

VL v. Cartoet (S. Plainfield)

?

(1986)

● Certification of ~~S. Plainfield~~

→ Anna Malloch

~~4 pgs~~

9 pgs

700

● CACCO ~~(S)~~ V

ERIC NEISSER, ESQ.
 BARBARA STARK, ESQ.
 Constitutional Litigation Clinic
 Rutgers Law School
 15 Washington Street
 Newark, NJ 07102
 201-648-5687
 ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 MIDDLESEX/OCEAN COUNTY

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

vs.

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

CERTIFICATION
 (South Plainfield)

Alan Mallach, of full age, certifies as follows:

1. I am a professional planner and have frequently testified at the Court's request in Mount Laurel matters. I am fully familiar with the facts and circumstances of this case. I submit this certification in support of the Urban League's Motion for the Imposition of Conditions on Transfer.

2. After remand from the Supreme Court's affirmance of Judge Furman's holding of unconstitutionality, plaintiffs initiated discovery concerning remaining vacant land in South Plainfield. In documents provided to plaintiffs by defendants in February 1984, defendants asserted that only 641 acres of vacant land remained, of which substantial portions were in lots of less than 3 acres and substantial portions were in wetlands or otherwise unbuildable. As noted in my Affidavits of June 21,

1985, Para. 4, and August 28, 1985, Para. 8, the Borough's assertedly "complete" listing of vacant lots in the Borough did not include two of the largest vacant sites -- the 84.8 acre Harris Steel site and the 27 acre Coppola farm -- which were identified by plaintiffs after careful review of the tax maps and assessment rolls.

3. After extensive negotiations, the Borough and the plaintiffs entered into a formal Stipulation on May 10, 1984 filed with this Court. The Stipulation is Exhibit F to Eric Neisser's Affidavit of June 21, 1985. In that Stipulation, the parties agreed that both the Lerman fair share methodology, which would produce a fair share of 1725 lower income units, and the Mallach methodology, which would produce a fair share of 1523 lower income units were reasonable, but that there was insufficient remaining developable land to produce either number. Stipulation, Paragraphs 1 and 2.

4. The reason for the insufficient remaining land is that in the period from 1976 to 1984 the Borough and its agents had granted development approvals and issued building permits which vested development rights and permitted extensive construction, primarily of commercial and industrial uses, but also some market-priced single-family and two-family homes. As noted in the Stipulation, no multi-family housing was constructed since 1976, Para. 6, the only proposal for rezoning for more than two-family homes was rescinded by the Planning Board, Para. 4, the only proposal for multi-family housing in South Plainfield since 1976

was rejected by the Board of Adjustment, Para. 7, and none of the single and two-family homes approved or constructed since 1976 is affordable to lower income households, Para.9.

5. In view of the prior emphasis on commercial and upper income housing units, all remaining land could have properly been set aside at that point to satisfy the stipulated fair share. As a practical matter, however, the parties compromised on a fair share number of 900, the Borough's preference, rather than the 1000 figure proposed by plaintiffs. Neisser Affidavit of August 28, Para.9. Plaintiffs never conceded that no more than 900 units could be accommodated as a matter of sound planning. Moreover, the Mayor of South Plainfield, at the public meeting on July 29, 1985 on adoption of the zoning and affordable housing ordinances, stated:

*see ** quote from pp 56-57 of Transcript (Exhibit A to Neisser Affidavit of August 28, 1985).

6. In any case, the Stipulation did not itself require rezoning even for the compromised fair share number of 900. Rather the Stipulation also embodied a settlement with regard to the number of sites to be targeted for use, specifying only that eight sites, which could at most produce 603 or 2/3 of the 900 unit fair share, were appropriate for high density multi-family development. Neisser Affidavit of August 28, 1985, Para. 5 and Exhibit B thereto.

7. There were, of course, other appropriate sites in the Borough and the Stipulation did not indicate otherwise.

* THE MAYOR: Councilman Woskey, just for a point of information, this town can accept a lot more than the units that were called for. Don't kid yourself. We went around, Bill went around with one of the Planners, right, Mr. Administrator?

MR. DE SABATO: Yes.

THE MAYOR: And so did our Planner and large ~~portions of certain areas like on the south side or~~ on the north side near the lake, et cetera, we told them there were no sewers there; you can't build there. All right. We told them no, you can't build on New Brunswick Avenue. That is all a waterway.

