

CA - general

10/1/79

~~10/1/79~~

~~10/1/79~~

- cover letter
- motion for leave to file brief + participate as Amicus Curiae in support of motion for rehearing, memorandum, and affidavit in support thereof + certificate of service from 10/1/79

P.ii. 1169
pg 8

CA001161M



Upp

CA001161M

State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

P.O. BOX 141

TRENTON, NEW JERSEY 08625

CARLS. BISGAIER
DIRECTOR
TEL. 609-292-1693

STANLEY C. VAN NESS
PUBLIC ADVOCATE

October 1, 1979

Elizabeth McLaughlin, Clerk
Superior Court of New Jersey
Appellate Division
State House Annex, Room 316
Trenton, New Jersey 08625

RE: Urban League of Greater New Brunswick v. Carteret
Docket No. A-4681-75

Dear Ms. McLaughlin:

Please find enclosed the original and five copies of the Public Advocate's motion for leave to file a brief and participate as an amicus curiae in support of plaintiffs' motion for rehearing in the above-referenced matter, accompanying supporting documents and its amicus brief. All counsel and the judicial panel in this matter have been served.

Sincerely,

Linda R. Hurd

Linda R. Hurd
Assistant Deputy Public Advocate

LRH/ap
Enclosures
cc: All Counsel

STANLEY C. VAN NESS, PUBLIC ADVOCATE
DEPARTMENT OF THE PUBLIC ADVOCATE
LINDA R. HURD, ASST. DEPUTY PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY
POST OFFICE BOX 141
TRENTON, NEW JERSEY 08625
(609) 292-1693

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-4681-75

URBAN LEAGUE of GREATER NEW BRUNSWICK, :
et al., :

Plaintiffs-Respondents, :
Cross-Appellants, :

-v-

MAYOR and COUNCIL of the BOROUGH of :
CARTERET, et al., :

Defendants-Appellants. :

Civil Action

MOTION FOR LEAVE TO FILE BRIEF AND
PARTICIPATE AS AMICUS CURIAE IN
SUPPORT OF MOTION FOR REHEARING,
MEMORANDUM AND AFFIDAVIT IN SUPPORT
THEREOF AND CERTIFICATE OF SERVICE.

TO: MARTIN E. SLOANE, ESQ.
N.C.D.H.
1425 "H" Street, N.W.
Washington, D.C.

WILLIAM C. MORAN, JR.
Huff and Moran
Cranbury-South River Road
Cranbury, New Jersey 08512

BERTRAM E. BUSCH, ESQ.
99 Bayard Street
New Brunswick, New Jersey 08903

THOMAS R. FARINO, JR.
Cor. Applegarth & Half Acre Rds.
Cranbury, New Jersey 08512

JOSEPH H. BURNS, ESQ.
103 Bayard Street
New Brunswick, New Jersey 08901

DANNY S. BERNSTEIN, ESQ.
Sachar, Bernstein, Rothberg,
Sikora & Mongello
700 Park Avenue
Plainfield, New Jersey 07061

JOSEPH L. STONAKER, ESQ.
41 Leigh Avenue
Princeton, New Jersey 08540

STANFORD E. CHERNIN, ESQ.
1075 Easton Avenue
Somerset, New Jersey 08873

BARRY C. BRECHMAN, ESQ.
3530 Highway 27
Kendall Park, New Jersey 08824

SIRS:

PLEASE TAKE NOTICE that the undersigned attorney for the New Jersey Public Advocate hereby moves before the Superior Court of New Jersey, Appellate Division, for an order granting the Public Advocate leave to file a brief and participate in oral argument as amicus curiae in the above-captioned matter. Movant relies on the attached memorandum and affidavit in support of this motion.

STANLEY C. VAN NESS
Public Advocate

By: Linda R. Hurd
LINDA R. HURD,
Asst. Deputy Public Advocate,
Div. of Public Interest Advocacy

Date: October 1, 1979

MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE A BRIEF AND
PARTICIPATE IN ORAL ARGUMENT

Respondent's motion seeks reconsideration of this Court's decision to reverse the lower court's decision that the defendants' zoning ordinances are unconstitutional. Reversal was based solely on this Court's finding that the respondents' and the trial judge had erred in relying upon Middlesex County alone in ascertaining the defendants' regional "fair share". This Court is being asked to reconsider its decision and to review the reasonableness of dismissing rather than remanding this case solely on this error in the respondents' proofs.

