

Discataway 1986

4/2

letter to Attorney of Peter J. Saker re: planning board authority

pg. 5.

no p.i.

CA000862

~~88/2~~

87/7

KIRSTEN, FRIEDMAN & CHERIN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

17 ACADEMY STREET

NEWARK, N. J. 07102

(201) 623-3600

April 2, 1986

rec'd 4/9 from kelso

RICHARD E. CHERIN*
 HAROLD FRIEDMAN
 JACK B. KIRSTEN*
 PHILLIP LEWIS PALEY**
 DENNIS C. LINKEN
 ROBERT A. VORT*

JOSEPH HARRISON (1930-1976)
 MILTON LOWENSTEIN
 OF COUNSEL

MARGARET E. ZALESKI
 JOHN K. ENRIGHT
 SHARON MALONEY-SARLE
 LIONEL J. FRANK*
 RICHARD M. METH

*MEMBER N.J. & N.Y. BARS
 **MEMBER D.C. BAR

Gluck and Kelso
 Box 1208
 132 Hamilton Street
 New Brunswick, New Jersey 08901
 ATTENTION: Thomas F. Kelso, Esq.

Re: Peter J. Saker, Jr. - Site 3
 Township of Piscataway

Dear Tom:

This will acknowledge receipt of your letter dated March 19, 1986, regarding land owned by your client, Peter J. Saker, Jr., within the Township of Piscataway. The question presented in your letter, one which we have struggled with for literally weeks and months, is the legal effect of the Order entered by Judge Serpentelli on December 11, 1984, as incorporated within the Judgment as to Piscataway entered by Judge Serpentelli on September 17, 1985.

For reasons which I will attempt to explicate in the following paragraphs, I have concluded that the contents of my letter dated February 25, 1986, addressed to Chris A. Nelson, Esq., attorney for the Piscataway Planning Board, and James F. Clarkin, Esq., attorney for the Piscataway Zoning Board, represented an

excess of caution, and I seek by this letter to modify my position with respect to the authority of either the Planning Board or the Zoning Board to grant developmental approvals on land deemed suitable for Mount Laurel development.

The December 11, 1984, Order entered by Judge Serpentelli recites as follows:

"It is . . . Ordered that pending a hearing on the final report of Carla Lerman, dated November 10, 1984 . . . no site found suitable for residential development by Ms. Lerman in the November 10, 1984, final report shall be approved for development by the Township of Piscataway and any of its official bodies, officers or agents, unless the approval requires a 20% set-aside for low and moderate income housing . . . nor shall use of the site be approved for any other purpose. Any approval granted pursuant to this Order shall contain on its face specific reference to this Order of the Court; and

'It is further Ordered that no building permit shall be issued by the Township of Piscataway or any of its official bodies, officers or agents as to the sites found suitable for residential development in Ms. Lerman's final report dated November 10, 1984 . . . without Court Order granting such permit upon a finding that the proposed development meets affordability and eligibility standards consistent with Mount Laurel II; and

'It is further Ordered that except as provided in paragraphs 1 and 2 above that the Township of Piscataway and any of its official bodies, officers or agents are permitted to process and approve development applications, providing that such processing and approval shall not, until further order of the Court, create any vested use or zoning rights or give rise to a claim of reliance against a claim by the Urban League Plaintiffs or an order of this Court for revision of the Piscataway Township zoning ordinances, if the Urban League shall claim or the Court shall order rezoning necessary to

satisfy the Township of Piscataway's obligation under Mount Laurel II . . ."

In the past, I have interpreted this language as an absolute proscription against the Planning Board or the Zoning Board taking any action with respect to any land described in Ms. Lerman's November, 1984, report, unless the prospective development contained a Mount Laurel component.

Having reviewed your letter of March 19, 1986, I believe that your conclusions are well taken, in that the intent of the December 11, 1984, Order was to safeguard any rights which might be available to the Urban League as regards low and moderate income housing. Therefore, your client, or any other individual or company similarly situated, may process a developmental application before the Planning Board or the Zoning Board, as the case may be, and may obtain appropriate approval, which approval shall be subject to any rights of the Urban League as regards Mount Laurel housing.

I have also examined the resolution of the Planning Board of the Township of Piscataway bearing docket number 84-PB-154 addressing Mr. Saker's application. Obviously, based upon the conclusions rendered above, I believe that the resolution reflects a mistaken view as to the state of governing law and I urge the Planning Board to vacate that resolution.

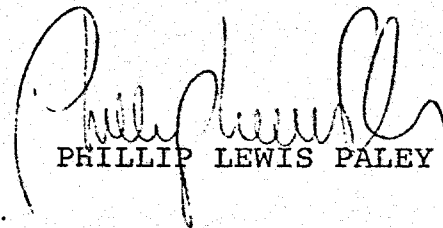
I want to clearly emphasize that my opinion as reflected in this letter in no way compels the Planning Board to issue any developmental approval to Mr. Saker whatsoever. I take no position on the merits of his application. The Planning Board may deal with his application by applying state law and local ordinances to those facts proved by the applicant or stipulated to by all parties. I only assert that the applicant shall not be denied his right to have the Planning Board deliberate on the merits of his application by virtue of the Mount Laurel litigation. In short, I intend in no way to supplant the general discretion of the Planning Board of the Township.

I also believe it relevant to point out that the Urban League has moved before Judge Serpentelli for an Order granting a general restraint as to all lands previously restrained by the December 11, 1984, Order and the September 17, 1985, Judgment. The Township will argue before Judge Serpentelli that the making of that motion reflects the Urban League's own view that the restraint previously imposed by Judge Serpentelli before the Mount Laurel III decision no longer carries legal effect. Whether Judge Serpentelli will restrain any or all of Piscataway's vacant lands is problematic and will not be known until April 25, 1986, the return date of the aforesaid motion. I will keep the

Planning Board and the Zoning Board apprised of Judge Serpentelli's decision.

I am available to the Planning Board or its counsel for any additional information on the subject raised herein, should that be deemed necessary.

Very truly yours,



PHILLIP LEWIS PALEY

PLP:pmmn

cc: Chris A. Nelson, Esq.
James F. Clarkin III, Esq.
Honorable Robert G. Smith
Honorable Paul A. Abati