Piscataway 1985 8/14

Attorney Letter to Judge re: revisions to proposed "Order and Judgement"

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August 14, 1985

Honorable Eugene D. Serpentelli
Judge of the Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick
v. Carteret, et al.,
Docket No. C-4122-73

Dear Judge Serpentelli:

I am in receipt of a letter dated August 8, 1985 submitted by Barbara J. Williams, Esq., attorney for the plaintiff Urban League of Greater New Brunswick, enclosing a form of Order and Judgment as to Piscataway. Pursuant to the Rules of Court, and for the following specific reasons, on behalf of the Township of Piscataway, I respectfully object to the form of Order submitted.

A. The document should be captioned "Judgment," rather than "Order and Judgment."

B. As to the first page, the drafter of the

proposed Order is in error in concluding that the "court appointed master" drew the conclusion set forth. No "master" was ever appointed by this Court with respect to Piscataway. The Court did direct that Carla Lerman, an "expert", view each vacant parcel of land in the Township and draw conclusions, first, as to the suitability of each such site for residential development and, second, as to the proposed maximum density feasible for development. Counsel was quite clear in asserting that Ms. Lerman was not to be considered a master, as that term is customarily used in Mt. Laurel litigation; furthermore, the Court made quite clear that Ms. Lerman was not such a master. Therefore, the language utilized on the fifth line of the proposed form of Order is inappropriate.

C. Ms. Lerman did not conclude that the fair share of the Township of Piscataway was 3,744 if calculated pursuant to the AMG methodology. Ms. Lerman's report concludes that Piscataway's fair share should be 4,194, 3,744 of which were to be immediately rezoned, with the balance to be rezoned in two stages, half in 1990 and half in 1996. That balance consists of 2/3 of the present

need reflected in the consensus report. The report was prepared by Ms. Lerman in her capacity as a court-appointed expert to develop a fair share methodology applicable to all defendants. I have previously submitted memoranda to this Court indicating that, as applied to Piscataway, the use of the fair share methodology is inappropriate; I pointed out, for example, that the application of the 20% increment, designed to apply to those municipalities which have ample vacant land and to compensate for those municipalities lacking vacant land, should not be included in the formula as applied to Piscataway, a community lacking sufficient vacant land. I also argued that Piscataway should be permitted to obtain a reduction in its fair share based on new approaches and refinements to the AMG methodology. The Court's opinion letter addresses the issue solely from the perspective of available vacant land; it did not apply the fair share methodology, raw or refined, to Piscataway. Therefore, I believe that any reference to a number not ordered by this Court is inappropriate and should be excised.

D. Throughout the introductory paragraph of the Order, the term "master" has been employed and, as pre-

viously indicated, the term "expert" should be substituted therefor.

E. With respect to the first ordering paragraph, there has been no analysis reflected in any previous order of this Court setting forth reasons and bases which compel the conclusion that Piscataway's zoning ordinance and land use regulations do not comply with Mt. Laurel II. The letter opinion of the Court dated July 23, 1985 recites that:

> "The fact that ....[Piscataway]... had not adopted ordinances complying with Mt. Laurel II has already been established."

While it is patent that Judge Furman's decision following the initial trial in this matter in 1976 concluded that Piscataway was obliged to accommodate 1,333 additional lower and moderate income households, Piscataway has presented substantial evidence before this Court regarding modifications to the zoning ordinances considered by Judge Furman, the substantial variety of housing contained within Piscataway's borders, and other facts which could permit the conclusion that Piscataway does comply. The point is, however, that there has been no definitive statement from this Court, other than the quoted conclusion

reached above, setting forth reasons for non-compliance, which I think Piscataway is certainly entitled to receive before acquiescing in a form of Judgment asserting non-compliance.

