UL v. Carteret [redacted] Piscataway 11/27/84 (1984)
Affidavit in support of motion for TRO+ interlocutory injunction in response to order dissolving TRO+ injunction (attached).
+letter objecting to the above matter.

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November 27, 1984

Honorable Eugene Serpentelli
Judge, Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick
vs. Township of Piscataway et al.

My dear Judge Serpentelli:

This office, representing the Township of Piscataway in the above-captioned matter, is in receipt of a form of Order prepared by Barbara Williams, Esq., representing the Plaintiff Urban League (now Civic League) of Greater New Brunswick. Pursuant to the Rules of Court, the Defendant Township of Piscataway hereby objects to the form of Order submitted for the following specific reasons:

A. As to the first ordering paragraph, the Township of Piscataway respectfully contends that no Order can restrain any entity but the Township of Piscataway, unless those other entities are designated as parties to the suit. While it is clear that the Zoning Board and the Planning Board received

notice of the Plaintiff's application, and were represented by counsel at the hearing, those entities are not parties to this lawsuit, have participated in no prior proceedings in this cause other than in connection with applications to restrain specific developmental projects, and, therefore, their involvement in this matter has been tangential, to say the least. Accordingly, it is inappropriate to enter an Order applicable to any party but for the Township of Piscataway in this proceeding. Further, as to the first ordering paragraph, the Court did not require that approvals granted pursuant to its Order shall refer specifically to this Court proceeding and to the Order emanating from the Court's ruling of two weeks ago.

B. With respect to the first two ordering paragraphs, the Court was specifically invited to address the question of indemnification of municipal employees (if memory serves, by Michelle Donato, Esq., attorney for the Zoning Board of Adjustment of the Township of Piscataway). The Court is well aware of those provisions of the Municipal Land Use Law requiring that applications filed with either the Zoning Board, Planning Board or the Township Council, as the case may be, must be acted upon within specific time frames. Unless this Court incorporates

within this Order a broad indemnification provision, the Township Council, and all other Boards acting on developmental applications, as well as municipal employees ordinarily responsible for designating applications as approved or disapproved, will be subject to lawsuits by developers for failing to comply with statutory guidelines. Unlike Judges, municipal non-judicial employees and functionaries are not immune from damage suits under 42 U.S.C. Section 1983 (see also 42 U.S.C. section 1988). Accordingly, to the extent that the Court intends to sign an Order imposing any restraints, the form of that Order should include an indemnification provision.

C. While it is clear in my recollection that the Court intended to restrain the Township from approving developmental applications for those sites incorporated within Ms. Lerman's November 10, 1984, report, the Court should note that there are differences between those sites included in that report and those sites deemed as appropriate in the earlier version. While I will argue below that the concept of blanket restraints in this circumstance is generally inappropriate, I do not understand how, upon a brief review of the most recent report, the Court can accept, prima facie, the conclusions contained therein and reject the conclusions contained in the earlier report. No explanation has been provided as to why parcels

included in the earlier report were dropped from the most recent. This situation suggests approaching the subject of interim restraints with substantial caution; it further suggests that the Court may wish to reconsider its earlier conclusion regarding the contents of the November 10, 1984, report.

D. With respect to the final ordering paragraph, the Court most definitely did not impose upon all developers a requirement to object within two days following receipt of the Court's Order. The Court stated, after imposing upon the Township the obligation to serve copies of the Order on all affected property-owners, that any developer might have leave to lift restraints imposed upon two days' notice. The phraseology of the final ordering paragraph suggests that developers may be barred from objecting to the restraint unless they apply to the Court within two days following receipt. This is an impossible and impractical burden to impose on individuals who have not received notice of the restraint and who cannot be reasonably expected to marshall fair objection to the restraints imposed in this most complex matter within 48 hours.

E. I also object to the Court's Order as to site 60 and the few small sites associated therewith. Site 60 consists of a number of acres of diffuse ownership, small parcels being

less than 10,000 square feet in size. If the Court will recall site 60 was the subject of specific testimony by Mr. Nebenzahl during the Trial; an exhibit was prepared delineating site 60 specifically because of its unique nature (I retain possession of that exhibit with the consent of Mr. Gelber). The parcels constituting site 60 are non-contiguous and extend across an area at least one mile in width. Interspersed throughout site 60 is a senior citizens center, municipal park land, property utilized by the Board of Education of the Township, by private owners and by the municipality. From time to time the Township has sold isolated small parcels from among its holdings to indivdiuals wishing to expand their side yards or rear yards or wishing to construct single homes. The impact of a restraint upon that site is out of proportion to the potential utility of that site for the purposes set forth by Plaintiff. This site demonstrates the inequity of a general restraint; numerous applications before this Court will be required by individuals who frequently cannot afford those applications. Therefore, because of the unique nature and disparate ownership of this site, site 60 ought to be excepted from the restraint, or the restraint should not apply to the development of parcels of one acre or less.*

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* The above concern for site 60 in no way suggests that the Township acquiesces in the conclusions reached by Ms. Lerner as to any other site, or suggests that restraints as to any site in the Township are appropriate.

F. Lastly, and with all due respect to the Court, I am concerned that the Court's Order may have resulted from an erroneous view of the extent to which Piscataway Township has rendered cooperation to the Court's expert. I wish to reiterate that no party to this action is served by delay; indeed, Piscataway joined with at least one developer in open Court to request a prompt decision with respect to that developer's parcel, and Piscataway wishes to emphasize its concern that the Court render its decision in this matter as quickly as possible. In light of what I perceive to be an erroneous view by the Court, I would urge the Court to reconsider the entry of the within Order, keeping in mind the standard parameters for any injunctive relief, the existing Orders of the Court dated May 7, 1984, June 26, 1984, and November 5, 1984, and recognizing that the Township has in the past and will in the future provide adequate notice of all developmental applications to Plaintiff. I continue to urge upon this Court the argument that an insufficient showing of irreparability has been presented before the Court to justify the broad and unusual restraint encompassed within this Order, especially on the basis that the Order was issued before counsel had an opportunity to review the document forming the basis for the Order.

