

UL v. Certoret (S. Plainfield)

Neisser Deposition (5)

Stipulation (7) x 2 ~~copy~~ copies

7 A Leaf (1985)

PI # 3012

19 pgs

CAC00650V

ERIC NEISSER, being duly sworn deposes and says:

1. I am co-counsel for the Urban League plaintiffs and submit this affidavit in opposition to South Plainfield's motion to transfer this action to the Affordable Housing Council.
2. I was the attorney primarily responsible for the South Plainfield litigation from September 1983 to September 1984. For details see my Affidavit in Support of Motion to Hold South Plainfield in Contempt and for Temporary Restraints, sworn on June 21, 1985, a copy of which is submitted with these papers.
3. As set forth in that affidavit, I negotiated the Stipulation between the Borough and the plaintiffs executed on May 10, 1984. Several key points concerning the negotiations and resulting Stipulation must be set forth in light of the statements in Mr. Santoro's affidavit in support of the pending motion. First, although the stipulation agrees to reduce the fair share obligation to 900 units in light of the limited land remaining, the Stipulation and, of course, the ensuing Judgment, do not require rezoning to produce 900 units. Rather, the 8 sites specifically designated for rezoning would produce only between 531 and 602 lower income units at best. These figures are based on multiplying the stated acreage times the specified gross density and then multiplying the total resulting units by 20 percent. Following the order in Paragraphs 12-19 of the Stipulation and Paragraphs 3(A)-(H) of the Judgment, the figures are:

Harris Steel site - 204 lower income units; Coppola farm - 65 units; Pomponio Avenue site, 75 to 96 units; Universal Avenue site - 43 units; Frederick Avenue site - 29 units; Morris Avenue site - 100-150 units; Archdiocese site - 15 units; Elderlodge site - 20 units. The range specified for Pomponio Avenue reflects the difference between the approximately 25 acres specified in the Stipulation and Judgment and the approximately 32 acres which we later learned were involved. See Neisser Affidavit of June 21, 1985, Paragraphs 6-9 and Williams Affidavit of June 21, 1985, Paragraphs 11-18. The range noted for the Morris Avenue site is specified in the Stipulation and Judgment because of the uncertainty as to how many senior citizen units could be constructed on that site given the limited land and available financing.

4. The reason that the Stipulation specified a fair share number greater than the number of units for which land would be rezoned is that plaintiffs wanted to insure that the Borough would be obligated to do everything possible to produce lower income units should substantial money become available for rehabilitation or rent subsidies or should redevelopment occur or additional land become available through fire or demolition. It is for this reason also that Paragraphs 21 and 22 were inserted in the Stipulation and Paragraphs 3(J) and 6 in the Judgment, requiring the town to permit higher density multi-family development with a set-aside on any site over 3 acres and to preclude such higher densities without a set-aside, and obligating the town to adopt a resolution, as yet not adopted, committing the Borough to apply for all government funding that might

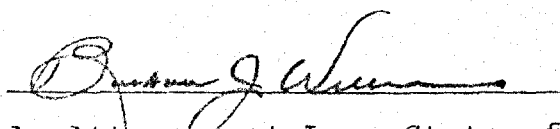
become available for rehabilitation of existing deficient units or subsidization of construction or rental of new units.

5. Indeed, the fair share number of 900 in the Stipulation was itself a compromise. Plaintiffs had proposed 1000, see plaintiffs' draft of proposed stipulation attached hereto as Exhibit A, Paragraph 2, but ultimately acceded to defendants' proposal of 900. See defendant's draft of proposed stipulation attached hereto as Exhibit B, Paragraph 2.

6. Moreover, not all of the rezoning will require a 4 to 1 construction ratio and thus the new rezoning will not even produce 5 times the 531-602 number. Most importantly, the Morris Avenue senior citizen project of 100-150 units was to be exclusively lower income units. Thus, using the lower, more realistic number, only the 431 lower income units on the seven other sites will be accompanied by market production, for a total production on those seven sites of 215 units, 1724 market and 431 lower income.

