

~~Ut v. Carteret~~ CA - General

2/24/76

Transcript of proceedings

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CHW

CA001039S

URBAN LEAGUE OF GREATER NEW BRUNSWICK,

et al

Plaintiffs,

300K - FRANK SCHAFERMAN
CLERK

-vs-

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al

Defendants.

.

New Brunswick, New Jersey
February 24, 1976

B E F O R E:

HONORABLE DAVID D. FURMAN, JSC

A P P E A R A N C E S:

DANIEL SEARING, ESQ.,
Attorney for the Plaintiffs.

LAWRENCE LERNER, ESQ.,
Attorney for Highland Park.

Daye F. Fenton,
Official Court Reporter.

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1 MR. LERNER: If it please the Court, I'd like
2 to make a motion.

3 If your Honor, please, the Borough of
4 Highland park is second to the City of New Brunswick
5 in its density.

6 THE COURT: Perth Amboy, I believe.

7 M.R LERNER: I'm sorry, Perth Amboy, with
8 Perth Amboy being the most dense municipality
9 in the County, with Highland Park being very
10 close behind and New Brunswick being actually third,
11 I think I can make that statement safely and the
12 density figures for the three municipalities are
13 in the very high 7000 ranges to 8000, I think
14 or somewhere in that neighborhood, that's people
15 per square mile. The amount of available land
16 for Highland Park, which is vacant and but
17 not, well question was never asked as to its
18 ability to be built upon, represents and I'll
19 state to the Court the land going from the
20 Raritan River adjacent to Donaldson Park
21 up towards Fifth Street, there are no streets, there
22 are no roads, its --

23 THE COURT: Well --

24 MR. LERNER: Flood Plain.

25 THE COURT: You're making a statement --

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MR. LERNER: I understand your Honor but the point was never asked as to whether or not there's any buildable land in Highland Park and the question is if there is any it's an odd lot here and there and the fact that the municipal land there may be a portion of it, of the landfill that now maybe built upon but there is no vacant land in Highland Park.

It has a housing authority, it has executed the Community Development Fund application, it has and is seeking monies for the rehabilitation of substandard homes and housing and it is doing everything within its discretionary powers to attempt to meet its fair share. The fair share of the municipality can only be described as what it has in fact been doing in the past. More than 50 percent of the municipality is renter occupied. I think the figure for total commercial development is minuscule, total industrial development is equally minuscule and that the municipality has devoted it's entire resources to providing housing at every level, the question is to the total number of households there are has fluxuated and the total number of people within the household but as

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all the various exhibits that have been introduced,
all bear that out.

I refer to P-75, the 1970 average, the median family income is 11,982, Highland Park is 11,756. It's with regard to P-70, distribution of multifamily housing units between New Brunswick, Perth Amboy and the rest of the County, New Brunswick 71 percent, Perth Amboy 66 percent, 66.9, Highland Park over 50 percent but I don't know the exact figure, the County was 32.7.

With regard to P-76, total assessed valuation of real property, Perth Amboy was the lowest on the chart, next to the lowest Highland Park. With regard to minority persons and lower, moderate income, the total number of people, I'm sorry minority by race, in schools, the P-73, 4.4 percent for the County and Highland Park was 10.1 percent.

I think that from all the exhibits, from all the proofs, that Highland Park is an older, there's no question about, developed town which has no land resources available, the only resources it has, is attempting to secure, is a landfill operation and the flood plain, and that there is not significant land available

1 for any purpose. I think that the case against
2 Highland Park has not been shown and that the
3 matter should be dismissed. I'm not even
4 questioning myself to the trailers, your Honor or
5 trailer parks or trailer spots because I don't
6 know if a trailer could turn around in one of
7 our streets, even to get in, even if it found a
8 lot.

9 MR. SEARING: May it please the Court, from
10 the Plaintiff's view contained in the testimony
11 of Mr. Mallach, his proof of prima facia
12 case under the Mount Laurel opinion of
13 exclusionary zoning practices, the evidence as
14 to the affirmative actions spoken of mby Mr. Lerner
15 are not offically in the record and I might
16 add that the fair share of the municipality is
17 also not in therecord and I would refute the
18 statement that it is solely past practices
19 of a municipality, although that clearly
20 might be a factor in determining that is fair
21 share.

