U.L. v. Cateret, Piscataway 1/18/1985

- Certification of Phillip Lewis Paley submitted to clarify procedures employed by Trial Ct prior to entry of 12/11/84 Order

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URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET AL.,	:	SUPREME COURT OF NEW JERSEY
Plaintiff/Appellee,	:	DOCKET NO.
vs.	:	Civil Action
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, ET AL.,	:	CERTIFICATION OF PHILLIP LEWIS PALEY
Defendant/Appellant	:	

PHILLIP LEWIS PALEY, of full age, does hereby certify as follows:

1. I am the Township Attorney for, and Director of Law of, the Township of Piscataway, a municipal corporation of the State of New Jersey, and I have personally represented the Township of Piscataway in all aspects of the

within matter subsequent to its remand to the Superior Court of New Jersey by the New Jersey Supreme Court. I have close familiarity and personal knowledge of those matters reflected in this Certification, which I respectfully submit in support of the application of the Township of Piscataway for leave to take an interlocutory appeal from an Order of the trial court dated December 11, 1984, and for the imposition of a stay of the provisions of that Order.

2. I further respectfully submit this Certification in the anticipation that it may serve to clarify the procedures employed by the Trial Court prior to the entry of the December 11, 1984 Order, and leading up to it.

3. Following a series of conferences with the Honorable Eugene J. Serpentelli, Judge of the Superior Court, assigned on the remand of the within matter, and one formal Pre-Trial Conference, hearings on the remand hereof commenced on April 30, 1984. On nineteen Trial days between April 30, 1984, and June 1, 1984, the Trial Court took testimony from a number of witnesses, including experts offered on behalf of the plaintiff Urban League (now "Civic League") of Greater New Brunswick, and a number of defendant municipalities, including the Townships of Cranbury, Monroe, and Piscataway, in addition to the testimony of Carla Lerman, the Court appointed expert, with respect to the development of a methodology for establishing concepts of

region, population extrapolations, and elements to be used to devise a formula whereby each municipality could determine its fair share of low and moderate income housing.

4. During the Trial, in the later part of May, 1984, the plaintiff moved for a restraint against the development of a particular parcel of land approximating 50 acres in the Township of Piscataway. The plaintiff had determined by consultation with Piscataway Township Planning Officials that the contract purchaser for that parcel sought to develop that parcel for light industrial uses, specifically a number of office buildings.

5. The specific parcel involved had earlier been identified as site number 30 on a list of 79 vacant parcels of land within the Township of Piscataway, and the plaintiff had earlier expressed its intent to seek the rezoning of that parcel from a zone permitting light industrial uses to one permitting the development of high density residential housing with a Mount Laurel component.

6. In the moving papers submitted in support of that application, plaintiff made reference to the consensus methodology employed by Ms. Lerman, as set forth in her report which had been earlier admitted into evidence in the trial, and correctly reflected that application of that methodology would produce for Piscataway a "fair share" number approximating 4,200. Plaintiff also pointed out,

correctly, that the methodology would require the immediate rezoning of lands within Piscataway Township to provide for 3,700 (approximately) Mount Laurel housing units.

7. In its moving papers, plaintiff acknowledged that the totality of the 79 vacant sites remaining within the Township of Piscataway approximated 1,900 acres; that an initial analysis disclosed that no more than 1,250 acres were suitable for high density residential development; and that, pursuant to the standard 20% set-aside formula, Piscataway could not reasonably expect to meet that fair share number produced by the consensus methodology through rezoning.

8. Although Piscataway, in its responsive pleadings, took a substantially different position with respect to the amount of acreage within its borders available to meet its fair share obligation, Piscataway clearly asserted that the amount of vacant land was certainly insufficient to meet its fair share number as derived by the consensus methodology.

9. Upon consideration of the papers filed during May, 1984, and the report filed by Ms. Lerman, which contains a general conclusion that Piscataway has insufficient vacant land, Judge Serpentelli directed that Ms. Lerman be employed as an expert to analyze each of the 79 vacant sites in the Township of Piscataway and to provide recommendations

as to appropriate densities for those sites which she found appropriate for high density residential development. The Court, therefore, implicitly recognized that the Township of Piscataway was differently situated than those other municipalities, such as the Townships of Cranbury and Monroe, which were its co-defendants at the trial; in those other municipalities, there was no question but that sufficient vacant land existed within the municipal borders to provide for the consensus methodology fair share number.

10. In response to the Court's request, Ms. Lerman prepared a report dated November 10, 1984, consisting of 25 pages, and analyzing approximately 37 sites which she concludes are appropriate for high density residential development. As to each of the sites, Ms. Lerman provides a physical description, a statement of the existing zoning, a summary of the development potential for those sites as reflected in Piscataway's master plan, a statement of adjacent land uses, an analysis of general neighborhood characteristics, a summary of environmental conditions affecting development, an analysis of road access and traffic conditions, a review of special site constraints, and a recommendation.

11. In November, 1984, when Judge Serpentelli heard argument with respect to plaintiff's application for a blanket restraint against all the sites included within Ms.

Lerman's report, the Court expressed its view that the report, a copy of which is appended hereto as Exhibit A, represented a cogent analysis of those sites available for Mount Laurel development within Piscataway. At the time of that argument, neither plaintiff's counsel nor the undersigned had received a copy of the report, and, to the best of my recollection, the Court had either received the report only that morning or perhaps the day before. In any event, a review of that report discloses substantial concerns by Ms. Lerman as to the appropriateness of development of high density residential housing from a site restraint viewpoint. For example, as to site 2, consisting of 125.1 acres, Ms. Lerman's report asserts that: "the soils in the site are of three types . . . all of which are described as offering 'severe' constraints to dwellings with or without basements. These constraints are potential seasonal high water table, potential frost action, and bedrock in one area within 40 inches. It would be advisable to conduct test pourings prior to developing site plans." With respect to site 6, Ms. Lerman's report reflects that the soils on site present moderate and severe limitations to development. Similar conclusions are reached with respect to a number of parcels referred to in the report.

12. In addition, at the time of the argument on plaintiff's application for the blanket restraint, Judge Serpentelli pointed out that, although he would grant the

restraint substantially as requested, he was not rendering "prima facie" validity to the report. As an example of his disagreement with several recommendations of Ms. Lerman, based upon his then cursory review of the report, Judge Serpentelli pointed out that sites such as 77 and 78, consisting of 6.45 acres and 3 acres respectively, may be unsuited for "Mount Laurel" development by virtue of the small area involved, alone. Judge Serpentelli indicated specifically his intent to question Ms. Lerman at the time of the continued hearing in this matter with respect to those sites of relatively small area.

13. In addition, Piscataway has contended throughout the Trial of this matter that it is entitled to certain "credits" for existing housing units, including garden apartments afforable by Mount Laurel households, single-family dwelling units afforable by Mount Laurel households, and large numbers of Rutgers University housing units, including dormitories, single-student housing, and family-student housing. Plaintiff has conceded at Trial that Piscataway's fair share number will be offset by at least 348 units of Rutgers University family housing, afforable by Mount Laurel households. Therefore, it is likely that Piscataway's fair share number may ultimately be reduced substantially by consideration of these existing housing units; among other issues, these questions will be posed to the Court at the January 28, 1985, continued Trial date.

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 willfully false, I am subject to punishment.

PHILLIP LEWIS PALEY

DATED: January 18, 1985