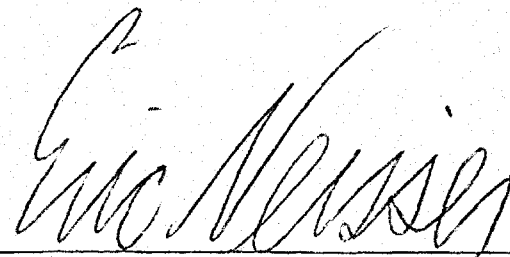
7. Finally, the Stipulation was a product of negotiation and hence of compromise. Plaintiffs did not insist on rezoning of all vacant sites over 3 acres, which was one of our original demands. Rather as set forth in my letter of April 3, 1984 to Mr. Diegnan, then counsel for the Borough, we agreed "to 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." Neisser Affidavit of June 21, 1985, Exhibit B, page 3.

SWORN TO and SUBSCRIBED
before me this *7th* day
of August, 1985.



A handwritten signature in cursive script, appearing to read "Barbara J. Williams", is written over a horizontal line.

An Attorney at Law, State of New Jersey



A handwritten signature in cursive script, appearing to read "Eric Neisser", is written over a horizontal line.

ERIC NEISSER

Eric's math for animals

Harris
 84.8
 $\times 12$

 1696
 848

 10176
 $.20$

 203520

Coyote
 27
 $\times 12$

 554
 27

 324
 $.2$

 64.8

Unimul
 18
 $\times 12$

 36
 18

 216
 $.2$

 3.2

Frederick
 12.25
 $\times 12$

 2450
 1025

 14700
 $.2$

 29400

Watts
 $100-150$

Campbell
 vaccines
 25 32
 15 $\times 15$

 125 160
 25 32

 375 480
 $.2$ $.2$

 750 960

Aich
 7.25
 $\times 12$

 1450
 725

 8700
 $.2$

 15400

Fletcher
 100
 $.20$

 20

204
 65
 43
 29
 100
 75

 651

$- 150 (+50)$
 $- 96 (+21)$

 $271 = 602$

~~35~~
 ~~17~~
 ~~5~~
 ~~1790~~
 ~~1850~~

431
 $\times 5$

 2155
 431

 1724

ERIC NEISSER, ESQ.
 JOHN PAYNE, ESQ.
 Constitutional Litigation Clinic
 Rutgers Law School
 15 Washington St., Newark, N.J. 07102
 201/648-5687

BRUCE S. GELBER, ESQ.
 JANET LA BELLA, ESQ.
 National Committee Against
 Discrimination in Housing
 733 - 15th St. NW, Suite 1026
 Washington, D.C. 20005
 202/783-8150

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION-MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,]	Docket No. C 4122-73
]	
Plaintiffs,]	
]	
vs.]	Civil Action
]	
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,]	
]	
Defendants.]	STIPULATION

Plaintiffs and the Borough of South Plainfield, by their attorneys,
 hereby stipulate as follows:

1. The fair share methodologies set forth in the Fair Share Report
 of Carla L. Lerman, the Court-appointed expert in this action, dated
 April 2, 1984, and in the Expert Report on Mount Laurel II Issues prepared
 by Alan Mallach, plaintiffs' retained expert, dated December 1983, are
 both generally reasonable approaches to the fair share issues remanded
 to this Court by the Supreme Court.

2. The total present and prospective fair share allocation for South Plainfield through 1990 resulting from the Lerman methodology is 1725 units affordable by low and moderate income households and the fair share for South Plainfield resulting from the Mallach methodology is 1523 units. There is, however, insufficient vacant developable land suitable for development of low and moderate income housing to meet the full fair share resulting from either methodology. As of February 1984, there were only 641 vacant acres remaining in the Borough, of which a significant proportion were in floodplains, in an environmentally sensitive swampland, or in the midst of substantial existing industrial or commercial development. In addition, much of the remaining developable land is in small lots of less than 3 acres. In light of the remaining land, the fair share obligation of South Plainfield should be reduced to 1000 units.

3. 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.

4. The only proposal for rezoning to permit more than two-family construction, which is set forth in the South Plainfield 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.

5. 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.

6. No multi-family housing has been constructed in South Plainfield since 1976.

7. The only proposal for multi-family housing in South Plainfield since 1976, a proposed six-story, 100-unit senior citizen housing project, was rejected by the Board of Adjustment on May 4, 1982. That decision of the Board of Adjustment was remanded to the Board of Adjustment for amplification and supplementation of the record in light of the decision in South Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), in an order of this Court filed December 23, 1983 in Elderlodge, Inc. v. South Plainfield Board of Adjustment, No. L-56349-81 (Law Div., Middlesex County).

