of Middlesex, 304 Best Supply Co., 313V T. Mancuso and 320/V Supermarkets Center, all listed on the February 13 list of Planning Board approvals.

(5) The comparable forms for the cases on the February 17 Board of Adjustment list.

(6) Application forms for any cases on the update requested in (1) above.

I would appreciate your getting me these few remaining documents immediately. I would also hope that you could expeditiously consult with your clients about the stipulation and get back to me as soon as possible so we can determine how best to proceed.

Sincerely yours,

*Eric Neisser*  
Eric Neisser

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