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ATTORNEYS FOR PLAINTIFFS

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C 4122-73

Civil Action

AFFIDAVIT IN SUPPORT OF MOTION
FOR CONSOLIDATION, TEMPORARY
RESTRAINING ORDER AND
INTERLOCUTORY INJUNCTION
APPOINTMENT OF A MASTER J
NOTICE TO PLAINTIFF

BARBARA J. WILLIAMS, of full age, being duly sworn
according to law, upon her oath deposes and says:

1. I am the attorney for plaintiffs in the above
referenced matter.

2. On or about June 8, 1982, Elderlodge, Inc., a
New Jersey corporation, filed a suit in Lieu of Prerogative
Writs against the South Plainfield Board of Adjustment in the

Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-56349-81, contesting the denial by the South Plainfield Board of Adjustment of Elderlodge's request for a use variance. (Exhibit A)

3. Plaintiffs' complaint in its Third Count is pleaded on a Mt. Laurel theory and seeks Mt. Laurel relief in the form of rezoning for low and moderate income housing.

4. The Honorable Eugene D. Serpentelli, J.S.C., ordered the matter referred to in Paragraphs 2 and 3 above to be remanded to the Board of Adjustment of the Borough of South Plainfield "in order to amplify and supplement the record pursuant to the principles and rules applicable under South Burlington Cty. NAACP v. Twp. of Mt. Laurel, 92 N.J. 158 (1983) (Mt. Laurel II)."

The Court furthermore ordered that the Board of Adjustment conduct all hearings and render its decision in this matter within 90 days from the date said hearings shall be commenced.

(Exhibit B)

5. On May 22, 1984, the Court entered a Judgment As To South Plainfield which inter alia established the "fair share;" ordered the non-compliant ordinances to be revised; and specified the parcels to be rezoned by the Borough of South Plainfield. Included in the Judgment as a parcel to be rezoned was the Elderlodge site. This site was to be rezoned for a 100 unit multifamily development "with a mandatory set aside of 10% low income and 10% moderate income units ..." (Exhibit C, SI 3H)

[emphasis added]

6. On July 9, 1984, William V. Lane, Esq., counsel for the South Plainfield Board of Adjustment, advised Eric Neisser, Esq. that the Elderlodge matter had been "carried at the request of the applicant." (Exhibit D)

7. On October 8, 1984, Angelo Dalto, Esq., attorney for the Elderlodge corporation, informed the Court that the South Plainfield Board of Adjustment had, on October 2, 1984, granted Elderlodge's application to construct Senior Citizen housing as originally submitted. "No references to Mount Laurel implications or mandatory set asides were established." (Exhibit E) [emphasis added]

8. Said approval of the Elderlodge site without a mandatory set aside for low and moderate income housing is in direct contravention of the terms of the Judgment As To South Plainfield previously entered by the Court.

9. On October 15, 1984, Judge Serpentelli reiterated to counsel for Elderlodge that the purpose of the remand was to supplement the record before the Board of Adjustment concerning Mt. Laurel grounds for relief. The Court did not enter the Order dismissing the Elderlodge action as requested in light of the fact that the Borough of South Plainfield had not enacted a compliance ordinance meeting its Mt. Laurel obligation. The Court instructed no municipal official to take any action to authorize construction on the Elderlodge parcel pending resolution of this issue. (Exhibit F)

10. On October 19, 1984 I wrote to Mr. Dalto requesting prompt notice by letter or telephone of any proposed action relating to the Elderlodge site (including Board of Adjustment or other official meetings at which the project might be discussed). I advised him that the Urban League plaintiffs would move on short notice for an injunction against any action in South Plainfield that might prejudice their rights. (Exhibit G)

11. Counsel for plaintiffs has identified a pattern of non-compliance in South Plainfield's response to the judicial orders referenced above. Its conduct with regard to the Elderlodge site exemplifies bad faith on the municipality's part in carrying out the Mt. Laurel objectives agreed to in the May 22, 1984 Judgment:

(a) On August 22, 1984, Mr. Rosa submitted to plaintiffs a copy of a revised proposed draft of ordinances for the Borough of South Plainfield. (Exhibit G-1)

(b) These draft ordinances were reviewed by Mr. Alan Mallach and Eric Neisser, Esq.

(c) On September 5, 1984, Mr. Neisser wrote to Mr. Rosa agreeing to the majority of the proposed ordinances, excepting concerns as to mandatory townhouse and garden apartment mix, the definition of townhouses and condominiums, and certain cost generating features by the proposed ordinances. (Exhibit G-2)

(d) No response was ever received from any representative of South Plainfield as to the three issues left outstanding.

(e) On September 25, 1984, Judge Serpentelli requested Mr. Diegnan inform the Court of the expected completion date of the Court-ordered revision of the zoning ordinances.

(Exhibit H)

(f) Pursuant to the terms of the Judgment As To South Plainfield, the Borough of South Plainfield was required to enact ordinances in compliance with terms of Order no later than 120 days from date of the Judgment. The 120 days expired on October 3, 1984.

(g) By letter dated October 4, 1984, Patrick Diegnan, Esc responded by advising the Court that revisions to South Plainfield's zoning plan would not be approved until a complete revision of the Master Plan was completed by the Borough's Planner, Robert Rosa Associates. (Exhibit I)

(h) On October 11, 1984, Judge Serpentelli wrote to Mr. Diegnan reiterating the Court's September 25th request for a specific time schedule as to the expected completion date of the zoning ordinance revisions. The Court reminded Mr. Diegnan that the October 3, 1984 deadline for that ordinance revision had passed. (Exhibit J)

(i) On October 12, 1984, I wrote to Mr. Diegnan indicating the dissatisfaction of the Urban League with

South Plainfield's intention to hold up Court-ordered revision of its zoning ordinances until enactment of an updated Master Plan and my intention to request appropriate relief absent an indication from the Borough of intention to comply with Court-ordered enactment of compliant ordinances within 7 days of October 12, 1984. (Exhibit K) I heard nothing from any representative of South Plainfield within the specified time period.

