

U.L. v. Carteret, Piscataway

10/25/1985

Neisser letter to Palky re Piscataway fair
Share Plan and U.L's

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October 25, 1985

Philip Paley, Esq.
Kirsten, Friedman & Cherin
17 Academy Street
Newark, N.J. 07102

RE: Urban League v. Cateret, et al.

Dear Mr. Paley,

At your request, I am writing to set forth the approaches that the Urban League believes would be most productive to achieve satisfaction of Piscataway's fair share and settlement of the present litigation. I submit this to you in confidence for presentation only to the Mayor and Council and without prejudice to, or compromise of, our litigation position should settlement not prove possible.

At the outset it is crucial that I reiterate the Urban League's three longstanding policy preferences:

- 1) we prefer satisfaction of fair share obligations through rental units rather than units for sale;
- 2) we prefer satisfaction of the obligation by adding appropriate controls to existing housing rather than reliance on zoning for possible new construction;
- 3) unlike builders, we do not insist upon techniques that require construction of substantial amounts of market units in addition to the lower income units.

With regard to Piscataway, these three preferences coalesce in a manner that we believe makes settlement feasible and indeed desirable from both parties' perspective. Piscataway already has substantial numbers of rental units, some of which may already be affordable to moderate income families, and a rent control ordinance. It thus should be possible, through a variety of techniques, to satisfy the great bulk of the fair share directly by appropriate controls or modifications of existing rental units. We outline below several possible approaches, which we would be glad to explore in detail should the Mayor and Council be interested.

A) "Retrofitting" existing rental units

By this we mean making adjustments in rent control regulations or tax assessments so that some of the existing units would be affordable to, and controlled for occupancy only by, low and moderate income families. One way, which you suggested, might

be to modify the tax assessments of rental properties and require a pass-through of the savings in the form of lowered rents, so that the apartments would become affordable to lower income families, and then controlled at that level. Another way, which I described at our meeting Wednesday, would be to allow vacancy decontrol of some percentage of apartments in exchange for strict lower income controls on others under the same ownership. Obviously, both the economic and legal structures of such approaches need further exploration, but we are confident that they are viable if there is interest in implementing them.

B) Housing Trust Fund

The idea of a trust fund is to provide funds that can be used in a number of ways, outlined below, to assist or subsidize the provision of lower income housing.

A trust fund can be generated by a development fee or "in lieu" money contributed by commercial developers and residential developers not providing low income units as part of their development. Such a fee is being adopted in Plainsboro as part of a settlement with the Urban League, is presently being actively considered as part of a settlement with the Urban League in Old Bridge (all such considerations are to date strictly confidential and I suggest you directly contact only Jerome Convery or Carla Lerman if you wish to learn more about it), and is being considered by the Master as part of her compliance plan for Monroe. As you know, substantial discussions have already occurred regarding a possible "in lieu" payment for Site 3, where Mr. Saker seeks, and the Township prefers, development of a shopping center, although the Court has found it suitable for 222 residential units of which 44 would be affordable to low and moderate income households.

A housing trust fund could be used for a number of purposes relevant to provision of the necessary lower income units:

i) Rent subsidies

Funds could be used directly to subsidize existing rents so that low and moderate income families presently paying more than 30 percent of their income for housing would be brought within affordability guidelines. Such an approach is costly -- requiring substantial outlay of funds on an ongoing basis -- and does not provide long-term controls or guarantees that the units will remain affordable, unless only the interest on the trust fund is used. On the other hand, subsidies permit a town to render some, albeit a small number of, units affordable to households with incomes below the 40 or 45 percent of the median usually addressed by new construction set-asides. This is one of the primary intended uses of the Plainsboro trust fund, which plans to preserve its capital and use the income only.

Housing trust funds could also be used to pay rental property management fees or to pay for capital improvements or

maintenance costs, which are in effect subsidies to the landlord that permits reduction of tenant rents.

ii) Rehabilitation of existing substandard units

As you know, the 1980 Census identified the existence of housing units within Piscataway (as well as all other New Jersey municipalities) that lack adequate plumbing or heating facilities. These units were crucial in determining the "present need" component of the fair share. Clearly it is appropriate to make some provision to address this need. Funds from the Housing Trust Fund could be used for this purpose. In addition, Community Development Block Grants from the County are available for this purpose, and the new funds from the New Jersey Housing and Mortgage Finance Agency under the Fair Housing Act of 1985, guidelines for which I sent you and all other Township Attorneys two weeks ago, apparently also can be obtained for this purpose. As the Master and Court have made clear in other towns, however, it is crucial in considering rehabilitation as part of a compliance plan that a) the units needing rehabilitation are readily identifiable; b) the funding is reliable; and c) the rehabilitation undertaken is substantial which, given the reality of construction costs today, requires a significant financial commitment. Nevertheless, when funding is available, we believe this is a worthwhile element of compliance.

iii) Subsidization of new construction

Housing Trust Funds can also be used to help finance new construction of lower income units. The benefit of this approach is that it limits the amount of accompanying market units that must be developed. Thus, instead of 20 percent low and moderate and 80 percent market units, it is possible, depending on the size of the subsidy, to do 50, 75 or even 100 percent low and moderate income construction. The NJHMFA funds clearly are available for this purpose, too.

iv) Monitoring function

As you know, the Urban League considers it crucial to have its own on-going monitoring capability through this fair share period to assure compliance with any Judgment or settlement. The amounts involved would be small.


C) Zoning for new construction

As the Court has ruled, Piscataway has sufficient suitable vacant land to permit construction of some 2215 lower income units through high density development including 80 percent market units. As stressed above, the Urban League has never viewed this as the preferred approach and, from our discussion on Wednesday, it seems clear that it is also disfavored by the Township. Nevertheless, given the current availability of several willing developers and very favorable

market conditions, we believe that some new construction would probably be advisable. Once a compliance package is achieved, of course, sites not rezoned for Mount Laurel purposes could be rezoned for commercial or other purposes at the Township's preference.

We hope that the above will assist in your discussions with the Mayor and Council at your meeting on October 31st. We look forward to prompt and productive settlement talks.

Sincerely yours,



Eric Neisser
John Payne

cc: Roy Epps