

CA - General

9/1/75

Affidavit of Dorothy G. Powers and ~~B~~ Henry Mendelson,
the NSLW amici people.

Dgp. 8

Pi. 3422

CA 001000T

jointly as "The Leagues"]. We make this affidavit in support of the applications by the New Jersey League and by the Middlesex County League for leave to appear as amici curiae in this action.

2. The Leagues wish to be heard in this case because they regard the within action as one of considerable importance to the developing area of the law concerning regional land use planning and regional decision making -- in particular, that area of the law dealing with a municipality's obligation to provide its fair share of racially and economically integrated housing.

3. In ruling on the defendants' motion to dismiss the Complaint on November 1, 1974 (T 16 to 17), the Court expressed doubt about the availability of certain of the relief sought in the Complaint, in particular, Prayer for Relief No. 2, which provides:

"Requiring defendants, individually and collectively, to take reasonable steps to correct past discriminatory conduct by preparing and implementing a joint plan to facilitate racially and economically integrated housing within the means of plaintiffs and the class they represent. In developing and implementing such plan, defendants should be required to solicit and utilize the advice and assistance of appropriate county, state, and federal agencies and programs. Such plan should include a precise program and timetable outlining the steps defendants will take to assure successful and expeditious implementation."

It is on that issue and that issue only as to which the Leagues

seek leave to appear as amici curiae and to participate in oral argument.

4. The Leagues believe that they are particularly in a position to give the Court information on this question as to which it is in doubt. In 1971, after concerted study and discussion, League members throughout the State reached agreement on measures to meet New Jersey's housing needs. A major point in the position is that municipalities must share in the overall responsibility of providing housing for persons of all income levels. In addition, a League study conducted in 1974 culminated in member agreement in support of regional planning and decision making for land use, including housing.

Efforts to implement these positions through legislative action have not been successful. Since 1971, when the New Jersey League adopted its housing position, only two legislative proposals concerned with zoning to meet housing needs have been introduced in the New Jersey Legislature. A. 1421, the "Voluntary Balanced Housing Plan Act", introduced July 17, 1972, never got out of committee. The controversy surrounding the bill was so strong that the sponsor finally withdrew the bill in November, 1973. S. 3100, the "Comprehensive and Balanced Housing Act", introduced March 24, 1975, differs from A. 1421 in that it requires municipalities to make zoning changes under certain cir-

STATEMENT OF FACTS

Dunellen, located at the northern end of the county, is a small Borough bounded on two sides by water courses that sometimes overflow. (Greenbrook and Boundbrook) In addition thereto, there are two or three streams that run through the Borough.

According to figures compiled by the Middlesex County Planning Board, Dunellen has a population of 7,072 according to the 1970 census. It has 2,282 housing units of which 785 are two or more units. Page 17 Selected Population and Housing Statutes for Middlesex County based on 1970 census. Thus, 34% of the housing units according to the survey are for multi-family units. There were 1,600 persons renting in Dunellen or 30% of the population. Page 23 (Housing report (supra)). Of the rental units, 63% of them rented for under \$120 per month rental. Page 35 Housing report (supra).

At the present time, there are 155 two family houses in Dunellen, there are ^{an additional} 25 units where three or more families are housed; this includes apartments. There are three ^{Plots} ~~units~~ which have received Zoning Board approval for 72 apartments; they are not yet built, ~~and~~ ^{and} since 1967, 44 apartments have been built. The above figures were obtained from the Tax Assessors rolls.

At the present time, according to the current figures in the Borough Assessors files, 45% of the single family houses have a value of between \$15 and \$25,000 and a similar 45% have a value between \$25 and \$35,000. 8.1% are above \$35,000. The remaining amount is \$15,000 or under.

Dunellen is 93% developed. It has 478 acres and there is a total of 32 acres still vacant. Of the 32 acres that are still vacant, there are 18 acres which are either undersized, have a brook running through the parcel, or are adjacent to one of the water courses and are prone to frequent flooding. Those 18 acres includes one tract of 5 ½ acres for which a green-acres application is pending by the Borough. The particular site is not suited for houses or apartments since it would require considerable fill.

There are 9 acres of buildable land, of which about 2 to three acres includes land already approved for apartments. The remaining vacant land consists primarily of single lots throughout the town. There is a five acre tract in an industrial area in the western end of town that could be considered vacant but which would be suited for commercial or industrial use.

