

UL v. Carteret (S. Plainfield)

27 Aug (1983)

Certification of Lawrence in opposition to motion to transfer case to Affordable Housing Council

6 pgs

CA000654 V

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
CIVIL ACTION  
No. C-4122-73

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al.,  
Plaintiffs,

v.

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

-----  
ELDERLODGE, INCORPORATED,  
A New Jersey Corporation,  
Plaintiff,

v.

SOUTH PLAINFIELD BOARD OF  
ADJUSTMENT BY ITS MAJORITY  
MEMBERS (Ronald Hepburn,  
Chairman; Carl Abbruzzese;  
Robert Horne; Carl LaFerrara;  
Cynthia GaNun, First Alternate);  
BOROUGH 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.

LAW DIVISION  
MIDDLESEX COUNTY

No. 56349-81

CERTIFICATION OF LAWRENCE J.  
MASSARO IN OPPOSITION TO MOTION  
TO TRANSFER CAUSE TO AFFORDABLE  
HOUSING COUNCIL

TO: The Honorable Eugene D. Serpentelli  
Assignment Judge, Superior Court  
Ocean County Court House  
Toms River, New Jersey 08754

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Clerk, Superior Court  
Hughes Justice Complex  
Trenton, New Jersey 08625

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TO: ERIC NEISSER, ESQ.  
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JOHN M. PAYNE, ESQ.  
Constitutional Litigation Clinic  
Rutgers Law School  
15 Washington Street  
Newark, New Jersey 07102  
ATTORNEYS FOR URBAN LEAGUE PLAINTIFFS

Lawrence J. Massaro hereby certifies as follows:

1. I am the equitable owner of the following described real estate:

All being referred to in accordance with the Tax Map  
of the Borough of South Plainfield being Block 427,  
Lot 1.01, and Block 448, Lot 4.01  
consisting of a total of approximately 24 acres.

2. I acquired this property from the Borough of South Plainfield at public bid held on August 13, 1984, which was duly published by copy of Notice of Sale of Land - LMC 11/84, a copy of which is attached hereto as Exhibit "A".

3. On August 23, 1985, in accordance with a time of the essence demand for closing from the Borough of South Plainfield, I delivered the total purchase price of \$1,270,318.50 for the property to the Borough of South Plainfield, thereby completing my obligation concerning the purchase of the property from the Borough.

4. The Borough, however, was unable to convey title because of the restraints in effect by virtue of the Orders of the Court dated August 9, 1985 and July 19, 1985, as well as the inability of the Borough to convey title by a bargain and sale deed as required by the terms of the public bid.

5. On May 15, 1985, I entered into an Agreement of Sale with a residential developer whereby the residential developer is to develop a portion of the property in accordance with the Ordinances #1009 and #1010 recently adopted under protest by the Borough of South Plainfield and which are in accordance with the Court's Judgment as to South Plainfield, filed May 22, 1984, as well as the Court's Orders of December 13, 1984; July 3, 1985; July 19, 1985 and August 9, 1985 whereby, South Plainfield was found,

inter alia, to have a fair share obligation for lower income housing; to not have its then existing zoning ordinances structured so as to create a realistic opportunity that its fair share obligation for lower income housing will be met, and that in order to create such realistic opportunity, it had to adopt Ordinances #1009 and #1010.

6. Under the May 15, 1985 Agreement, I was to develop a portion of the property which was not to be rezoned for multi-family residential and will be pursuing approvals jointly with the developer of the multi-family portion.

7. The developer with whom I have contracted for the multi-family portion of the tract has established itself as the "front runner" in the implementation of lower income housing, presently having seven multi-family developments under construction which include lower income housing and actually having lower income families owning and occupying their lower income homes in two of these projects with occupancy to take place in the very near future in four more of developments.

8. The obligation of the developer to proceed with the construction of the multi-family portion, as expressed in the Agreement of Sale, is contingent upon the Borough rezoning the property in accordance with Ordinances #1009 and #1010; the Borough vacating some "paper" streets which are dedicated, but neither accepted nor improved; and the proposed development receiving all the necessary approvals and permits.

9. The developer and I stand ready, willing and able to proceed with seeking necessary approvals and permits for development by this property which is to include a significant number of lower income homes to be credited against the fair share obligation of the Borough of South Plainfield as adjudicated on May 22, 1984.

10. The Borough has filed a motion seeking to have this cause transferred to the Affordable Housing Council which was created by the recently enacted New Jersey legislation.

11. Such legislation refers specifically to the consideration of "whether or not the transfer would result in a manifest injustice to any party to the litigation."

12. Given the length of time this cause has already been pending before the Court; the fact that judgment was rendered on May 22, 1984; the reality that South Plainfield's fair share obligation has been adjudicated and their compliance requirements determined; and the substantial delay by the Borough in adopting the compliance ordinance, there would be manifest injustice to not only the plaintiffs by transferring this cause to the Affordable Housing Council, but also grossly manifest injustice to the unnamed lower income families for whom the plaintiffs are seeking to create a realistic opportunity that homes will be built.