(j) On October 19, 1984, I wrote to the Court expressing the position of the Urban League that it was unreasonable and contrary to the mandate of Mt. Laurel II to delay amendment of the zoning ordinances pending revision of the Master Plan and suggesting it would be appropriate to allow the Borough one last opportunity to enact a compliant ordinance with a deadline of one properly noticed public meeting. (Exhibit L)

(k) On October 22, 1984, a letter to Judge Serpentelli from Patrick Diegnan, Esq. informed the Court that the next scheduled Public Meeting of the Mayor and Council of the Borough of South Plainfield is November 12, 1984. No indication was provided by this communication as to whether ordinance revision would or would not be considered by the Council of the Borough of South Plainfield at that meeting. (Exhibit M)

12. As of the date of this Affidavit, the Borough of South Plainfield has not enacted compliant ordinances nor has it given any indication it will comply with the terms of the Judgment by enacting such ordinances at the November 12, 1984 meeting specified by Mr. Diegnan in his letter of October 22, 1984.

13. The approval granted to the Elderlodge site without a mandatory set aside in violation of the Judgment of May 22, 1984 indicates that the set asides applicable to the other parcels subject to rezoning as a result of the Judgment are also in jeopardy and plaintiffs will be irreparably harmed if the actions of the Borough, its officers and agents which may impair the terms and conditions of the Judgment are not restrained.

14. Any action as to other vacant parcels in the municipality by such governmental entities will also irreparably impair the position of the plaintiffs by reducing the amount of land available for satisfaction of the fair share at a time when the Borough of South Plainfield has not enacted compliant ordinances and has, in at least one instance, violated the terms of the existing Judgment.

15. In the absence of a restraint enjoining such actions as requested by plaintiffs in its motion, plaintiffs will continue to be left in the posture to objecting to actions taken by any entity or individual on behalf of South Plainfield

after-the-fact. The existing status of the Elderlodge matter aptly illustrates the irreparable prejudice that has and will continue to occur to plaintiffs as a result.

16. The consequences to the Borough of South Plainfield of enactment of the requested restraints are minimal in comparison to the harm resulting to plaintiffs, especially when viewed in light of action and inaction of the Borough and its representatives set forth in this Affidavit which have transpired to date.

17. Plaintiffs have succeeded in this matter on the merits. It is no longer a question of the "probability of success" of the party seeking the restraint. The Judgment As To South Plainfield was entered after plaintiffs' Motion for Summary Judgment. Plaintiffs seek this restraint to ensure that the Judgment is not consistently and continually eroded by the Borough of South Plainfield or anyone acting on its behalf.

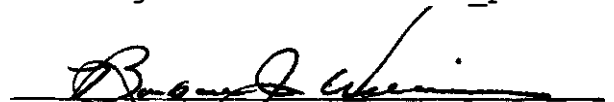
18. The Borough of South Plainfield is out of time for revising its ordinances. The 120 days mandated for revision of the ordinances has long passed. While draft ordinances have been submitted to plaintiffs and commented upon by the Urban League, the defendant has provided both the Court and the plaintiffs with correspondence that conveys virtually nothing as to its intent or its efforts to comply with the existing Judgment. As a result, plaintiffs request that a

Master be immediately appointed by the Court and that the Master's responsibility be to review the proposed South Plainfield draft ordinance and the comments of plaintiff thereon contained in Mr. Neisser's September 5, 1984 letter and, within 15 days, report to the Court as to his or her recommendations for revision of the ordinances of South Plainfield.

19. Consolidation of the Elderlodge and Urban League suits is necessary for the Urban League to be able to properly protect and assert its position within the context of the Elderlodge litigation. Common questions of law and fact exist in both suits. The Elderlodge parcel is the subject of the Court's Judgment of May 22, 1984 in the Urban League case and both suits seek relief on the basis of Mt. Laurel. Resolution of the existing inconsistency of the Borough's action and the Judgment can more efficiently take place in a consolidated action.

20. In order to enable plaintiffs to monitor the proposed actions of all individuals and entities acting on behalf of the Borough of South Plainfield, plaintiffs must have notice of the contemplated actions in advance. Accordingly, plaintiffs further move for an Order requiring that plaintiff be provided with copies of any and all agendas, meeting notices, proposals, etc. that could in any way affect or impact upon the ability of South Plainfield to satisfy its fair share of low and moderate income housing which the Judgment mandates provide,

SWORN TO and SUBSCRIBED
before me this 26th day
of October, 1984.


BARBARA J. WILLIAMS

~YWIRHWI JA [KRNPFJ]
Attorney at Law, State of New Jersey

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EXH-IBIT

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Attorneys for Plaintiff

ELDEKLODGE, INCORPORATED,
a New Jersey Corporation,

Plaintiff,

vs.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT
BY ITS MAJORITY MEMBERS (Ronald Hepburn,
Chairman; Carl Abbruzzese; Robert Home;
Cari Lal'errara; Cynthia GaNun, First
Alternate); BOROUGEI OF SOUTH PLAINFIELD
BY ITS MAYOR AND COUNCIL; JOHN GRAF,
BUILDING INSPECTOR OF THE BOROUGH OF
SOUTH PLAINFIELD; and PLANNING BOARD OF THE
"BOROUGH OF SOUTH PLAINFIELD,
Defendants.

SUPERIOR COURT OF NEW Ji-PS
LAW DIVISION
MIDDLESEX COUNTY

Docket !!<«, 56.3*9 i

Civil Action

COMPLAINT

(In Lieu of Prefc^ttivu "->

\The plaintiff, Elderlodge, Incorporated, with offices »t 100 front
Street, in the Borough of South Plainfield, County oi Middle-:ex, a:ia .Slat-e
of New Jersey, by way of Complaint against the defendants, ..ays:

FIRST COUNT

1. Plaintiff is the owner of property located in the borough of
Plainfield, and commonly known as Lots 5, 6A, 6B, 7 and 12, in Block 2D;. .
the Tax and Assessment Maps for the Borough of South Plainfield, Mic<21*=->-x
County, New Jersey.