8. The only proposal for ^{attached} high density single family development in South Plainfield, a proposal by Bayberry Construction to construct 70 townhouses on 6.9 acres, was denied a variance by the South Plainfield Board of Adjustment on January 3, 1984, in part because "the price range indicated is not within the 'low-income' as is required by recent Court decision."

9. ^{It is hereby stated} None of the single family and two-family homes approved or constructed in the Borough since 1976 is affordable by persons of low or moderate income.

10. The Borough has ^{not since 1976} never provided for construction of any subsidized low or moderate income housing under any government subsidy program.

11. The Borough has obtained Middlesex County Community Development funds for rehabilitation of ~~any~~ 33 housing units since 1976.

12. The 84.8 acre site on New Brunswick Avenue, known as the Harris Steel site and designated as 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, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent

low income and 10 percent moderate income units.

13. The 27 acre site on New Durham Road, known as the Coppola farm and designated as Block 528 Lot 44, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

14. The municipally owned site of approximately 25 acres at the northern tip of Kennedy Road, known as the Pomponio Avenue site and designated as Block 448 Lots 2.01 and 4.01 and Block 427 Lot 1.01, is appropriate for multi-family development at a density of 15 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units, if the Borough constructs Pomponio Avenue from the northern tip of Kennedy Road west to Clinton Avenue.

15. The 18+ acre site near Universal Avenue, known as the Universal Avenue site and designated as Block 255, Lots 14, 33 and 34, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units, if the Borough constructs the necessary road extension to provide appropriate access to the developed site.

16. ~~All portions of the municipally owned site of 4 acres and the privately owned site of 6.4 acres to the north and west~~ of Frederick Avenue, known as the Frederick Avenue site and designated as Block 308, ~~lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34~~ and Block 310 Lot 1.01 + 4.01, 5, 6, 7, 9, 11, 13-15, 17, which are wider than 100 feet are appropriate for

multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units, if the Borough extends Sylvania Place and Frederick Avenue until they connect and donates the Borough-owned land without cost to an

*1200 foot
depression
along on
Union Ave*

ANNEX 10

*domino
south of
Frederick Ave*

Block 311, 16-36

appropriate developer.

17. The municipally owned site of 10 acres on Morris Avenue, known as the Morris Avenue site and designated as Block 111, Lots 1-4, Block 112, Lots 1, 2.01, Block 113, Lots 1.01, 2,4, 5.01, and Block 115, Lots 1,2, 2.01 and 3, is appropriate for development as a senior citizens housing project at a density of 15 units per acre of which all would be affordable by low or moderate income households, if the Borough would contribute the land and provide necessary financial support, including seed money and tax abatement.

18. The 6.9 acre site at the northern tip of Rush Street, known as the Bayberry site, and designated as Block 315 Lot 7, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

19. The 7 $\frac{1}{2}$ acre site south of Tompkins Avenue, currently owned by ~~the Archdiocese of Metuchen~~ *and planned to be used for church purposes*, designated as Block 12, Lots 9, 16 and 17, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units. *See other map.*

20. The 2+ acre site on Hamilton Boulevard, known as the Elderlodge site and designated as Block 259, Lots 5, 6A, 6B, 7, and 12, is appropriate for development of a 100-unit multi-family development, with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

21. The Borough permits use of modular or manufactured housing meeting state building code requirements and zoning requirements for residential development.

22. The Borough will adopt a policy in its zoning ordinance requiring that of all future development on vacant sites other than those listed in paragraphs 12-20 above, on sites on which existing structures are destroyed or demolished by act of God or otherwise, or on sites that are proposed to be redeveloped, at least 10 percent of new units constructed will be affordable by low income families and at least 10 percent will be affordable by moderate income families. This policy will govern all actions of the South Plainfield Planning Board and Board of Adjustment in passing on applications for site and subdivision approvals and variances.

23. The Borough will apply for all federal, state, and county funds that become available between the present and 1990 for rehabilitation of existing deficient housing units and for all funding that becomes available for subsidization of the construction or rent of new housing units.