22 Now, in the Plaintiff's view point the amount
23 of vacant land in a municipality is simply a
24 function of its ability to participate in any
25 remedy that is ordered, after a showing of facial

1 liability, this is one factor as I think the
2 testimony of other witnesses and of Mr. Mallach
3 himself, has shown. The Plaintiffs are alledging
4 that if there's liability there are a number
5 of possible remedies falling within theChancery
6 powers. Mr. Lerner seems to be saying that
7 if there is no land available too, for a remedy
8 there is no liability and we would dispute that.
9 I think a major factor in the consideration of
10 thismotion has to be the testimony regarding
11 the 155 units of substandard housing as of 1970,
12 plus others who need help in affording their
13 housing, equalling a large number of individuals
14 who are at this time ill-housed. Mr. Lerner
15 admitted that a lot of the housing was older,
16 perhaps in the future this might be available
17 for either rehabilitation for assembling ito
18 lots on which multifamily dwellings could be
19 developed.

20 Our final point, your Honor, is that the
21 effect of dismissing Highland Park in this case,
22 simply is to block in past practices, it also locks
23 in the current density and in that regard it might,
24 I might add that P-50 A indicates a current
25 populatin as of 1970 of 14,385 people

1 in Highland Park, P-40, the comprehensive
2 Master Plan shows a projected increase to 18,344
3 or an additional 3,959 people. Now, I can't
4 believe that the County Master Plan or the
5 County Planning Board would increase the density
6 of the housing in Highland Park without having
7 made some projections or provision for where
8 these people would go.

9 Finally, your Honor, the effect of this
10 freezing in is to prevent even, under changing
11 conditions any remedy by the Borough of Highland
12 Park.

13 For those reasons we would respectfully
14 request the Court to deny this motion to dismiss.

15 THE COURT: The conditions changing, wouldn't
16 that be another law suit?

17 MR. SEARING: Possibly, your Honor.

18 THE COURT: And we don't usually decide
19 law suits on speculation as to what conditions
20 may be in the future.

21 Would you indicate to me, you've used the
22 phrase locked in and frozen, in and that sort of
23 thing but you've recognized a locking in so to
24 speak in New Brunswick and Perth Amboy by not
25 joining them as defendants. Now, what would appear

1 to you to be the significant distinctions
2 between Perth Amboy and Highland Park?

3 MR. SEARING: Well, we have not received
4 testimony yet as to the affirmative actions
5 that Highland Park can take. I really, I
6 hesitate to speak from my own knowledge
7 which is limited but there are activities being
8 conducted in both Perth Amboy and New Brunswick
9 to renew and revitalize older housing stock to
10 provide for their low and moderate income
11 people.

12 I also believe that there are plans under
13 way for, to take into account, expected to
14 reside and there are differences in terms of
15 the restrictions imposed by the Zoning Ordinance.
16 Admittedly the density factors when put side by
17 side are very impressive but I think it has
18 to be, this has to be measured by Highland
19 Park's location in the County, it's desirability
20 as an area of residence, its central location.
21 Now, both attributes are also enjoyed by Perth
22 Amboy and New Brunswick.

23 THE COURT: Well, with respect to some
24 of the inhibiting factors that Mr. Mallach testified
25 to, while it is true that bedroom ratios, three

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bedroom maximums, may be inhibiting to low and moderate income people, the structures are already built, there isn't much that can be done by changing those limitations as to housing to be built, isn't that so?

MR. SEARING: That is so, your Honor but while they are still in the ordinance they operate to make or to discourage the provision of housing for low and moderate income people, should there become available certain lands or certain properties which are accumulated. Our problem with these is that they, I think they have a chilling effect in simply being present in the ordinance.

THE COURT: It would appear that they had a chilling effect only with respect to 19.5 acres now owned by the Borough, that's the only place new housing could go, isn't that right?