As can be seen above, there are 2,282 housing units in the Borough. Only Perth Amboy, New Brunswick, and Highland Park exceed the density by square mile. If one compares the population of these four towns, Dunellen, Perth Amboy, New Brunswick, & Highland Park, to housing density, one will see that Dunellen has 3.10 persons per unit, the second highest figure among the four most densely populated communities in Middlesex County.

Attached herewith is a copy of zoning ordinance. One will see that there is no prohibition against either apartments or trailer. The only regulation being the number of families per acre. In the A family zone, 48.4 families per acre are permitted. In the B zone, 18 families per acre are permitted.

ARGUMENT

All of the communities who are parties to this suit have awaited the outcome of the Mt. Laurel decision 67 NJ 151. It is clear to ~~now~~ now, that on its face the decision does not apply to all. Mt. Laurel at page 173-174. It applies only to developing communities or those in the process of becoming so. Since the decision was handed down, the Appellate Division has twice ruled that certain communities are unaffected by Mt. Laurel Segal Construction Company vs. Zoning Board of Adjustment Wenonah 134 Super 421 and an unreported case concerning the Borough of Rochleigh in Bergen County. Rochleigh is a small community comprised of moderate to expensive single family houses and some industry.

Wenonah, like Dunellen, is one square mile. It has 109 acres still to be developed; Dunellen has 10-15 acres. Wenonah has a 41 acre tract available; Dunellen has possibly a 5 acre tract. Most of the houses in Wenonah are valued at between \$25-35,000; most of the houses in Dunellen are valued at between \$15-35,000. See Segal Supra at page 423. Since several criteria that have been used by the Appellate Division in the Wenonah case are applicable to Dunellen, it is appropriate for Dunellen to petition this court to be excused from any more burdens, financial and otherwise, that may be imposed on it if it should be obliged to further defend this protracted and expensive law suit.

The Wenonah Court was reluctant to judicially impose on a small community a growth rate it may have not been equipped to deal. Segal Supra at p. 424. In Dunellen, it is argued there is no growth that can be judicially imposed since most of the present vacant land is comprised of individual lots situated throughout the Borough. (Counsel will have a map on the return day of the motion which will graphically portray this fact.)

The argument that flows most naturally from that aforesaid fact is one that this honorable court has recognized on either occasions. In the Oakwood at Madison Case 128 Supra 438. This court acknowledged that, while zoning now is a regional area concern, nevertheless minor contributions to the region by a developed community is an insufficient reason to impose judicial fiat on a zoning ordinance or planning scheme. This court quoted with approval the words of C.J. Weintraub in Fanale vs. Hasbrouck Heights 26 NJ 320 at 328: "It is quite another proposition to say that a municipality of 960 acres must accept uses it believes to be injuries in order to satisfy the requirements of the city. There is no suggestion that the ~~city~~ ^{County} is so developed that Hasbrouck Heights is the last hope for a solution...!"

Dunellen now asks as did Wenonah, Segal Supra at p. 424 is it the last hope for housing in Middlesex County? The answer of course must be a resounding no and this court should have no trouble in reaching that conclusion.

In fact, J. Pashman who in the Mt. Laurel decision (concurring) would go "further and faster" says that no municipality need assume more than its fair share of housing burdens 67 NJ at page 212-213. An analysis of the figures prepared by the Middlesex County Planning Board shows that Dunellen has a population density $3 \frac{3}{4}$ times more dense than the county average (Dunellen 7082 population per square mile vs. County average 1869 population per square mile p. 16 Housing Report Supra).

In conclusion, it is argued that since Dunellen does not ban certain uses it may continue to zone as it has in the past keeping its present balance of primarily moderate one and two family houses together with certain multi-family uses. Such a zoning plan is expressly approved so long as it does not exclude other uses. See Gruber vs. Mayor and Township Community of Raritan Township 39 NJ1.

The complaint in this case was filed largely because recent surveys have shown that Middlesex has a lot of vacant land zoned industrial. See Land Use Regulation The Residential Land Supply (1972) Published by the NJ State Department of Community Affairs. Such is not the case of Dunellen. The case against ^{IT} should be dismissed.

Respectfully submitted,

by *Deborah Berman*

Handelman & Jacobs
Attornies for Dunellen