2. The subject properties are developed with two marginal commercial buildings and a two-family residence dwelling; the balance of the property being in a vacant state.

3. The property lies in two separate zones; the 305 ft. frontage on Hamilton Boulevard is in the OBC 2 Zone, or Central Business Zone, wherein retail uses are permitted on parcels of 50 x 100 ft. dimension. The portion of the property abutting the railroad overpass and Lakeview Avenue is zoned R 7.5 or one-family residential, on parcels of 75 x 100 ft. This portion of the site has no practical access or frontage for development, except in the OBC 2 Zone.

4. On or about November 11, 1981, plaintiff did make application to Board of Adjustment of South Plainfield for a use variance to construct a 100-unit, six story (56 ft. height) Senior Citizen housing project to be used as moderate priced housing on a fee simple condominium basis. The application requested a use variance in that no multi-family zoning, other than 2-family is permitted in the Borough of South Plainfield. In addition, the 35 ft. height limitation in the OBC 2 and R 7.5 Zones would be exceeded by 21 ft. The applicant further requested an interpretation of parking requirements incident to the development.

5. The defendant, Board of Adjustment, did conduct public hearings, and give due and proper notice to all interested parties, on January 5, 1982, February 2, 1982, February 23, 1982 and March 2nd, 1982, at which time plaintiff presented testimony. A transcript was made of all the hearings, and is available for review by the Court.

6. On or about April 27, 1982, the Board of Adjustment did meet to consider plaintiff's application and to render a decision. The Board of Adj:

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ment, by vote of five (5) to two (2), did deny the application.

7. Plaintiff, under date of May 5th, 1982, did receive a copy of the Board of Adjustment resolution, dated May 4th, 1982, purporting to memorialize the findings of the majority members of the Board of Adjustment in denying the application. J"

8. Plaintiff contends that the Board of Adjustment was arbitrary, capricious and unreasonable in denying the requested relief from the Zoning Ordinance, for the following reasons:

(a) The majority members of the Board of Adjustment in arriving at their decision did consider matters outside the record compiled before the Board at its public hearings, thereby denying plaintiff its right to cross-examine and counter the negative matter considered by the majority members of the Board of Adjustment.

(b) The "findings" as set forth in the Board of Adjustment resolution are inaccurate, unsubstantiated and totally unfounded in the record before the Board of Adjustment. In addition, the "findings" represent tortured misconstructions of the testimony submitted at the public hearings. Those stated "findings" are, in fact, conclusory statements which do not accurately reflect the testimony submitted at the public hearings.

(c) The record before the Board of Adjustment contains a preponderance of evidence establishing special reasons for the granting of a use variance pursuant to R.S. 40:55D-70, subsection (d); the following representing a partial listing of those special reasons:

1. promotion of the statutory mandate to "encourage senior citizen housing" (R.S. 40:55D-2.1 and R.S. 40:55D-70)
2. The subject site is uniquely situated and peculiarly suited to the use intended in that sufficient space at .i

appropriate location for a residential use not otherwise provided for in South Plainfield will be achieved

(R.S. 40:55D-2 g).

3. The proposed density constitutes an appropriate population concentration that will contribute to the well being of persons--~(R.S. 40:55D-2c) .
4. There is a demonstrated need for senior citizen housing not only in South Plainfield but statewide and the project would guide appropriate development of land in a manner that would promote the public health, safety and general welfare of the senior citizens residing within and within the Borough of South Plainfield .(R.S. 40-.55D-2 a) .
5. The subject site, by virtue of its unreasonable zoning classifications is subject to hardship and unreasonable restrictions rendering it unusable as to the reasonable use of the site in question. ..
6. The subject site and the general area in which the project is located has been blighted by the movement of commercial uses and general obsolescence, and the proposed senior citizen use would tend to stabilize the area and to stimulate a population which could revitalize an otherwise decaying neighborhood.
7. The bulk variance regarding height limitations is dictated by the needs of senior citizens and the type housing most suited to those needs and is therefore mandated by the needs of the specific segment of the population.
8. The proposal was to provide 60 parking spaces which the

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record reveals would be more than sufficient for the use intended by virtue of experience, expert testimony and those reports and statistics obtained from reliable sources including but not restricted to the Division on Aging of the State of New Jersey.

9. The height variance is dictated by the specific needs of senior citizens and is consonant with the need and the area.

(d) The record compiled before the Board of Adjustment demonstrates by a preponderance of the evidence, that the requested relief can be granted without substantial detriment to the public good and that the approval of the subject variances will substantially enhance and improve the existing zoning ordinance and plan as opposed to any impairment of the same.

WHEREFORE, Plaintiff demands judgment against the defendant board of Adjustment of South Plainfield, and the Building Inspector, for the following:

A. That the decision of the majority of the Board of Adjustment be reversed and that the Board of Adjustment be required to grant the variance requested and to permit the matter to proceed to site plan review.

\ U. That the Building Inspector be directed that after favorable site plan review, a building permit be granted pursuant to all applicable ordinances, laws and regulations.

C. That the plaintiff be awarded costs of suit.

SECOND COUNT

1. Plaintiff repeats all of the allegations of the First Count as if fully set forth herein,

2. The Borough of South Plainfield is a municipal corporation of the County of Middlesex, and State of New Jersey, having 5248 acres of land.

3. There have been three major revisions of the Zoning Ordinance for the Borough of South Plainfield since the community was incorporated as a separate municipality in 1926; those adopted in 1932, 1960 and 1978.

4. In 1932, the Zoning Ordinance permitted one-family residence dwell on 50 x 100 ft. and limited multi-family units and apartments to the T, A, B, C & I Zones.

