UL v. Piscataway 2/4/85 (1985)

Discussion of Prof. Payne's statements as upsetting

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February 4, 1985

Honorable Eugene Serpentelli
Superior Court of New Jersey
Ocean County Courthouse
Administration Building
Toms River, New Jersey 08754

Re: Urban League v. Piscataway et al.

My Dear Judge Serpentelli:

I am in receipt of the January 30, 1985 letter from John M. Payne, attorney for the Urban League plaintiffs, addressing what Professor Payne describes as a situation "which may have an appearance of conflict of interest". Professor Payne's concern relates to the inclusion within Carla Lerman's January 18, 1985, report of a parcel of land owned by Rutgers, the State University (Site 55) which Ms. Lerman describes as suitable for Mount Laurel housing.

Although, by now, I should be surprised at nothing related to this case, I am disturbed and dismayed by Professor Payne's attitude and tone. According to a fair reading of his letter, Professor Payne suggests that the Township of Piscataway is endeavoring to take unfair advantage, or to delay, or to prevent the adjudication of a decision in this matter, or all of the above. To the extent that my reading

of his letter as to tone and implication is correct, I vehemently object to those assertions, for a number of reasons.

Professor Payne's statements with respect to Ms. Lerman's review of Site 55 are misleading. Originally, neither the Urban League nor the Township deemed site 55 as appropriate for Mount Laurel housing. Indeed, the Urban League submitted a report of Alan Mallech, its expert, concluding that site 55 was absolutely inappropriate for high density housing. Ms. Lerman's initial report of July 1984 took issue with that conclusion; without any reference to difficulties caused by its ownership by the State University, Ms. Lerman concluded that the site was eminently suitable. Thereafter, Ms. Lerman was aked to supplement her report by obtaining information as to appropriate densities. On November 10, 1984, Ms. Lerman submitted a more detailed analysis, designating 37 sites as appropriate for Mount laurel purposes. The report contained no reference whatever to site 55. So, at the December 17 status conference, I asked Ms. Lerman why that site had not been included in her more detailed report. I raised the

question then to avoid potential surprises and additional delays which might have followed my eliciting that data during cross examination at trial, and in fairness to Ms. Lerman and to the Court. Ms. Lerman's response was to apologize for the inadvertent exclusion of site 55; she believed that the site was eminently suitable, and asked for leave to prepare a supplemental report (subsequently prepared on January 18, 1985).

Professor Payne and his colleagues received Ms. Lerman's July report; presumably, they evaluated those areas of difference between that report and Mr. Mallech's earlier submission. They should not now be heard to assert that they were unaware that Ms. Lerman's July report included Site 55 as appropriate for Mount Laurel housing. Now, less than two weeks before trial, Professor Payne first raises the issue of apparent conflict, while simultaneously accusing Piscataway of acting in a dilatory manner!

Professor Payne has apparently been persuaded (to some extent) by Piscataway's arguments that Rutgers University and its relationship with Piscataway Township deserves singular attention. Piscataway has been saying

exactly that since before trial; it presented contentions relating to credits for existing University housing in its pre-trial memorandum. Following the last day of trial testimony, on May 31, 1984, the final comment made on the record by the Court was that it felt that the relationship between Rutgers and the Township deserved special attention, insofar as that relationship impacts upon Piscataway's Mount Laurel obligation. Piscataway had presented the testimony of an employee of Rutgers University with respect to the quantum of housing now in place in Piscataway. Why did Professor Payne and his colleagues not raise the issue contained in his January 30, 1985 letter then? Was not Professor Payne aware then that an appearance of conflict might result when Rutgers professors are actively prosecuting a suit dealing with land use against the municipality in which Rutgers' largest campus is located? Did Professor Payne feel that Rutgers, the State University, should escape any Mount Laurel scrutiny whatever?

The Township did not designate site 55 as appropriate for Mount Laurel purposes. The Township has continu-

ally maintained that only those sites which it itself rezoned are appropriate for Mount Laurel housing. We have pointed out to the Court that we have zoned hundreds of acres for high density residential housing; that we have voluntarily encouraged set-asides for Mount Laurel households; that before Mount Laurel was a gleam in the eye of the Supreme Court of New Jersey, we had zoned additional hundreds of acres for high density housing, more than 40% of which are currently affordable for Mount Laurel households. We have pointed out through testimony, without contradiction, that we have added very few acres to the lands zoned for industrial and commercial development since the early 1960's; other counsel in this case have supported the proposition that Piscataway's zoning for industrial and commercial use is not "over-zoning", but is absolutely appropriate, particularly in the industrial sector along Route 287, which is exactly where industrial and commercial zoning belongs.

It is not the Township which has consistently sought to delay resolution of any issues before this Court. The Township did argue, to some extent apparently

persuasively, that the blind application of a methodology suitable to communities which have substantial tracts of vacant land to Piscataway is fatuous; the strict application of the consensus methodology to a town developed to Piscataway's extent makes no sense. This is exactly why Ms. Lerman was asked to undertake her site-by-site analysis in the first place, since it is clear from her own testimony that the use of "growth area" within the consensus allocation formula is a poor substitute for available vacant land. If Professor Payne is suggesting implicitly that the realities of Piscataway's development should not play a part in the determination of the fair share number, Professor Payne is ignoring clear pronouncements of the New Jersey Supreme Court in the Mount Laurel II decision.

Professor Payne's letter concludes with the now familiar canard that Piscataway has ignored its obligation to provide low income housing since 1976. Of course, in so asserting Professor Payne has blithely ignored the 1976 conclusion of this Court that Piscataway had no obligation for indigenous need whatsoever. In 1976, Piscataway received a fair share allocation based upon a process

which in 1983 PLP ~~did~~ the Supreme Court concluded was inappropriate. The Appellate Division, in reviewing Judge Furman's opinion below, had reversed his decision in its entirety (as this Court well knows). Following the Mount Laurel II decision, Piscataway and its sister municipalities presented extensive testimony to seek to determine what the fair share of each municipality should be; to the present time, more than 30 court days have been consumed in various applications and conferences.

At bottom, what Professor Payne objects to is Piscataway's view that the Urban League is over-reaching in seeking a number based on the blind application of the consensus methodology; Professor Payne really contends that only the Urban League should determine what Piscataway's fair share obligation should be. I respectfully disagree.

With respect to the specific issue posed by Professor Payne, Piscataway Township wishes to reserve further comment until it determines what the position of Rutgers, the State University, is, with respect to its perception of any appearance of conflict. Having said that,