UL v. Carteret, Piscataway 3/[illegible] (1986)

Certification of John M. Payne, Esq. (Piscataway) in support of Π's motion to establish appropriate conditions on the transfer of the Piscataway litigation to the Council on Affordable Housing

15 pgs

also, letter to Meisser from Daley acknowledging receipt of 2/24/86 letter and confirming / recounting the subject of their conversation.

also, letter to Stark from Clarkin acknowledging receipt of 3/4/86 letter and clarifying a point about the Supreme Court's Mt. Laurel ruling.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

| | |
|---|---|
| URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants. | Civil No. C 4122-73 (Mount Laurel) CERTIFICATION (Piscataway) |

John M. Payne, Esq., of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and counsel for the Urban League plaintiffs and the class of lower income households in the housing region in which Piscataway is located.

2. I submit this certification in support of plaintiffs' motion to establish appropriate conditions on the transfer of the Piscataway litigation to the Council on Affordable Housing, pursuant to the mandate of the Supreme Court in this action.

3. Piscataway has undergone explosive non-residential growth in the past 10 years, primarily because of the opening of Interstate

Route 287 through the middle of the Township. Although the Township has actively fostered this commercial growth, it has not sought to provide the additional housing needed to support the new employment opportunities. Of the relatively small amount of residential growth that did occur over the last decade, none prior to the trial date in this matter was for affordable housing meeting Mount Laurel II standards.

4. The Township has insisted throughout this litigation that because of its commercial growth policy of the past decade, it no longer has suitable land for residential development, and therefore should have a correspondingly small fair share. Piscataway should not be permitted to avoid its Mount Laurel obligation by means of this self-serving analysis as plaintiffs will demonstrate.

5. In March, April and May, 1984, this Court held extensive hearings in the Urban League case and in AMG Realty Co. v. Warren Township, on the issue of regional fair share methodology. Thereafter, on July 16, 1984, the Court issued an opinion in the AMG case setting forth at length such a methodology which allocated fair share primarily on the basis of vacant land and employment factors. Based on the AMG formula, Piscataway's fair share is 3744 units.

THE DEVELOPMENT RESTRAINTS

6. In May 1984, the Urban League plaintiffs learned that, despite the claim that it had insufficient land to meet its fair share, Piscataway and its agent boards and officials were

entertaining non-Mount Laurel development proposals respecting sites that were suitable for Mount Laurel housing. Because of the risk that actual development or acquisition of vested rights would preclude Mount Laurel development when a final order issued in the Urban League case, plaintiffs sought restraints on development pending the outcome of this action.

7. This Court's temporary restraining order of June 7, 1984, enjoined any final vesting as against the Urban League plaintiffs on three sites totalling 84 acres. After further hearing on June 26, 1984, the Order was converted into a preliminary injunction. In these two orders, the Court also required Piscataway to furnish the Urban League with Planning Board agendas and provided for hearings on further disputed sites on short notice.

8. In an Order dated September 11, 1984, plaintiffs obtained a further restraint in accordance with the procedure established in the June 26 Order. The September 11th Order concerned a vacant site which had not previously been disclosed to the plaintiffs in discovery, and the restraints on this site were subsequently dissolved with the Urban League's consent by an Order dated November 5, 1984, after the Cout-appointed expert reported that the site was not suitable for Mount Laurel development.

9. In late October, 1984, plaintiffs learned of further pending development applications, involving sites that had been specifically submitted to Ms. Lerman for review and recommendation, as described further in ¶13 below. Taking into account the municipality's repeated demonstrations of bad faith, the Court

entered general restraints as to any site found suitable by Ms. Lerman, pending further Order of the Court, dated December 11, 1984.

10. The December 11, 1984 Order is carefully tailored to preserve the status quo without unnecessary intrusions into either private or municipal rights. Development applications may continue to be processed, so long as they are subject to the no-vesting provisions of the June 7th and June 26th Orders. Applications containing a 20% set-aside for low and moderate income housing can be given final approval, subject to judicial review of any building permits thereafter issued. This review provision was included to insure that any developed sites would have adequate price and occupancy controls, and judicial supervision was necessary since Piscataway as yet has not created an Affordable Housing Agency. Any landowner aggrieved by the restraint can move to have it lifted on short notice.

11. The June 7, June 26 and December 11, 1984 Orders were continued in force by this Court's Judgment as to Piscataway entered September 17, 1985.

12. Although these Orders clearly remain in full force and effect, the need for confirmation is unfortunately demonstrated by the letters of James Clarkin, III, Esq. dated March 13, 1986 and Phillip Paley, Esq. dated February 25 and March 5, attached as Exhibit A. In addition, before the Supreme Court announced its decision in Hills, the Board of Adjustment considered and then approved a variance permitting development on site 80, which is subject to these restraining orders, without requiring any Mount

Laurel set-aside. In light of Piscataway's position, as reinforced by its specific conduct as set forth in this certification, it is respectfully requested that the orders be continued expressly until the Council grants Piscataway substantive certification or as otherwise ordered by this Court after a plenary hearing.