5. In 1952, a major amendment of the 1932 Zoning Ordinance was enacted* eliminating all multi-family units, with the exception of two-family units in R-2, B-1, B-2 Zones. In addition, new one-family zones were created, R-1, R-1-1, R-1-2, wherein one-family dwellings were restricted to certain lot sizes, 15,000 sq. ft., 9,000 sq. ft. and 7,000 sq. ft.

6. In 1956, an additional revision of the 1932 Zoning Ordinance was enacted whereby larger areas of the Borough of South Plainfield were included in one-family residential zones having greater minimum lot requirements, R-1 (15,000 sq. ft), R-1-1 (10,000 sq. ft), R-1-2 (7,500 sq. ft.) .

7. In 1960, the 1932 Zoning Ordinance was repealed and the 1960 Zoning Ordinance was enacted. No multi-family or apartment uses were permitted and one-family residential dwellings were permitted in the following classifications:

R-40 (40,000 sq.ft.)
R-20 (20,000 sq.ft.)
R-15 (15,000 sq.ft.)
R-10 (10,000 sq.ft.)
R-7.5 (7,500 sq.ft.) and
R-5 (5,000 sq.ft.)

Two-family dwellings were permitted only in the B-1, B-2, and B-3 Commercial Zones and, while one-family dwellings were originally allowed in the M-2 industrial zone pursuant to R-20 standards, this was later amended to prohibit all residential development in the industrial zones.

8. The Rezoning Study predating the 1960 Zoning Amendment projected the R-40 and R-20 one-family residential zones as "holding zones" to permit construction of sanitary sewers and to allow for construction of schools to absorb the then existing residential growth. With sewers and school construction, R-10 one-family residential development was projected for those zones.

9. In 1978, the Borough of South Plainfield adopted a major revision of the Zoning Ordinance and repealed the 1960 Zoning Ordinance.

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10. No multi-family uses or apartment uses were permitted in any zone and two-family uses were permitted in the R-1-2 Zone on lots having 10,000 square feet (100 x 100), as well as OBC1 and OBC2 Commercial Zones. One-family residence dwellings were continued in the following classifications:

R-15 (15,000 sq. ft.)
 R-10 (10,000 sq. ft.) and
 R-7.5 (7,500 sq. ft.).

11. Prior to the adoption of the 1973 Zoning ordinance, the South Plainfield Planning Board did adopt a comprehensive amendment to the community Master Plan and as part thereof included a Land Use Plan which Land Use Plan established the basis for the Zoning Ordinance division into zoning districts pursuant to R.S. 40:55D-62a.

12. The Master Plan and the Land Use element thereof both provided for new zoning districts to accommodate areas in which one, two, three and four family dwellings would be permitted with densities ranging between five and

eight dwellings per acre. In addition, the Master Plan provided for Senior Citizen Housing designations with the following rationale therefore:

"Two additional residential areas are designated 'Senior Citizen Housing'. The delineation of these two areas as shown on the Land Use Plan recognizes the special needs of the elderly, many of whom neither desire nor are able to maintain a large single family home. The Senior Citizen Housing area to the West of Fleet Avenue could accommodate approximately 200 Senior Citizen apartment units at a density of about ten units per acre. The second recommendation for Senior Citizen Housing is to convert the Grant School building into a Senior Citizen apartment complex. Borough officials are presently working with state and federal agencies to determine the availability of funding for this project."

13. The Zoning Map as adopted with the 1978 Zoning Ordinance contains those areas designated Senior Citizen Housing as well as the following definition of "Senior Citizen Community":

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59. Senior Citizen Community.

A community where inhabitants exceed fifty-five years of age.

14. The 1978 Zoning Ordinance as ultimately adopted contained no provision for multi-family dwellings or standards to govern senior citizen housing although the areas designated for Senior Citizen Housing remains as delineated by the Planning Board in the Land Use Plan.

15. In November 1979, the Zoning Ordinance was amended as was the Zoning Map and, at that time, the areas designated "Senior Citizen Housing" were eliminated and redesignated for one-family and commercial use.

16. At the present time, the Zoning Ordinance makes no provision for any multi-family zoning nor is any provision made for senior citizen housing in spite of the fact that less than 0.3% of all land within the Borough of South Plainfield has been developed for multi-family uses and all of that development predates 1952.

17. The defendant, Mayor and Council, in adopting the Zoning Ordinance of 1978, did not incorporate the land use element of the Master Plan as part of the Zoning Ordinance and failed to set forth reasons for its failure to do so as part of the Minutes of the Mayor and Council meeting held on December 1978, which violates the requirements of R.S. 40:55D-62a.

WHEREFORE, plaintiff demands judgment setting aside the Zoning Ordinance of the Borough of South Plainfield and requiring amendment of the Zoning Ordinance to correct the inadequacies and violations of law for the following reasons:

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A. Defendant, Mayor and Council, did violate the mandatory provisions of R.S. 40:55D-62a in adopting a zoning ordinance which departed from the land use element of the Master Plan with, it setting forth reasons therefor.

B. The Zoning Ordinance of the Borough of South Plainfield ~~is~~ ~~in~~ ~~violation~~ of the provision for Senior Citizen Housing in direct contravention of R.S. 40:55 21 and R.S. 40:55D-65g, as well as the mandate placed upon all municipalities to provide zoning for all forms of housing needs within the community.

C. The Zoning Ordinance of the Borough of South Plainfield, by virtue of the fact that no multi-family housing has been permitted within

Borough of South Plainfield since 1952, constitutes exclusionary zoning whereby none but single-family and two-family housing is and has been permitted to the detriment of those segments of the population requiring other forms of housing to meet their needs.

D. The Court should appoint a Special Master to oversee the implementation of the municipal legislative process leading to the amendment of the Zoning Ordinance in order to correct the lack of low and moderate income housing, least cost housing, and Senior Citizen housing-

E. For the foregoing purpose, jurisdiction should be retained by the trial court until a proper legislative remedy shall have been implemented by the defendants.