F. The second ordering paragraph should not be contained within the form of judgment; similarly, the appendix should not be included. The Court quite clearly found that the fair share of the Township is 2,215, but the Court also expressly noted that "... the fair share number need not be satisfied on every site ... "; "the need for some adjustment to the fair share ..."; and the Court's opinion further reserves to the Township the right to demonstrate that the densities may not be attained. (See page 4, Opinion-July 23, 1985). The Court's use of the available vacant land to derive a fair share number was a method, not an end result; therefore, the specifics of that method should not be contained within the final judgment.

G. With respect to the third ordering paragraph, the second sentence thereof should be excised from the judgment; again, the judgment should contain the result, not the process.

H. With respect to the fourth ordering paragraph, the Court makes quite clear in its written opinion, while disallowing claims for "pure credit" advanced by the Township, it did afford some allowance for at least one of the areas of concern expressed by Piscataway, that being the married student housing. As that allowance was considered by the Court when it determined the fair share number, the fourth ordering paragraph of the judgment should be struck.

I. With respect to the fifth ordering paragraph, it is impractical and inappropriate to have the 90 day period run from July 23, 1985 (especially where the letter opinion does not expressly so direct). Given summer vacations and abbreviated meeting schedules (only once each month rather than twice, as is the case during the balance of the year), the obligations imposed upon Piscataway by the judgment cannot quickly be addressed by the governing body. For the Court's information, I have met on several occasions with the Mayor, our newly retained Township Planner, and other municipal representatives in order to communicate the essence of the Court's opinion to those officials, and we have commenced an analysis of the opinion and of alternatives available to us with respect thereto. In light of

these efforts, and in light of the vacation schedules, I respectfully urge that the 90 day period commence with the date of the execution of the form of judgment by the Court.

This request is particularly significant in light of the Court's apparent misconception that a master has previously been appointed by the Court. That view is demonstrated by language throughout the letter opinion of July 23, 1985, incorporated throughout plaintiff's form of order. In light of these circumstances, it is far more reasonable to start the clock running, as it were, from late August, 1985, rather than late July.

J. With respect to the last sentence of the fifth ordering paragraph, Your Honor's letter opinion states "... the Township should not expect that this Court will permit any <u>significant</u> extension of this 90 day period." Somehow, in the drafting in the form of judgment, the term "significant" has been ignored. I would have no objection to the sentence referred to if the word "significant", tracking the language of Your Honor's opinion, were added to the sentence.

K. With respect to the sixth ordering paragaph,

the language should be changed as follows:

> "Nothing herein shall compel the Township of Piscataway to zone each parcel of vacant land within the Township which has been determined by the Court appointed expert to be suitable, but the Township of Piscataway may seek to meet its obligation for rezoning, as required by this judgment, by the use of a number of methods and approaches other than rezoning on a 4 for 1 basis."

L. With respect to the eighth ordering paragraph, I respectfully reiterate that no master has presently been appointed, and unless the 90 day period runs from date of the court's judgment, there will be limited opportunity to consult with the individual appointed as master.

M. With respect to the tenth ordering paragraph, there is no language whatever within the court's opinion continuing those restraints set forth in the December 11, 1984 order of the court. It is the clear intention of the court that the Township be permitted discretion and flexibility in terms of effecting compliance with the fair share number determined by the court. It is therefore inappropriate to continue those restraints, which were

expressly intended by the Court to pend a final opinion, beyond the rendering of that opinion.

Your Honor's customary courtesy in considering these objections will be, as always, greatly appreciated. Should Your Honor desire a redrafted Judgment, I will be pleased to prepare the same.

Respectfully and sincerely yours,

KIRSTEN, FRIEDMAN & CHERIN
A Professional Corporation

By: _____
PHILLIP LEWIS PALEY

PLP:bhp

P.S. This will confirm my intention to file a motion seeking relief by way of transfer of the litigation to the Affordable Housing Council and other affirmative relief, to be made returnable during September, 1985. If the Court desires oral argument as to the form of the Order, the Court may wish to consider such argument on the same return date as the motion.

cc: Barbara J. Williams, Esq.
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