

UL v. Carteret, Piscataway 1984 11/13/84

- Certification of Donald R. Daines in Opposition to Plaintiff's Motion for temporary restraining Order and Interlocutory Interlocutory Injunction Returnable on 11/14/84
- letter to Judge

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K. HOVNANIAN COMPANIES OF NEW JERSEY, INC.

10 HIGHWAY 35, P.O. BOX 500, RED BANK, NEW JERSEY 07701 ☐ (201) 747-7800

November 13, 1984

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
Toms River, NJ 08753

RE: Urban League v. Carteret
Civic Cause #4122-73


Dear Judge Serpentelli:

I am enclosing the certification of Donald R. Daines in opposition to plaintiff's motion for temporary restraining order and interlocutory injunction returnable on November 14, 1984.

Copy of this document will be hand delivered to all attorneys on the attached "counsel service list" immediately prior to the hearing of plaintiff's motion. Copies of all papers will be mailed to counsel who do not appear at this motion.

Respectfully,

K. HOVNANIAN COMPANIES OF NEW JERSEY, INC.


Donald R. Daines, Esq.
Associate Legal Counsel

DRD:1k
Enclosure
cc: Doug Wolfson, Esq.
All Counsel on attached service list

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EUGENE D. SERPENTELLI'S CHAMBERS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

Civil Action C4122-73

CERTIFICATION OF DONALD R. DAINES
IN OPPOSITION TO PLAINTIFFS MOTION
FOR TEMPORARY RESTRAINING ORDER AND
INTERLOCUTORY INJUNCTION RETURNABLE
ON NOVEMBER 14, 1984

STATE OF NEW JERSEY)
 : ss.:
COUNTY OF ESSEX)

DONALD R. DAINES, of full age, being duly sworn according to law,
on oath deposes and says:

1. I am presently employed as an Associate Legal Counsel by K. Hovnanian Companies of New Jersey, Inc. and have been so employed since October, 1983 and am a duly licensed attorney in the State of New Jersey.

2. My responsibilities as Associate Legal Counsel include, but are not limited to, supervising and preparing documentation necessary for obtaining all approvals necessary for construction of various projects and developments.

3. Both K. Hovnanian Companies of New Jersey, Inc. and K. Hovnanian at Piscataway, Inc. are wholly owned subsidiaries of Hovnanian Enterprises, Inc., a duly organized and authorized New Jersey corporation.

4. In the course of my employment as Associate Legal Counsel, I have had an opportunity to become personally familiar with the statements contained herein and am personally involved in the applications presently pending before the Planning Board of the Township of Piscataway by K. Hovnanian at Piscataway, Inc. seeking approval of a development to be known

as Society Hill at Piscataway to be erected on Block 744, Lot 2 on the tax map of Piscataway.

5. On September 13, 1984, under cover letter of same date, K. Hovnanian at Piscataway, Inc. submitted its applications for approval to the Township of Piscataway seeking the following approvals: Conditional Use Permit; Preliminary and Final Site Plan Approval; Classification of Subdivision Sketch Plat; Preliminary Approval of Major Subdivision; and Final Approval of Major Subdivision. Such cover is attached hereto as Exhibit "A".

6. Society Hill at Piscataway is proposed for development upon Block 744, Lot 2 on the Township of Piscataway which has been identified as **Parcel No. 46** on Exhibit A of the proposed Order submitted by Plaintiffs consisting of 55.64 acres in NR-20A PRD zone.

7. By letters dated September 18, 1984 attached hereto as Exhibits B and C, the Township of Piscataway advised K. Hovnanian at Piscataway, Inc., hereafter referred to as the "Applicant", that the above applications were deemed complete for review and were assigned the following application numbers: 84-PB-124 Classification of Subdivision; 84-PB-125 Application for Preliminary Subdivision Approval; 84-PB-126 Application for Final Subdivision Approval; 84-PB-127C Conditional Use Permit; and 84-PB-128 Preliminary and Final Site Plan Approval.