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THIRD COUNT

1. The allegations of the First and Second Counts are incorporated by reference as if fully set forth herein.

2. The Master Plan, as adopted in 1978, specifically acknowledged the Mount Laurel decision and the fact that "developing municipalities must, in means of their land use regulations, make possible the opportunity for an appropriate variety and choice of housing for all types of people who may desire to live within that community".

3. The Master Plan further acknowledged that the Urban League of City of New Brunswick had succeeded in its suit against several Middlesex County municipalities, including the Borough of South Plainfield, which had been ordered to provide 1750 additional low and moderate income housing units in 1985.

4. Acknowledging these factors, the Master Plan established as a specific goal and objective the following:

"1. To establish a pattern of residential development which will provide a variety and balance of housing supply to meet the existing and future needs of the Borough and to provide for its fair share of the region's housing needs."

5. In support of this goal, the Master Plan specifically proposed the Residential 1-2, 1-4A and 1-4B Zones, wherein residential dwellings including one-family, two-family and three and four-family use were proposed with densities ranging between five and eight dwelling units per acre. The Master Plan further provided the specific areas to be so classified within specific zones.

6. The Master Plan further proposed a Senior Citizen Housing designation to accommodate "... the special needs of the elderly, many of whom neither desire nor are able to maintain a large single-family home". Two areas were designated for such development; the site of the former Grant School, within 300 feet of plaintiff's property, and now to be utilized as a school residence for the developmentally disabled, and an area to the west of Flee Avenue.

7. The Master Plan in canvassing existing land uses found that single family residential development comprised the single largest category of developed land; 39.6% and 26% of all lands, a total of 1,375.72 acres. Of a total of 5,248 acres, 1,776.95 acres, or 33.9%, was projected as vacant and undeveloped lands.

8. There remains a substantial area of vacant lands available for development to accommodate the variety of housing needs existing within the community and region, including low and moderate cost housing, as well as Senior Citizen Housing, and least cost housing.

9- The Master Plan was amended in 1979 and 1980 to reflect the adoption of the Zoning Ordinance of 1978, which failed to accommodate any provisions for multi-family housing or senior citizen housing. These amendments were in direct contradiction of the established findings of the 1978 Master Plan.

10. By failing to provide for multi-family uses and senior citizen housing, the Zoning Ordinance has systematically excluded those persons of lower and moderate economic status as well as senior citizens, whose specific needs are entirely overlooked.

11. The exclusion of multi-family housing and senior citizen housing runs contrary to the mandate to promote a reasonably balanced community, ignores the housing needs of substantial segments of the community population as well as those of the region in which the community exists.

12. The Borough of South Plainfield has classified an unreasonable and inordinate amount and percentage of its total land areas for single-family residential and industrial use.

13. Said residential and industrial zones are arbitrary, capricious and unreasonable in that the excess areas zoned for those uses deny the ability to meet the existing community and regional need for low, moderate and least cost housing, as well as Senior Citizen Housing.

WHEREFORE, plaintiff demands judgment setting aside the existing Zoning Ordinance and requiring the appointment of a Special Master to oversee the

legislative process leading to amendments of the Zoning Ordinance to accommodate the needs for low, moderate and least cost housing, as well as Senior Citizen Housing.

In the alternative, plaintiff demands judgment approving its special project as a permitted use and permitting the same to move to site plan approval and implementation.

FOURTH COUNT

1. The allegations of the first three counts are incorporated herein as if fully set forth herein.

2. The standards and use classifications imposed on plaintiff's property do not reflect the character of the district or the peculiar suitability of the property for particular uses and does not encourage the most appropriate use of the property.

3. The Zoning Ordinance requirements applicable to plaintiff's property deprive the plaintiff of the use of the property without due process of law and have denied to the plaintiff the equal protection of the law and are violative of the New Jersey and United States Constitutions.

4. The Zoning Ordinance requirements applicable to plaintiff's property are discriminatory, unreasonable, exclusionary, arbitrary and capricious.

WHEREFORE, plaintiff demands judgment as follows:

A. That the defendants be directed to permit plaintiff to develop the property in accordance with the plans submitted.

B. That the Court declare the existing zoning regulations invalid

and direct the adoption of standards which will bring about and permit multi-family low and moderate income housing as well as Senior Citizen Hons to serve the community and the region.

C. That the Court appoint a Standing Master to oversee the adoption of zoning standards in accordance with the Court's decision and retain jurisdiction for that purpose.

D. Awarding plaintiff costs.

ABRAMS, DALTP-GRAN, HENDRICKS & PEIJA
A Professional Corporation

Dated: June 8th, 1982.

By: Angelo J. Dalto
Angelo J. Dalto

ANGELO H. DALTO, ESQ.
Abrams, DalCo, Gran, Hendricks & Reina
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South Plainfield, New Jersey 07080
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Attorneys' for Plaintiff -

ELDERLODGE, INCORPORATED,
a New Jersey Corporation,

Plaintiff,

vs.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT,
BY ITS MAJORITY MEMBERS, etc., et als.,

- Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY ;

Docket No. L-56349-81

j Civil Action
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ORDER

•The Court on its motion, and without objection from any of the parties, either plaintiff or defendants, in this matter, does O R D E R that the above entitled matter be remanded to the Board of Adjustment of the Borough of South Plainfield in order to amplify and supplement the record pursuant to the principles and rules applicable under Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (MOUNT LAUREL II)- The

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Board of Adjustment of the Borough of South Plainfield shall conduct all hearings and render its decision in this matter within ninety (90) days from the date said hearings shall be commenced.

This Court shall retain jurisdiction of the matter in the event that any party wishes to seek further review of the Board of Adjustment action rendered

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after the conclusion of all hearings conducted under the terms and conditions of this Order.

Dated: December 23, 1983.

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J.S.C.