24. Low income households are those earning less than 50 percent of the median household income in the 11-county region designated in the Lerman Report of April 2, 1984. Moderate income households are those earning between 50 and 80 percent of the median household income in that 11-county region.

25. To be affordable by low income households, units for sale may require the expenditure of no more than 28 percent of the household income for principal, interest, taxes, insurance, and condominium fees, and units for rent may require the expenditure of no more than 30 percent of the household income for rent and utilities.

26. All units affordable by low and moderate income households must be affirmatively marketed by the developer throughout the 11-county

could use + county use

between my budget the cost of housing need

region and all marketing practices must comply with federal and state laws against discrimination.

27. All units for sale affordable by low and moderate income households must contain deed restrictions limiting resale for a 30-year period to households of similar qualifications and these restrictions must be enforced by an appropriate ~~independent~~ agency *indep of developer*

28. If, for any reason, the Court fails or refuses to enter Judgment directing appropriate rezoning and ~~assuring~~ *issuing an Order of Comp. to the market w/ an order* six-year repose upon appropriate ordinance amendments, within 30 days of the signing of this Stipulation, either party is free to withdraw from this Stipulation and to proceed to trial on the issues herein, at which trial this Stipulation will not be admissible in evidence.

Plaintiffs Urban League, et al.

Defendant Borough of South Plainfield

By _____
Eric Neisser

By _____
Patrick Diegnan

Date _____

Date _____

ERIC NEISSER
JOHN PAYNE
Constitutional Litigataion Clinic
Rutgers Law School
15 Washington Street
Newark, N.J. 07102

BRUCE GELBER
JANET LABELLA
National Committee Against
Discrimination in Housing
733 Fifteenth Street N.W.
Washington, D.C. 20005

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION/MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiffs

Plaintiffs

v.

DOCKET NO. C-4122-73

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

Defendants..

STIPULATION

Plaintiffs and the Borough of South Plainfield, by their attorneys,
hereby stipulate as follows:

1. The fair share methodologies set forth in the Fair Share Report of Carla L. Lerman, the Court-appointed expert in this action, dated April 2, 1984, and in the Expert Report on Mount Laurel II Issues prepared by Alan Mallach, plaintiffs' retained expert, dated December 1983 are both generally reasonable approaches to the fair share issues remanded to this Court by the Supreme Court.

B

2. The total present and prospective fair share allocation for South Plainfield through 1990 resulting from the Lerman methodology is 1725 units affordable by low and moderate income households and the fair share resulting from the Mallach methodology is 1523. There is, however, insufficient vacant developable land suitable for development of low and moderate income housing to meet the full fair share resulting from either methodology. In light of the remaining land, the fair share obligation of South Plainfield should be reduced to 900 units, to be allocated as 250 Units present need by 1990 and 650 units prospective need.
3. 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.
4. The only proposal for rezoning to permit more than two-family construction, which is set forth in the South Plainfield 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.
5. 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.
6. No multi-family housing (^{other than} ~~in excess of~~ two-family units) has been constructed in South Plainfield since 1976.
7. The only proposal for multi-family housing in the Borough of South

Plainfield since 1980 was rejected by the Board of Adjustment in April 1982. That decision of the Board of Adjustment has now been remanded to the Board of Adjustment for amplification and supplementation of the record in light of the decision in South Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), in an order of this Court filed December 21, 1983 in Elderlodge, Inc. v. South Plainfield Board of Adjustment, No. L-56349-81 (Law Div., Middlesex County).

8. The Borough has obtained Middlesex County Community Development funds for rehabilitation of ³³housing units since 1976.
9. The municipally owned site of approximately 25 acres at the northern tip of Kennedy Road, known as the "Pomponio Avenue site", and designated as Block 448, Lots 2.01 and 4.01 and Block 427, Lot 1.01, is appropriate for multi-family development at a density of 15 units per acre with a mandatory set-aside 10 percent low income and 10 percent moderate income units, said 15 units include a density bonus of 3 units per acre by the Borough of South Plainfield to encourage construction of 'Mt. Laurel' housing and as such shall be considered a "municipal contribution" to the "Pomponio Avenue Site".
10. The municipally owned site of 4 acres and the privately owned site of 6.4 acres to the north and west of Frederick Avenue, known as the Frederick Avenue site, and designated as Block 308, Lots 30.01 and 34, is appropriate for multifamily development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