8. Notice was duly served and a public hearing was held before the Planning Board of Piscataway in regard to the above applications on November 7, 1984.

9. The applications submitted by the Applicant sought approval of a total of 546 units however during the public hearing on November 7, 1984, the Applicant amended and revised its application so that the Applicant is now seeking a total of 545 units yielding approximately 9.8 units per acre.

10. It is believed by the Applicant that the above pending applications, specifically the application seeking a Conditional Use Permit, are consistent with the applicable ordinances of the Township of Piscataway, specifically Section 21.1011, pertaining to Planned Residential Developments. Specifically Section 21.1011.2b provides that if a developer provides for the construction of a minimum of 20% of the total number of dwelling units for low and/or moderate income families, the maximum gross density may be increased 2 additional dwelling units per acre from 8 units per acre to 10 units per acre.

11. The Applicant opted for the additional 2 units per acre density and in accordance with the above cited Section is seeking to provide 20% of the 545 units as lower income housing units consisting of a total of 109 of such units, 55 moderate income units and 54 low income units.

12. In conjunction with the submission of the above applications, the Applicant submitted its proposed Affordable Housing Plan which is intended to provide the mechanism for monitoring the resales and sales of these 109 units in order to ensure the continued availability of such units in the pool of lower income housing within the Township of Piscataway. A copy of the proposed Affordable Housing Plan being attached hereto and marked as Exhibit D.

13. Included within the Affordable Housing Plan was a phasing plan providing for the phasing of the lower income units so as to assure the Township that such lower income units would be in fact constructed and completed by the Applicant along with the non-restricted market units.

14. The Township of Piscataway forwarded a copy of the proposed Affordable Housing Plan to the National Committee Against Discrimination in Housing, hereinafter referred to as NCDH. By memorandum dated October 31,

1984, the NCDH acknowledged that it had reviewed the proposed Affordable Housing Plan for Society Hill at Piscataway and expressed its approval of the Plan subject to a few specific modifications. This memorandum prepared by Mr. Bruce S. Gelber, Esq. on behalf of the NCDH is attached hereto as Exhibit E.

15. The Applicant is presently involved in discussing the several points raised by Mr. Gelber in the Memorandum in an effort to resolve such issues in a manner which eliminates any basis for the NCDH to oppose the crediting of such lower income units being included within Society Hill at Piscataway against the fair share obligation ultimately arrived upon for the Township of Piscataway.

16. The Applicant believes that the above pending applications fully and completely comply with the precepts and mandates of Mount Laurel II, 92 N.J.158(1983) and is wholly consistent with the Mount Laurel II decision.

17. Plaintiff's motion and supporting affidavit establish that Plaintiff is seeking to restrain and enjoin the Township of Piscataway from approving only those applications or taking any other action with respect to applications for development of any of the vacate site identified on the "Vacate Land Inventory" attached to the proposed Order as Exhibit A and identified as satisfactory by Carla Lerman, P.P., which approval or other action would permit the development of any of the sites so designated for any use that does not require a minimum of 20% set aside for lower income housing consistent with Mount Laurel II.

18. The Applicant's application for approvals are believed by the Applicant to be consistent with Mount Laurel II as aforesaid and in fact seek to include the 20% set aside of lower income housing and the Applicant therefore believes that the above pending applications are not subject to the Plaintiff's motion.

19. The Applicant believes that there exists no basis for plaintiff seeking or obtaining the restraining of any of the above referenced pending applications for Society Hill at Piscataway. Applicant further believes that such applications should not be restrained or enjoined because the above pending applications already seek to provide the very housing that Plaintiff ultimately desires.

20. The Applicant requests that the Order of the Court be revised so as to specifically and expressly exclude the above pending applications from any restraint or injunctive relief which may be granted to the Plaintiff.

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

DATED:

November 13, 1984

Donald R. Daines
DONALD R. DAINES