If Your Honor wishes to entertain argument with respect to any of the matters raised herein, I will be pleased to make myself available for such purpose at the Court's earliest convenience.

Respectfully and sincerely yours,

PHILLIP LEWIS PALEY

PLP:pmm

cc: All attorneys on the attached list

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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 C 4122-73

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND INTERLOCUTORY INJUNCTION

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

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

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

2. Pending consideration of the vacant land question in Piscataway, the Township, as the Court is aware, has continued to consider and approve applications on properties that appear to be suitable for Mt. Laurel development.

3. On or about October 24, 1984, developer Lackland Brothers, Inc. petitioned the Site Plan/Subdivision Committee of the

Piscataway Planning Board for preliminary approval of a subdivision application of seventeen (17) lots located on Hillside Avenue in Piscataway Township. The lots at issue, Site #76, are identified on the Township Tax map as Block 561, Lots 11-15 and 18-21, and Block 564, Lots 29-38, currently zoned as R-10. (The Piscataway Planning Board Site Plan/Subdivision Committee Meeting Agenda of October 24, 1984 is annexed hereto as Exhibit C.)

4. As indicated on the agenda of October 24, 1984 (Item 11), the goal of Lackland Brothers is to construct single family dwellings on the property at issue.

5. I have been informed that the application for preliminary approval was accepted by the Site Plan/Subdivision Committee and scheduled to be heard on November 14, 1984 at 8:00 PM at the regularly scheduled meeting of the Piscataway Planning Board, and may be acted upon at that time.

6. According to the Court-appointed expert, Carla Lerman, P.P., this site is "satisfactory" for Mt. Laurel development, and represents a good "infill" site. I have been advised by plaintiffs' expert, Alan Mallach, that this site can be developed with no negative impact on the existing character of the surrounding area. A conventional single-family subdivision of this site, such as the one proposed by developer Lackland Brothers, Inc., would eliminate a suitable site from consideration toward meeting Piscataway's fair share obligation. Site #76 is representative of a large number of "infill" sites, especially in the western part

of Piscataway. Despite its small acreage (approximately 3 acres), sites of this general size and character are uniquely suitable for medium townhouse clusters. Additional benefits in constructing townhouses are efficiency and economic incentives.

7. If the application for Site #76 is approved, it will create for the applicant substantial vested rights in the terms and conditions of the approval and may preclude rezoning of the tract for residential use as part of a remedy in this case.

8. On or about October 24, 1984, developer New Castle Builders, Inc. appeared before the Site Plan/Subdivision Committee of the Piscataway Planning Board, seeking a reclassification as a minor subdivision to subdivide property located on Morris Avenue into two (2) lots. The property, Site #44, is designated on the Township Tax map as Block 745, Lots, 3, 4C, 4E and 4. These lots are currently zoned as R-15 and R-15A, and amount to a 20.97-acre parcel of land. (Exhibit C, supra).

9. I have been advised that the developer plans to prepare preliminary and final site plan applications providing for development of luxury condominiums, without any set aside for Mt. Laurel housing.

10. Site #44 is located adjacent to two cemeteries and directly across from an area zoned for planned residential development, with a set-aside density bonus for Mt. Laurel units.

11. If the application for Site #44 is approved, it will create for the applicant substantial vested rights in the terms

and conditions of the approval and may preclude rezoning of the tract for residential use as part of a remedy in this case.

12. Because the Township of Piscataway has proceeded to receive and approve applications, despite the constraints imposed by the lack of vacant land elsewhere in the Township as identified by the Court-appointed expert, Carla Lerman, P.P., that would be appropriate to meet the Township fair share obligation, plaintiffs continue to be placed in a position of suffering irreparable injury.

13. Any action regarding the vacant land in Piscataway reduces the amount of land available for satisfaction of Piscataway's fair share.

14. The existing situation as to the Lackland Brothers, Inc. and New Castle Builders, Inc. sites is further evidence of the irreparable injury that plaintiffs will suffer if denied injunctive relief.

15. Because it is clear that there is insufficient vacant developable land in Piscataway to meet Piscataway's fair share obligation, it is essential that the Township of Piscataway Council, Planning Board and Zoning Board of Adjustment take no further action that might limit the availability of such land for these purposes.

BARBARA J. WILLIAMS

SWORN TO and SUBSCRIBED
before me this 7 day
of November, 1984.

Attorney at Law, State of New Jersey

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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION/MIDDLESEX COUNT

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

Civil Action C 4122-73

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND INJUNCTION

11-5-84

This matter having been opened to the Court by the Urban League plaintiffs, the Court and all interested parties having reviewed the report of Ms. Carla Lerman dated October 18, 1984, no objection having been raised by any interested party as to its contents, and for good cause shown,

It Is on this 5 day of November, 1984,

O R D E R E D, that the existing temporary restraining order with respect to the applications of Reidhal, Inc. for preliminary and final subdivision approval for Block 593, Lots 16, 17, 47A and 50, Block 594, Lot 14A, and Block 595, Lot 10A is and shall be deemed dissolved effective immediately.

EUGENE D. SERPENTELLI, J.S.C.