EXH-13 J i C

Johnstone, Skok, Loughlin & Lane

COUNSELLORS AT LAW

324 EAST BSOAQ STREET
O. BOX -490
WESTFIECO. N. J. 07091

*AOLJ 233-S000

NEW YORK OFFICE

233 BROADWAY
SUITE S09
NEW YORK, N. Y. 10007
1212 81-33**

IRVINE B. JOHNSTONE, #16
FRANZ J. SKOK*
VINCENT K. LOUGHLIN*
WILLIAM V. LANE
IRVING E. JOHNSTONE, III*

S-XMC L. MODEL.*

*ALSON T. >>A>>

ITC 7)to

July 9, 1984

Eric Neisser, Esq.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102

Re: Elderlodge, Inc. v. South Plainfield Board of

Dear Mr. Neisser: Adjustment/Docket N'o.L-56349-31

In response to your most recent inquiry to Mr. Diegnan, the above captioned matter has been carried at the request of the applicant. As of the writing of this letter it has not been rescheduled. I suggest that any future questions with regard to the status of this matter can be addressed to the attorney for the applicant, Angelo H. Dalto, Esq.

Sincerely yours,

JOHNSTONE, SKOK, LOUGHLIN 5 LANE
A Professional Corporation

William V. Lane

WVL:acm

cc: Angelo H. Dalto, Esq.

cc: Board of Adjustment/Borough of South Plainfield

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ABRAMS, DALTO, GRAN, HENDRICKS 5 REINA

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A FROreasiQHak CORPORATION
COUNSELLORS AT LAW

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POST OFFICE DRAWER D
SOUTH PLAINFIELD, NEW JERSEY 07030

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bound brook o^cice
ROBERT E. HENORICKS
RESIDENT PARTNER

NORMAN J. ABRAMS
ANGELO H. DALTO
HOWARD GRAN
ROBERT E. HENDRICKS
C. DOUGLAS REINA
JANE O. CASTNER

(201) 75<*-9200
(ZOO 7S7-4->aa

10 39-9-00

PLEASE REFER TO
FILE NO.

October 8th, 1984

Honorable Eugene D. Serpentelli
Judge of the Superior Court
Ocean County Court House
C.N. 2191
Toms River, New Jersey 08754


re: ' Elderlodge (South'plainfield)

Dear Judge Serpentelli:

The South Plainfield Board of Adjustment met on October 2nd. At that time the public hearing was concluded and the Board deliberated and rendered a decision. They moved to grant the application as originally submitted for 100 Senior Citizen units on the subject parcel. No references to Mount Laurel implications or mandatory set asides were established. The Board reserved decision with respect to the bulk variance for violation of height and parking, and indicated it would consider those requests at the time site plan application was submitted. The approval therefore was purely as to the use variance, partially in accordance with my request to bifurcate the hearing. On the basis of the foregoing, my client has directed me to submit an Order to dismiss the action as originally filed, and I am herewith enclosing a form - of Consent Judgment, which I am circulating among all counsel for the purpose of affixing signatures in order to file the same upon the adoption of the Resolution memorializing the Board's approval.

I thank Your Honor for the considerations extended all the litigants in this matter, and I am pleased that the resulting termination appears to be in accordance with the present desires of all litigants.

Respectfully yours,

• LSCCCAYLb 
.Angelo H. Dal'to

AHD:jsb
Enclosure

cc: Patrick J. Diegnan, Jr., ESq.
William V. Lane, Esq.
Peter J. Calderone, Esq.



j i u p m a r (E n u r i n f ^ e f c 3) c r s e g

CHAMBERS OF
JITDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER, N. J. 08753

October 15, 1984

Angelo H. Dalto, Esq.
Abrams, Dalto, Gran, Hendricks & Reina
1550 Park Avenue
P. O. Drawer D
South Plainfield, N. J. 07080

Re: Elderlodge South Plainfield

Dear Mr. Dalto:

This will confirm our telephone conversation of Friday,
October 12, 1984. M ; . . -

In light of the fact that the Elderlodge matter was remanded to the Board of Adjustment for the specific purpose of permitting supplementation of the record concerning Mount Laurel grounds for relief before the Board of Adjustment, I am most hesitant to enter an order of dismissal which would approve the granting of the application when the approval does not contain a Mount Laurel component.

If the Borough of South Plainfield wishes to provide a compliance ordinance which adequately met its Mount Laurel obligation, I might withdraw my objection to the Elderlodge approval. However, at this posture, the municipality has not done so. I must specifically instruct that no municipal official take any action to authorize construction on the Elderlodge parcel pending resolution of this issue.

Very truly yours,

^ / " ' .

•v.,*-,... ,

EDStRDH

Eugene D. Ser^fentelli, JSC

CC: Barbara Williams, Esq.v
Patrick J. Diegnan, Jr., Esq.
William V. Lane, Esq.
Peter J. Calderone, Esq.
Carla L. Lerman, P. P.

Exhibit
6

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

Jill

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 19, 1984

Angelo H. Dalto, Esq.
Abrams, Dalto, Gran, Hendricks & Reina
1550 Park Avenue
P.O. Drawer D
South Plainfield, N.J. 07080

William V. Lane, Esq.
324 E. Broad Street
Box 490
Westfield, N. J. 07091

Dear Mr. Dalto and Mr. Lane,

I am in receipt of Mr. Dalto's letter to Judge Serpentelli October 8 and the Judge's response of October 15. Plaintiffs in Urban League v. Carteret consider any attempt to construct housing on the Elderlodge site without a 20 percent Mount Laurel set-aside to be in violation of the May 22 Judgment As To South Plainfield, a copy of which is enclosed for your convenience. Both of you knew, from Judge Serpentelli's remand in Elderlodge as well as from conversations and correspondence with Mr. Neisser for the plaintiffs and Mr. Diegnan for the Borough throughout the spring, that the Elderlodge site was one of the few sites in South Plainfield that would be subject to a Mount Laurel rezoning and that the Court had so ordered in May. Any action by the Board of Adjustment or other municipal officials to approve the Elderlodge project without an express, mandatory set-aside would be in violation of the Judgment. Indeed, had the Borough Council complied with the Judgment in a timely manner, the Elderlodge site would have already been rezoned with such a requirement by the time of the Board of Adjustment meeting on October 2. Clearly plaintiffs in Urban League cannot be deprived of the benefits of their Judgment by wilful delay on the part of Borough officials.

relative to the Elderlodge sitl J??J"* P — Ptly, in writing or
other official meetings at wJich J"cluding Board of Adjustment or action
S oth* ±n5°r*al — t L g fWit^ ^he a l @ h t b * diseased
or other officials concerning a^v « Officer, Town Engineer
necessary, plaintiffs wou L ? a S f ? C t of project. j f " * * *
injunction against any a ^ ^ o n ^ r ^ ^ f ^ - / - -
JW prejudice their rights.