The effect of this decision will have a devastating impact on the provision of needed housing opportunities in Middlesex County and throughout this state and on the challenges to unconstitutional municipal land use practices which preclude the opportunity to meet those needs. The importance of this decision for persons desperately in need of safe, decent and affordable housing mandates close scrutiny and reflection by this Court of its decision to severely sanction plaintiffs for inaccurately designating Middlesex County's planning region. Furthermore, such an examination is required by the facts that:

1. The law of exclusionary zoning, definition of region and the demarcation of regions throughout the state in such cases was unsettled at the time of this trial and, in fact, still is not completely resolved.
2. The Supreme Court in Madison Tp. affirmed and remanded the lower court decision although the trial court had not even delineated the region in which Madison was located. The Court did not rule on, did not need to rule on, nor did it even know what Madison's region or "fair share" number was prior to finding that the zoning ordinance was unconstitutionally discriminatory.

3. The trial court conclusively held that the defendants' land use controls were unconstitutional precluding any opportunity for housing affordable to persons of low and moderate income. The issue of how much of an opportunity need be provided was not reached until the remedy to be imposed was addressed.

4. In any event, the result of the respondents' error -- from a factual perspective was not even in their favor. This Court determined that the appropriate region would include more than just Middlesex County but also include the greater metropolitan area of northeastern New Jersey. Under the D.C.A. Housing Allocation Plan, Middlesex County is a part of an eight-county region. Under this plan all but two of the defendants have fair share numbers equal to or greater than those used by the lower court. If the plaintiffs had in fact use a larger planning area, the defendants' "fair shares" would have been greater in almost every instance.

In light of the significant implications for residents of this state and related zoning litigation pending in New Jersey's courts, the Public Advocate seeks leave to submit an amicus curiae brief and to participate in oral argument to state his position on this motion for rehearing. The Department of the Public Advocate has served or is serving as counsel to a party or as amicus curiae before the Supreme Court and this Court in the following related cases: Southern Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975); Home Builders League of South Jersey, Inc. v. Tp. of Berlin, ___ N.J. ___ (July 29, 1979); Oakwood at-Madison, Inc. v. Tp. of Madison, 72 N.J. 481 (1977); Ewing v. King, 69 N.J. 67 (1976); Taxpayers Ass'n. of Weymouth Tp. v. Weymouth Tp., 71 N.J. 249 (1976); State v. Baker, ___ N.J. ___ (July 29, 1979); Southern Burlington County N.A.A.C.P. v. Tp. of Mt. Laurel, A-5014-79.

CONCLUSION

For the above-stated reasons, the New Jersey Department of the Public Advocate respectfully requests that its motion for leave to file an amicus curiae brief and participate in oral argument be granted.

STANLEY C. VAN NESS
Public Advocate

By: Linda B. Hurd
LINDA R. HURD
Asst. Deputy Public Advocate
Div. of Public Interest Advocacy

Date: October 1, 1979

STATE OF NEW JERSEY)
) ss:
COUNTY OF MERCER)

AFFIDAVIT

LINDA R. HURD, being duly sworn according to law, deposes and says:

1. I am an attorney-at-law in this State and an Assistant Deputy Public Advocate of the Division of Public Interest Advocacy of the New Jersey Department of the Public Advocate.
2. The Department of the Public Advocate was created by the Department of the Public Advocate Act of 1974, Chapter 27, Laws of New Jersey, enacted May 13, 1974.
3. The Division of Public Interest Advocacy is authorized by Article IV of said Act to represent the public interest "in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest."
4. The disposition of this motion will have a significant impact on the availability of housing opportunities for the citizens of New Jersey and the provision of needed housing opportunities throughout the state.
5. Because of the importance of the issues raised and thier implications, the Public Advocate seeks leave to file and amicus curiae brief and to participate in oral argument.

Linda R. Hurd
LINDA R. HURD

Sworn and Subscribed to before me
this 15th day of October, 1979.

Sandra T. Ayres
Attorney-at-Law
State of New Jersey