Don't kid yourself. This town can with high density accept a lot more homes. He can go into an area such as Gary Park and say okay, I now zone this so that you can build 12 units on an acre of land. And they can be built. There are homes there. They can be torn down. People can decide to tear them down and build 12, 15 units on an acre of land. This is not just for existing vacant land. We are talking about someone coming in and rezoning all of South Plainfield. They can turn around and rezone one of the vacant factories and say, okay, let's make that an apartment complex, and put four, 500 people in it. They can do a lot more than what we were able to get them down to at 900, 200 immediate and 990 total. Believe me, Michael. If you were there and saw all the parcels that the Planner came up with, and we said, oh, this couldn't be done because there is no sewers there, this can't be done because it is wet, this can't be done because there is no roads there. All right. We snowed them down to 900. They can

Nonetheless, the plaintiffs, in order to conclude what then appeared to be a good-faith settlement by the Borough, and in reliance upon the promiss and assurances of the Borough that such settlement could be promptly implemented, agreed to forego several sites that I believed perfectly appropriate for multi-family development. Neisser Affidavit of June 21, 1985, Exhibit B, at 3; Neisser Affidavit of August 28, 1985, Para. 10. The Stipulation signed by the Borough, however, admits "[t]he likelihood that additional sites will become available in the future for development" and therefore made high-density multi-family use with a set-aside a permitted, rather than a mandated, use for all other sites of three acres or larger. Stipulation, Para. 21. Neisser Affidavit of August 28, 1985, Para. 10 and Exhibit A thereto, at 46(statement of Mayor).

8. The Judgment of May 22, 1984 was entered by this Court in response to plaintiffs' motion for summary judgment which relied exclusively on the compromise Stipulation. The Judgment mandates high density rezoning with a mandatory set-aside for only the eight sites identified in the Stipulation, requires such use as a conditional use on any 3-acre site in any residential zone, and prohibits any substantially similar use of a 3-acre or larger site without the same set-aside. Judgment, Para. 3(J). This Judgment remains in full force and effect. It should be continued until the Council takes action.

9. The number of vacant acres in the Borough has been reduced since May 10, 1984 by subsequent development approvals.

Plaintiffs do not know the precise amount of land remaining but are seeking propriate discovery to assure the Court of more detailed information for determination of this motion. This Court already knows, however, that these approvals include some in direct violation of this Court's Judgment and orders. Williams Affidavit of June 21, 1985 Paras. 7-18 and exhibits thereto; Neisser Affidavit of November 7, 1985, Paras. 5-7 and exhibits thereto.

9. The Borough also owns a substantial number of small lots throughout the Borough, in both residential and nonresidential zones. The Stipulation and Judgment required the Borough to contribute the 6.15 acres constituting the Morris Avenue site and to provide the necessary financial support for the senior citizen lower income housing project on that site. Stipulation, Para. 17; Judgment, Para. 4.

10. The Borough often swaps municipally owned parcels to obtain privately owned parcels more desirable for some municipal purpose. Patrick Diegnan and Frank Santoro, the prior and present Borough Attorneys, have advised Urban League counsel that the Borough made several swaps to obtain some of the Morris Avenue site parcels. As of November 1985, the Borough did not yet own the last site within the Morris Avenue site -- known as the Buccellato site. See Santoro letter of November 8, 1985 submitted at compliance hearing, Para. 2. Plaintiffs have sought discovery to determine the number, location, size, and value of all remaining Borough-owned land parcels.

11. The Borough also often sells municipally owned land. Exhibit F to Neisser August 28, 1985 Affidavit is a property sale chart provided by the Borough in discovery, showing sales of Borough lands from January 1984 through April 1985. The sales price of Borough-owned land which the Borough agreed to sell in this 16 month period alone totalled over \$_____ . Because of this Court's restraints since July 3, 1985, title has not closed on sale of any Borough-owned land. It is crucial that such restraints be kept in effect pending receipt of the proceeds from such sales to the appropriate agency for the construction of lowr income housing, possibly in connection with the Morris Avenue senior citizen site.

12. The Borough, however, adopted resolutions making time of the essence for several sales, including that for the 25 acre municipal site in the Pomponio Avenue site in the Stipulation and Judgment. Neisser Affidavit of November 7, 1985, Para. 6(b); Certification of Philip P. George, sworn October 25, 1985, submitted in support of Application for Leave to Intervene and to Lift Restraints. As to such sites, the Borough required deposit of the full purchase price, although the Borough was legally barred from transferring title. The deposits made include the \$1,270,318.50 deposited by Mr. Massaro for the Pomponio Avenue site. See same sources.

13. Plaintiffs do not presently know the exact amount of funds on deposit with the Borough, or the total value of outstanding contracts for sale of Borough-owned land, but are

seeking discovery to provide the Court with complete, accurate and up-to-date information in this regard for determination of this motion for conditions on transfer.

14. On August 7, 1985, the Borough enacted zoning and affordable housing ordinances in compliance with its Stipulation and this Court's Judgment of May 1984. These ordinances rezone the eight sites identified in the Stipulation and Judgment. Without the Morris Avenue site, for which municipal financial support and donation of land is required, the rezoning would only make possible a maximum of 453 lower income units (accepting for present purposes the Township's evidence as to the size of the Pomponio Avenue site). Neisser Affidavit of August 28, 1985, Exhibit B. This is one-half of the compromised fair share of 900 and 3/4 of the originally zoned 603 units. It is essential that these ordinances remain in place. It is equally important, however, that it be understood that at best they will enable the Town to satisfy only a small portion of its probable fair share. Accordingly, these Ordinances should be supplemented by appropriate restraints imposed by this Court.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

ALAN MALLACH