Sincerely yours,

cc: Judge Serpentelli
Patrick Diegnan, Esq.
Peter Calderone, Esq.
Carla L. Lerman, P.P.

Barbara Williaas f

Robert E. Rosa Associates

- *Community Planning Consultants*
- *Landscape Architects*

- *Robert E. Rosa, P.P.*
- *James W. Higgins, P.P.*
- *Michael P. Fowler, B.S.*
- *Michelle H. Rybak, L.S.*
- *Stephen R. Rosa*
- *Frene Molillo*

*510 Amboy Avenue
Woodbridge, New Jersey 07095
Telephone (908) 636-7575*

REC'd 8/24
August 22, 1984

Mrs. Barbara Ciccone
South Plainfield Planning Board
2480 Plainfield Avenue
South Plainfield, N.J. 07080

Dear Barbara,

Enclosed is a copy of the Zoning Ordinance amendment to comply with Mt. Laurel 11, and the "Affordable Housing Ordinance," a companion piece of legislation. As we discussed, I would appreciate your help in duplicating this to get a copy to all members as soon as possible so they have time to read it before the September 11th meeting. See you on the 11th.

Very truly yours,

Bob

Robert E. Rosa

RER:jg
Enc.

cc: Patrick Diegnan
Eric Neiser ✓

Exhibit G-1

Edison Office
7 Southfield Rd.
Edison, N.J. 08817

Mannville Office
101 So. Main St.
Mannville, N.J. 08835



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CHAMBERS OF
JUDGE EUGENE D. SERPENTELU

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I T A

OCEAN COUNTY COURT HOUSE
C.N. 2191
TOMS RIVER, N.J. 08794

September 25, 1984

Patrick Diegnan, Esquire
P. O. Box 736
2325 Plainfield Avenue
South Plainfield, N. J.
07080

Re: Urban League v. Carteret et al
(South Plainfield)

Dear Mr. Diegnan:

As a result of reports that I have received, there remains some question in my mind as to whether the Borough of South Plainfield is proceeding with the Court ordered revision.

Kindly advise me with a specific time schedule as to the expected date for completion of the revision and what steps must be taken before the revision has been accomplished.

Very truly yours,

Handwritten signature: <J/> R F •

EDS:RDH
cc: Bruce Gelber, Esq.
cc: Carla L. Lerman, P. P.
cc: Angelo H. Dalto, Esq.

^Jtfgene D. Sg^pentelli, JSC

EXHIBIT I

File #

Patrick J. Diegman, Jr.

Attorney at Law

2325 Plainfield Avenue

P.O. Box 736

South Plainfield, N.J. 07080

October 4, 1984

Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Courthouse
CN 2191
Toms River, New Jersey 08754

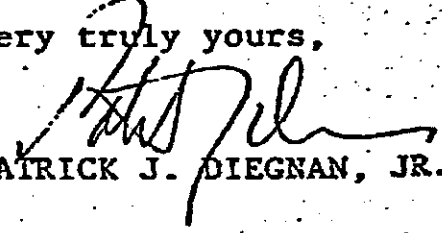
RE: Urban League v. Carteret et al
(South Plainfield)

Dear Judge Serpentelli:

Reference is made to your letter dated September 25, 1984 which was received by this office on October 3, 1984. It is the position of the Mayor and Council that revisions to the Zoning Plan of the Borough of South Plainfield will not be approved until a complete revision of the Master Plan is completed by the Borough Planner, Robert Rosa Associates.

If I can provide any additional information, please advise.

Very truly yours,


PATRICK J. DIEGMAN, JR.

PJD/cp

cc: Mayor and Council
Robert Rosa Associates
Barbara Williams, Esq.

L A I R A



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CHAMBERS OF
JL'DGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C.N. 214M
TOMS RIVER, N. J. 08733

October 11, 1984

Patrick Diegnan, Esquire
P. O. Box 736
2325 Plainfield Avenue
South Plainfield, N. J.
07080

Re: Urban League v. Carteret et al
(South Plainfield)

Dear Mr. Diegnan:

I have your letter of October 4, 1984 which responds to my letter of September 25» 1984 but it is not responsive to that letter. The same doubt remains as to whether the Borough is proceeding in compliance with the previously entered court order. You did not present me with a specific time schedule as to the expected completion date nor did you advise what steps must be taken before the revision has been accomplished other than to make a brief statement that the master plan must be revised.

As you are aware, the Borough was granted a longer time period than is provided in Mount Laurel II for revision purposes and has already exceeded tht period. I would request a specific response to my inquiries.

Very truly yours,

• / / v

EDS-.RDH
cc: Barbara Williams, Esq.

Jlgene D. Se^pentelli»JSC

EXHIBIT
K

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

October 12, 1984

Patrick J. Diegnan, Esq.
2325 Plainfield Avenue
South Plainfield, N.J. 07080

Re: Urban League v. Carteret, No. C 4122-73

Dear Mr. Diegnan:

I am in receipt of your letter to Judge Serpentelli dated October 4, 1984 indicating that the Mayor and Council will not approve revisions to the Zoning Plan of the Borough of South Plainfield in the absence of a complete revision of the Master Plan.

This position is totally unacceptable to the Civic League.