11. The 7 1/4 acre site south of Tompkins Avenue, designated Block 12, Lots 9, 16, and 17, owned by the Archdiocese of Metuchen is

~~currently planned to be used for Church purposes; However, if no application is made for the site for a non-church related development use is to be made of the~~
said property should in the future become available for non-church

~~related development, it shall at that time be considered~~

appropriate for multi-family development with a mandatory set-aside of 10 percent low income and 10 percent moderate income family units. *INSERT*

*state of the town
order of the*

12. The municipally owned site of 10 acres on Morris Avenue, known as the Morris Avenue site and designated Block 111, Lots 1-4, Block 112, Lots 1, 2.01, Block 13, Lots 1.01, 2.4, 5.01, and Block 115, Lots 1, 2, 2.01 and 3 is appropriate for development as a senior citizens housing project at a density of 15 units per acre of which all would be affordable by low or moderate income households, if the Borough would contribute the land and provide necessary financial support, including seed money and tax abatement.

13. The 18+ acre site near Universal Avenue, known as the Universal Avenue site and designated as Block 255, Lots 14, 33, and 34, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income.

14. The 2+ acre site known as the Elderlodge site and designated as Block 259, Lots 5, 6A, 6B, 7, and 12 is appropriate for development of a 100-unit multi-family development with a mandatory set aside of 10 percent low income and 10 percent moderate income units subject to reasonable conditions to be

imposed by the Board of Adjustment.

16. The 27 acre site on New Durham Road, known as the Coppola farm and designated as Block 528, Lot 44 is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of ~~of which~~ 10 percent ~~would be affordable by~~ low income ~~persons~~ families and 10 percent ~~by~~ moderate income ~~families~~ units.

17. The 84.8 acre site on New Brunswick Avenue, known as the Harris Steel site and designated as 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 is appropriate for multi-family development at a density of ~~with a mandatory set-aside of~~ 12 units per acre ~~of which~~ 10 percent ~~would be affordable by~~ low income ~~families~~ and 10 percent ~~by~~ moderate income ~~families~~ units.

18. The Borough permits use of modular or manufactured housing meeting state building code requirements and zoning requirements for residential development.

19. The Borough will adopt a policy in its zoning ordinance ~~requiring that~~ ^{permitting} of all future ^{residential} development on ^{including} vacant sites other than those listed in paragraphs 11-17 above, ^{For more acre} or on sites ^{of 4 acres or more} on which existing structures are destroyed or demolished by act of God or otherwise, or ^{on sites that are} are proposed to be redeveloped, at least 10 percent of new units constructed will be affordable by low income families and at least 10 percent will be affordable by moderate income families.

20. The Borough will apply for all ~~available~~ federal, state, and county funds ~~for~~ that become available between the present and 1990 for rehabilitation ^{ation} of existing deficient housing units and for all funding that becomes available for subsidization of the construction or rent of new housing units.

~~xc2kxxx7ixhbxhxxnxiidaxaxaffordablaxbxuxixamxineomaxhraxkxaxkx~~

21. Low income households are those earning less than 50 percent of the median household income in the 11-county region designated in the Lerman Report. Moderate income households are those earning between 50 and 80 percent of the median household income in the 11-county region.

22. To be affordable by low income households, units for sale ~~must~~ ^{may} require the expenditure of no more than 28 percent of the household income for principal, interest, taxes, insurance and condominium fees and units for rent ~~must~~ ^{may} require the expenditure of no more than 30 percent of the household income for rent and utilities.

23. All units ~~affixxxxx~~ affordable by low and moderate income households must be affirmatively marketed/throughout the 11-county region ^{by the developer}.

24. All units affordable by low and moderate income households must contain deed restrictions limiting resale for a 30-year period to households of similar qualifications and ~~a~~ these restrictions ~~will~~ ^{must} be enforced by an appropriate independent agency ^{for sale}.

25. If, for any reason, the Court fails or refuses to enter Judgment directing appropriate rezoning and providing ^{an Order of Compliance to the municipality with an accompanying} six-year repose upon appropriate ordinance amendments, within ⁹⁰ ~~30~~ days of the signing of this Stipulation, either party is free to withdraw from the Stipulation and proceed to trial on the issues herein, ~~at~~ ^{at} which trial this Stipulation will not be admissible in evidence.