13. The members of the Affordable Housing Council have not yet been named and have not yet been confirmed; they have not adopted their rules and regulations, nor criteria and guidelines and according to the maximum timetables provided by the legislation, these procedures could take at least another thirteen (13) months, not accounting for the fact that there

is no time limit upon confirmation of nominated members and ignoring the possibility of an appeal from the recommendations of the Affordable Housing Council.

14. All matters in this action appear to have been finally resolved; the Borough has adopted its compliance package as ordered by the Court and in accordance with the fair share obligation determined for the Borough on May 22, 1984; and the developer and I are presently ready, willing and able to commence with the procedures necessary to build and deliver the lower income homes to be included within the development upon this property.

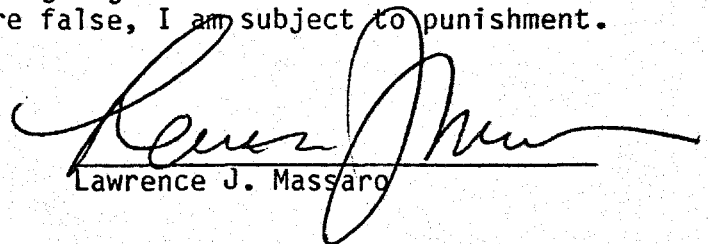
15. To transfer this cause to the Affordable Housing Council achieves no purpose but to further frustrate and delay efforts to build and deliver these lower income homes which only results in manifest injustice to the unnamed lower income families whom plaintiffs represent.

16. I believe that the present economic climate is ideally suited for the economic viability of the proposed multi-family development and that there presently exists an economic incentive for the developer to include the lower income homes in the project.

17. The minimum of a thirteen (13) month delay caused by transferring this cause to the Affordable Housing Council would expose the development to substantial risks due to possible changes in the economic climate, employment situation and demographics and that adverse changes could jeopardize the fiscal viability of the project thus completely defeating the objective of actually having lower income homes built in South Plainfield.

18. I do not want this cause transferred, but would ask the Court to enforce its judgment of May 22, 1984 and its orders of December 13, 1984; July 3, 1985, July 19, 1985 and August 9, 1985 in so far as such judgments and orders obligate South Plainfield to create a realistic opportunity for its adjudicated fair share obligation of lower income homes to be built.

19. I hereby certify that the foregoing are true. I am aware that if any of the foregoing stated by me are false, I am subject to punishment.

  
Lawrence J. Massaro

Dated: August 27, 1985

# PUBLICATION

SS.

### TO WHOM IT MAY CONCERN:

At a regular meeting of the Mayor and Common Council of the Borough of South Plainfield, County of Middlesex, State of New Jersey held on June 11, 1984, I was directed to advertise the fact that the Mayor and Council will meet in the Municipal Building, 2480 Plainfield Avenue, South Plainfield, New Jersey, on August 13, 1984 at 8:00 p.m. to expose and sell at a public sale to the highest bidder, according to terms of sale on file with the Borough Clerk, the property described below.

Take further notice that the Mayor and Council have, by resolution and pursuant to law, fixed the minimum price at which said property will be sold together with all other details pertinent, said minimum price being as shown below, plus costs of preparing deeds and advertising this sale.

Take further notice that at set sale or any date or place to which it may be adjourned, the Mayor and Council reserve the right in its discretion to reject any or all bids and to sell said property to such bidder as it may select, due regard being given to terms and manner of payment in case one or more minimum bids shall be received.

Upon acceptance of the minimum bid or bid above minimum, by the Council and the payment thereof by the purchaser according to the manner of purchase in accordance with terms of sale on file, the Borough will deliver a Bargain and Sale Deed for said premises.

William T. DeSabato, Borough Clerk  
Bids to be advertised in The Reporter on July 26, 1984 and August 2, 1984 to be sold on August 13, 1984 at the Municipal Building, 2480 Plainfield Avenue, South Plainfield, New Jersey at 8:00 p.m.

| Block | Lots        | Name                | Street                | Amt. of Bid    |
|-------|-------------|---------------------|-----------------------|----------------|
| 427   | p/o<br>1.01 | Lawrence<br>Massaro | Clinton &<br>Pomponio | \$1,270,318.50 |
| 448   | p/o<br>4.01 |                     |                       |                |

### SCHEDULE "A"

LMC 118A

### METES AND BOUNDS DESCRIPTION PORTION OF LOT 1.01 IN BLOCK 427

AN

### PORTION OF LOT 4.01 IN BLOCK 448

BEGINNING at a point on the easterly sideline of SOUTH CLINTON AVENUE (80' R.O.W.) Said point being N. 0° - 17' E. distant 530.00 feet from the northerly sideline of POMPONIO AVENUE (60' R.O.W.) as shown on the Tax Assessment Maps of the Borough of South Plainfield and running thence:

- (1) N. 0° - 17' E. along the easterly sideline of SOUTH CLINTON AVENUE, a distance of 363.43 feet;
- (2) S. 76° - 52' - 30" E. along the southerly boundaries of Lot 11.02 in Block 448, and Lot 30.01 in Block 308, a distance of 1194.92 feet, more or less, to a point; thence
- (3) S. 85° - 15' E. along the southerly boundaries of Lot 53 in Block 308, Lot 34 in Block 427, and along the rear line of Lots fronting on CHRISTOPHER AVENUE, a distance of 953.96 feet, more or less, to a point on the westerly sideline of the proposed extension of RUSH STREET (50' R.O.W.); thence the following three courses along the last mentioned westerly sideline:
- (4) Southerly along a curve to the left, having a radius of 325.00 feet, an arc length distance of 63.41 feet, more or less, to a point of tangency; thence
- (5) S. 14° - 59' - 30" E. a distance of 100.00 feet, more or less, to a point of curvature; thence
- (6) Southerly along a curve to the right, having a radius of 275.00 feet, an arc length distance of 94.75 feet, more or less, to a point of tangency on the westerly sideline of SECOND PLACE (50' R.O.W.); thence
- (7) S. 4° - 45' W. along the westerly sideline of SECOND PLACE, a distance of 1.81 feet, more or less, to a point; thence
- (8) N. 85° - 15' W. a distance of 100.00 feet to a point; thence
- (9) S. 4° - 45' W. a distance of 350.00 feet to a point on the northerly sideline of POMPONIO AVENUE (50' R.O.W.); thence
- (10) N. 85° - 15' W. along the northerly sideline of POMPONIO AVENUE, a distance of 410.32 feet, more or less, to a point; thence
- (11) N. 89° - 43' W. still along the northerly sideline of POMPONIO AVENUE, a distance of 275.14 feet, more or less, to a point; thence
- (12) N. 1° - 15' E. a distance of 10.00 feet to a point on the northerly sideline of POMPONIO AVENUE (60' R.O.W.); thence
- (13) N. 89° - 43' W. along the northerly sideline of POMPONIO AVENUE, a distance of 535.88 feet, more or less, to a point; thence
- (14) N. 0° - 17' E. along the easterly boundary of Lot 1 in Block 448, a distance of 530.00 feet to a point; thence
- (15) N. 89° - 43' W. along the northerly boundary of Lot 1 in block 448, a distance of 815.00 feet to a point on the easterly sideline of SOUTH CLINTON AVENUE, the point and place of BEGINNING.

Being further described as portions of Lot 1.01 in Block 427 and Lot 4.01 in Block 448. Containing 23.33 acres, more or less, subject to disclosures of an accurate survey. Subject to all easements of record and not of record, including drainage easements as recorded in Book 3208, Page 388, and Book 3281, Page 381.

Sale of the property described above will be made subject to the following conditions.

1. The conveyance by the Borough of South Plainfield shall be by bargain and sale deed, without covenants, and without representations as to the marketability of title. In the event the purchaser shall determine that title to the property in question shall not be good and marketable, any questions as to marketability of title shall be submitted to the Borough Clerks Office within 45 days of the date of sale. In the event said questions have not been raised within said 45 day period, then and in that event all questions relating to the marketability of title shall be deemed waived and this matter shall proceed to closing of title within 90 days of the date of sale.
2. Easements, both of record and not of record.
3. Restrictions of record.
4. Zoning ordinance of the Borough of South Plainfield as presently constituted without representations as to the use to which said property can be put.
5. In the event that the purchaser is unable to close title within ninety (90) days of the date of sale, they shall forward to the Borough of South Plainfield a check representing the balance of the purchase price to be held by the Borough until closing of title.
6. In the event that the purchaser fails or refuses to close title and/or pay the consideration therefore within the time period stated herein, then in that event, the Borough of South Plainfield may, at its sole option, exercise any or all of the following rights:
  - (a) Declare the transaction null and void and the purchasers deposit shall be retained by the borough as liquidated damages.
  - (b) Any other rights as provided by law which may be available to the Borough.
7. The cost of advertising, preparation and filing of the deed shall be paid by the purchaser.
8. All costs of sub-division, including but not limited to on site and off site improvements as required by appropriate Borough Boards, Agencies and Officers, shall be paid by the purchaser.

2 Times: 7-26-84 & 8-2-84  
Fee: \$166.40

V. ECKERT

I oath, that he/she is the Publisher of THE Borough of South Plainfield, Middlesex County, which he annexed is a true copy, was published

on July 26, 1984 & August 2, 1984 commencing on the day of July 25th day of A.D. 1984

*John J. ...*  
Notary Public of New Jersey

NOTARY PUBLIC OF NEW JERSEY

Commission Expires May 23, 1985