On May 22, 1984, the court entered its Judgment which was explicit as to the parcels to be rezoned and zoning ordinances to be modified and enacted by October 3, 1984. This Judgment was not contingent in any respect upon enactment of a Master Plan. The Judgment is final and binding upon South Plainfield.

In addition, South Plainfield has drafted proposed ordinances in accordance with terms of the Judgment. You submitted these proposed ordinances to us for purposes of review and we have substantially agreed to the ordinances other than the three items of definition of condominium apartments and townhouses, apartment and townhouse mixture and certain cost generating factors set forth in the letter of Eric Neisser, Esq. to you dated September 5, 1984. (Attached)

Absolutely no reason exists to await implementation of the Judgment pending enactment of the Master Plan. Nothing in Mt. Laurel II either authorizes or permits delay of enactment of the compliant ordinances. The Judgment is specific; discrete from the Master Plan process; and most importantly an Order of the Court subject to enforcement.

Since only the three items set forth in Mr. Neisser's letter remain outstanding, I am writing to provide you one last opportunity to work with us in resolving these open issues and enacting the ordinances required by the existing Judgment. Please be advised that unless the Borough of South Plainfield affirmatively indicates it will comply with the terms

Patrick J. Diegnan, Esq.

-2-

10/12/84

of the Judgment with seven (7) days from the date of this letter, I will formally move before the court on short notice for appropriate relief.;

I await your response.

Very- truly yours,

Barbara J. Williams

cc/Eon. Eugene Serpentelli
Bruce Gelber
Alan Mallach

bcc/Erlc Neisser

EXHIB



School of Law-Newark - Constitutional Litigation Clinic
Si Newhouse Center For Law and Justice
15 Washington Street - Newark - New Jersey 07102-3192 - 201/648-5687

October 19, 1984

Hon. Eugene D. Serpentelli
Ocean County Court House
C.N. 2191

Tons River, N.J. 08753

Dear Judge Serpentelli,

I write to set forth plaintiffs' response to your Honor's letters of October 11 to Mr. Diegnan and October 15 to Mr. Dalto.

For the reasons set forth in my October 12 letter to Mr. Diegnan, which was mailed before receipt of your Honor's October 11 letter, plaintiffs consider it wholly unreasonable and contrary to the mandate of Mount Laurel II to delay amendment of a noncompliant zoning ordinance until after revision of the Master Plan. It is particularly inappropriate in a municipality, such* as South Plainfield, which all parties agree has very little vacant land remaining that is appropriate for residential development, and where the town has not even raised this concern until after the entire, extended revision period has expired. In any case, the current Master Plan's guidelines were expressly considered during the earlier stages of this litigation leading to the May 22 Judgment As To South Plainfield.

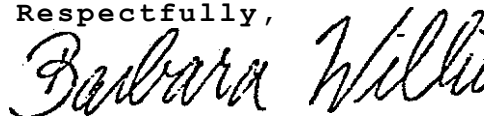
Although we, therefore, believe implementation of the May 22 Judgment should proceed forthwith, plaintiffs emphasize that the areas of difference remaining between the parties are small, as indicated in my letter of October 12 and Mr. Neisser's attached letter of September 5. Given this, we believe it appropriate for your Honor to afford the Borough one last, very brief opportunity to enact a compliant ordinance before proceeding, through a Master, to a court-mandated ordinance. To this end, we suggest that your Honor establish a deadline (we believe two weeks is the maximum time needed), which will permit the Borough Council to hold one properly noticed public meeting at which it could take expedited formal action with regard to a revised zoning ordinance. If it enacts an ordinance revision, and plaintiffs have any objection, we could then move for the Court to refer the revision and our objections to a master for a prompt review and report to the Court. If the Council refuses to adopt a revised

zoning ordinance, for the reasons stated in Mr. Diegnan's October 4 letter or otherwise, we would move for the Court to refer Mr. Rosa's draft ordinances and Mr. Neisser's objections to the Master for prompt review and report to the Court. Because Ms. Lerman already reviewed the Judgment as to South Plainfield and conferred with Mr. Mallach and Mr. Rosa, we believe that she would be the appropriate Master and could reasonably be asked to report back within 10 days or two weeks. Under either circumstance, we would ask the Court's permission to make our motion for reference to a Master, if necessary, on very short notice.

Finally, because it is clear that the Judgment requires rezoning of the tract that is the subject of the Elderlodge litigation for residential development with a 20 percent Mount Laurel set-aside, see Para. 3<H>, we have notified the affected parties of our position and requested notice of any action, including agendas of meetings at which the project might be discussed. We will, if necessary, bring a motion on short notice to prevent any action that would prejudice the Urban League plaintiffs' vested interest in the rezoning of that tract. See enclosed copy of letter to Mr. Dalto and Mr. Lane.

-r We hope that your Honor will move promptly on this matter to prevent any additional prejudice to plaintiffs' rights by reason of South Plainfield's conscious and unnecessary delay.

Respectfully,



Barbara Williams

cc: Patrick J. Diegnan, Esq.
Angelo H. Dalto, Esq.
William V. Lane, Esq.
Peter J. Calderone, Esq.
Carla L. Lerman, P. P.

EXHIBIT M

File 2B

Patrick J. Diegman, Jr.

Attorney at Law

2325 Plainfield Avenue

P.O. Box 736

South Plainfield, N.J. 07080

October 22, 1984

Honorable Eugene D. Serpentelli
Judge, Superior Court of New Jersey
Ocean County Courthouse
C.N. 2191
Toms River, New Jersey 08753

RE: Urban League v. Carteret et al
(South Plainfield)

Dear Judge Serpentelli:

Reference is made to Ms. William's letter of October 19, 1984. The next scheduled Public Meeting of the Mayor and Council of the Borough of South Plainfield is November 12, 1984. I submit that it would be inappropriate to set a deadline prior to that date.

If I can provide any additional information, please advise.

Very truly yours,

PATRICK J. DIEGMAN, JR.

PJD/cp
cc: Barbara Williams, Esq.
Mayor and Council