THE VACANT LAND DEFENSE

13. On July 27, 1984, shortly after the first Piscataway restraints were imposed, the Court issued a letter-opinion applying the AMG methodology to the Cranbury and Monroe portions of the Urban League case. Because of the "insufficient land" defense, however, this Court did not rule on Piscataway's fair share at the same time, but instead ordered the Court-appointed expert, Ms. Lerman, to review the sites that the plaintiffs asserted were suitable and to report to the Court. As to sites found suitable, she was also instructed to recommend appropriate densities. The parties were given leave to test Ms. Lerman's conclusions subsequently in a factual hearing. The Court indicated that it would establish a more realistic fair share obligation for Piscataway once it determined the amount of land actually available for development. As explained further in ¶14 below, the Urban League objected as a matter of law to this approach, but it nevertheless fully and promptly cooperated with Ms. Lerman as she prepared her report for the Court.

14. In order to carry out the Court's charge regarding site suitability and to determine appropriate densities, Ms. Lerman

requested additional information of the Township. The Township's failure to supply same promptly delayed Ms. Lerman's report until November 10, 1984. At the request of Piscataway Township, Ms. Lerman thereafter reviewed several additional sites (although Piscataway throughout contended that the sites were unsuitable), and issued a supplemental report on January 18, 1985. Of the sites submitted to her, Ms. Lerman concluded that some 30 were suitable. The Court thereafter scheduled a hearing on Ms. Lerman's report to begin on January 16, 1985.

15. Despite the Township's involvement in the analysis of the vacant sites since the initiation of discovery in early 1984, and Ms. Lerman's identification of most of the "suitable" sites in her November 10, 1984 report, and despite clear knowledge that Bruce Gelber, Esq., the Urban League co-counsel who was most familiar with the vacant land issues in Piscataway, would have to withdraw his appearance in the case because of an impending change in employment, Piscataway informed the Court late in December 1984 that it could not be prepared in time for the January 16 hearing, and requested a substantial adjournment. At considerable inconvenience to himself and to his new employer, the U. S. Justice Department, Mr. Gelber was forced to rearrange his personal plans and the vacant land hearing did not begin until February 1985.

16. Although Ms. Lerman has not accepted all of the sites recommended by the Urban League, plaintiffs made a strategic decision to accept her report as submitted in order to shorten the hearing and move more rapidly to plaintiffs' prime concern, site-

specific compliance. The defendant Township, however, contested each and every site recommended by Ms. Lerman, even when it had little or no credible evidence to offer in support of its opposition. Because of the Township's position, all parties were forced to incur unnecessary legal expenses and several weeks of this Court's valuable time were wasted.

17. On May 16, 1985, the Court conducted a personal inspection of all the sites in Piscataway, accompanied by counsel for the Township and the Urban League. It thereafter issued a letter-opinion on July 23, 1985, finding Piscataway to be in non-compliance, establishing a fair share of 2215 Mount Laurel units, and finding all of the sites recommended by Carla Lerman to be suitable for high density multi-family development.

18. While plaintiff cooperated fully and promptly with Ms. Lerman in evaluating vacant land, it has consistently maintained the position that the amount of vacant land remaining goes to the issue of compliance rather than fair share. Plaintiffs explained, for instance, that in addition to new construction at a 4:1 set-aside ratio, other subsidy techniques could permit some land to be developed with higher percentages of Mount Laurel units, and that additional Mount Laurel housing could be achieved without new construction, such as by imposing price and occupancy controls on existing garden apartment housing in the Township.

19. Because of this continuing position, the Urban League plaintiffs submit that Piscataway Township's proper fair share is substantially in excess of 2215 units. Indeed, in view of the

probability that the Council will consider financial need in determining fair share, it may well find Piscataway's fair share exceeds 3700. Restraints accordingly should be imposed on all future development in Piscataway involving more than one acre rather than being limited to the sites set forth in the existing Orders, pending action by the Council.

PISCATAWAY'S COMPLIANCE PRIOR TO TRANSFER

20. This Court's September 17, 1985 Judgment permitted Piscataway 90 days to prepare a compliance plan, measured from the date of the Court's letter opinion of July 23, 1985. Despite the fact that Piscataway had known to a certainty no later than July 27, 1984, the date of this Court's parallel rulings respecting Cranbury and Monroe, that it would have a substantial fair share obligation, it took no publicly-discernible steps towards compliance either before or after July 23, 1985. Rather, after the letter opinion of July 1985 establishing its precise Mount Laurel obligation, it hired a new municipal planner who had no Mount Laurel experience, and then sought delay of the October 23, 1985 compliance deadline on the grounds of its planner's need to master Mount Laurel doctrines.

21. On October 2, 1985, this Court denied Piscataway's motion to transfer the case to the Council on Affordable Housing, and declined to stay further compliance proceedings. An Order to that effect was entered on October 11. On October 23, the compliance deadline, a three-judge panel of the Appellate Division denied

Piscataway's motion for a stay pending decision on its motion for leave to file an interlocutory appeal of the denial of transfer.