MR. SEARING: That's true, your Honor but there have been units constructed I believe under these restrictive practices and there may be available land as older housing stock deteriorates and properties become available for multifamily units, this is especially applicable to the restriction Mr. Mallach testified

1 to regarding the multifamily units must be 40
2 plus units, this doesn't allow for anything smaller.

3 THE COURT: As far as substandard units is
4 concerned, again we have the problem that so
5 far as I know this Court lacks the authority
6 to and it is not an issue raised in the case
7 in any event to order the demolition of present
8 substandard units and their replacement. Isn't
9 that so?

10 MR. SEARING: That is so, your Honor, but
11 we do not wish to preclude and I think it is
12 within the power of this Court to order the
13 municipality to explore steps by which such
14 substandard housing stock maybe improved, without
15 destroying it.

16 THE COURT: You mean it's part of the remedy
17 in this case?

18 M.R SEARING: Yes, sir, to encourage
19 builders to come in to undertake to explore
20 participation in federal programs to work iwith
21 County officials in producing plans for improving
22 such facilities. It is not the Plaintiff's
23 position that all of this, all of these proposed
24 remedies or the housing stock is going to be
25 upgraded within a day or two or week or two or

1 year or two but we're asking that where there
2 is, where there is inaction in this area,
3 where there is a problem in this area, that has
4 been identified that the Court turn its
5 attention to plans and time tables to remedy
6 this type of condition.

7 THE COURT: Anything you wish to add?

8 MR. SEARING: Well, your Honor, only
9 that at some point substandard housing
10 stock or the older housing stock is
11 probably going to need replacing simply as a
12 factor in the development of urban community,
13 I believe Mr. Mallach testified to a continual
14 turnover in some areas and the real question is
15 what zoning is going to govern in those areas,
16 Plaintiff's believe it's important that the
17 restrictive features of these ordinances not
18 be the governing provisions at that point.

19 That's all your Honor.

20 THE COURT: My view would be that the
21 case against the Borough of Highland Park comes
22 down to an apparently prima facia case against
23 the multifamily restrictions, the size requirements
24 and bedroom ratios and three bedroom maximum,
25 these would appear to be presumtively valid.

1 In so far as the case against the Borough of
2 Highland Park for failing to provide its fair
3 share of low and moderate income housing or
4 enacting zoning which excludes the opportunity
5 for realizing the fair share, the testimony
6 is that the Borough has virtually no land
7 resources and those land resources maybe
8 scattered vacant lot or two plus apparently
9 about 19.5 acres and I accept at this point
10 Mr. Lerner's representation, the approximate
11 location, that part of it is flood plain and
12 part of it is sanitary landfill, negligible
13 from the stand point of vacant land in which the
14 housing needs, diversified housing, low and
15 moderate income housing for the County or
16 larger region or the region of Highland Park
17 could be reasonably provided for.

18 I cannot grant totally the motion to
19 dismiss, however because it would appear that
20 the zoning ordinance is vulnerable with respect
21 to the bedroom ratios.

22 MR. LERNER: If it please --

23 THE COURT: And the other provisions as
24 to the size of multifamily parcels for multifamily
25 buildings.

1 MR. LERNER: If the Borough Council were to,
2 during the pendency of this action, remove those
3 restrictions, would the Court then reenter
4 my motion with regard to that portion of my
5 application?

6 THE COURT: Yes, I would.

7 M.R LERNER: Thank you, very much.

8 THE COURT: Now, you can judge yourself,
9 Mr. Lerner, how much further participation
10 you need to take.

11 MR. LERNER I'm sorry, your Honor.

12 THE COURT: You can judge yourself, how
13 much further participation you need to take.

14 MR. LERNER: I understand that, your Honor.

15 THE COURT: All right.

16 * * * * *

17
18 CERTIFICATE

19 I, DAYE F. FENTON, do hereby certify that the
20 foregoing is a true and accurate transcript of
21 the proceedings as taken by me stenographically
22 at the time and place hereinbefore set forth.

23
24 
25 DAYE F. FENTON, CSR