22. On October 24, 1985, plaintiffs moved for an Order instructing the Master to submit a compliance plan for Piscataway, in default of the Township having submitted its own plan by October 23. The Court granted an extension of the compliance deadline to December 23, conditioned on weekly reports of progress to the Master. In November 1985, the Supreme Court granted direct certification in this and a number of other appeals relating to transfer, and directed that further stay motions be heard by the trial courts. Piscataway renewed its motion for a stay, which this Court reluctantly granted finding that the Supreme Court's stay of the Bernards Township case, which was also pending on appeal, compelled a stay as to Piscataway as well. As a result of these events, Piscataway is the only one of nine municipalities involved in the Urban League litigation that has neither settled nor prepared a compliance plan pursuant to court order.

COMPLIANCE ISSUES AFTER TRANSFER

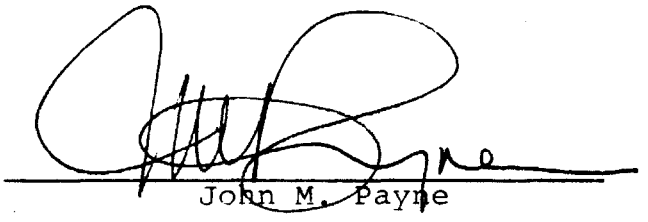
23. It is the Urban League plaintiffs' position that Piscataway's fair share obligation exceeds 2215 units. In addition to the argument noted above that vacant land cannot serve as a cap on fair share, plaintiffs intend to argue that the Fair Housing Act clearly authorizes inclusion of financial need (households living in adequate housing but paying more than 30% of household income for

it) in the fair share formula, even though it was excluded from the AMG methodology. Inclusion of financial need will substantially increase the pool of unmet housing need subject to reallocation to communities such as Piscataway.

24. Throughout this litigation, the Urban League plaintiffs have unilaterally and repeatedly compromised vacant land issues. These strategic decisions have no legal significance in light of the Supreme Court's decision in Hills Development. As a factual matter, these compromises only represent plaintiffs' desire to speed the trial process and achieve actual housing construction. They should not be construed as any concession on plaintiffs' part as to the actual feasibility of development on the contested sites.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statement made by me are wilfully false, I am subject to punishment.

Dated: March 20, 1986



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February 25, 1986

Eric Neisser, Esq.
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Re: Urban League vs. Piscataway et al.

Dear Eric:

I have your letter dated February 24, 1986. It is correct that we spoke on February 24, 1986. It is correct that I informed you that I would advise the Piscataway Planning Board and Board of Adjustment of your intent to file a Motion seeking to impose conditions on transfer, within the time limit set forth by the Supreme Court. It is correct that I advised both bodies that, although I consider the restraints entered on December 11, 1984, and confirmed by the Judgment of September 17, 1985, to be inoperative, I will advise both bodies to continue their practice of granting no relief which would entail the vesting of any property rights on any of the suitable sites referred to in the Judgment.

I believe that this conforms fully to our conversation;

EXHIBIT A

if there is any error contained herein, please feel free to telephone me upon receipt of this letter.

Very truly yours,

PHILLIP LEWIS PALEY

PLP:Pmmn

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March 5, 1986

Ms. Barbara Stark
Rutgers, the State University
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Constitutional Litigation Clinic
15 Washington Street
Newark, New Jersey 07102

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

Dear Ms. Stark:

This will acknowledge receipt of your letter dated March 4, 1986, addressed to James Clarkin, Esq., in the above matter.

As a municipal attorney, it is incumbent upon me to respond to the last paragraph of that letter. The Supreme Court opinion in Mount Laurel III, decided February 20, 1986, effectively means that there is no present restraint or limitation on the development of Piscataway's vacant land. Therefore, there is no requirement for the adoption of any resolutions "assuring a Mount Laurel set-aside . . . in accordance with the Judgment", because the Judgment has, effectively, been reversed.

Your courtesy and cooperation in acknowledging this position will be greatly appreciated.

Very truly yours,

PHILLIP LEWIS PALEY

PLP:pmmn

cc: James Clarkin, Esq.

BORRUS, GOLDIN, FOLEY, VIGNUOLO, HYMAN & STAHL

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March 13, 1986

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RE: Urban League v. Carteret
Our File No. 10004

Dear Ms. Stark:

I am in receipt of your March 4, 1986 letter. I did not characterize the Board's approval of site 80 as an error. However, the approval was given because the Board was not aware that site 80 was in the Mount Laurel inventory.

Your letter also indicates that you understand that a Mount Laurel set aside will be assured for this site in accordance with the judgment. That is not entirely accurate since the Mount Laurel III decision is controlling over Judge Serpentelli's judgment. Of course, the Piscataway Township Zoning Board of Adjustment will comply in all respects with the Supreme Court Mount Laurel III decision.

Very truly yours,

JAMES F. CLARKIN III

JFC/klh
CC: Phillip L. Paley, Esq.
CC: Chris Nelson, Esq.