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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
Docket No. C-4122-73

URBAN LEAGUE OF GREATER NEW BRUNSWICK, a non-profit corporation of the State of New Jersey, et al,

Plaintiffs,

vs.

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

Defendants.

Civil Action

TRIAL BRIEF

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ARGUMENT

POINT ONE

CRANBURY TOWNSHIP IS UNIQUELY SITUATED WITH REGARD TO SEVERAL FACTORS WHICH DRASTICALLY REDUCE ANY OBLIGATION IT MAY HAVE IN THE HOUSING AREA

The Township of Cranbury is not abandoning the argument it made at trial in the motion to dismiss at the end of Cranbury's affirmative case, i.e., that the Township is not a "developing municipality" within the definition given that term in So. Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151, 336 A.2d 731 (1975). The Court in that case defined developing municipalities as ones which had

> "substantially shed rural characteristics and have undergone great population increase since World War II, or are now in the process of doing so but are still not completely developed and remain in the path of inevitable future residential, commercial and industrial demand and growth." (Emphasis added) 336 A.2d at 717.

The Township of Cranbury, as indicated by the proofs at the trial, has not and is not presently undergoing "great population increase", nor has it "substantially shed rural characteristics". Furthermore, there was no proof adduced at the time of trial that Cranbury was in the "inevitable path of future residential, commercial and industrial demand and growth".

Therefore, it is again argued here that the Township is not a developing municipality, and the holding of Mt. Laurel is not applicable. The burden is on the Plaintiffs to make this threshold affirmative proof before that burden shifts to the Defendant to demonstrate the viability of its ordinance under the "Mt. Laurel" criteria. See e.g. Hyland v. Mayor and Tp. Committee v. Morris Tp., 130 N.J. Super, 471, 327 A.2d 675 (App. Div. 1974) aff'd 66 N.J. 31, 327 A.2d 657 (1974).

The Plaintiffs have not met their burden in demonstrating that Cranbury is a developing municipality within the meaning of the "Mt. Laurel" decision; and, indeed, proofs at trial as to the rate of growth in the Township since World War II and the existing characteristics of the Township strongly indicate the contrary. However, Cranbury is mindful of the Court's ruling on this at the time the motion to dismiss was made, and, therefore, the purpose of this Brief will be to outline those factors which reduce (in this case, drastically) the burden of Cranbury to alter its zoning policies to permit an influx of housing.

Mt. Laurel recognized the propriety of land use regulations taking due account of ecological or environmental problems. As the Court said,

> "Their importance, at least being recognized, should always be considered." 336 A.2d 731.

The Court indicated that generally only a really small portion of a municipality would be involved. However,

in the case of Cranbury Township, because of the unique nature of one of the three important environmental factors, virtually the entire Township is involved, and, therefore, in order to minimize the impact on these critical environmental factors, any influx of new housing into Cranbury Township should be kept to a minimum.

During the course of the trial, three major environmental factors were identified in Cranbury Township: the conservation of prime agricultural land; the preservation of an important aquifer; and the existing polluted condition of the Millstone River.

A. Prime Agricultural Land. The report prepared by the Middlesex County Planning Board, entitled "Critical Natural Features Phase 1", dated December, 1975, and in evidence as DCr2, identifies seven critical natural features in Middlesex County which the Planning Board feels should be preserved. This report was prepared by the County Planning Board staff with the aid of a grant from the Department of Housing and Urban Development and an appropriation from the State of New Jersey.

The first critical natural feature identified is Prime Agricultural Land. As pointed out on Page 6 of the report,

> "To be an economically viable enterprise, agricultural uses must have a sufficiently large land area available for cultivation (the average size farm in 1972 was 126 acres). It is therefore necessary to preserve the remaining available

prime agricultural land in the County in sufficiently large tracts in order to support a viable agricultural industry."

Cranbury Township is unique in the County as being the only municipality where virtually the entire municipality consists of prime agricultural land. The map opposite Page 7 on the report shows the approximate locations of prime agricultural land which consists of Class I, II and III Soils out of the eight soil classes identified by the United States Department of Agriculture Soil Conservation Service. Mr. Neil Muench, of the Freehold office of the Soil Conservation Service, further stated that virtually all of Cranbury's prime agricultural land is in Class I. In other words, Cranbury Township's agricultural land is the prime of the prime. Mr. Muench's statewide map of prime agricultural lands in the entire state indicated that there was not much of the Class I land left in the state, and that in the Central Jersey region, Cranbury Township was the only municipality that consisted almost entirely of Class I lands. His testimony, supported by the testimony of Milton Cowan, Middlesex County Agricultural Agent, and the Critical Natural Features Report indicated that farming must be done on suitably large tracts, and Mr. Muench further testified that the existence of a viable agricultural industry is not compatible with residential development since there are many factors in both uses which are not compatible with the needs of the other use.

The argument that Cranbury's prime agricultural land should be preserved is not made merely for the sake of avoiding an influx of housing. The County Agricultural Agent testified as to the successful nature of the existing agricultural industry in Cranbury Township and the fact that Cranbury farms are among the best and most productive in the state. The land exists, it is being used, and this use should be preserved.

The need for the preservation of this land as part of a long range plan for the development of the County as a whole is pointed out in the "Long Range Comprehensive Plan Alternative", which is P49 in evidence. Appendix B, Table B shows 4, shows 4,468 acres of land in Cranbury Township in agricultural use in the year 2000. This is virtually one-third of the farm land in the entire County, even though Cranbury represents less than 5 per cent of the total land area in the County.

B. Aquifer. P49 in evidence contains a chart opposite Page 73 entitled, "Potential Water Sources of Supply". The entire southern portion of the County, including all of Cranbury Township, is identified as an area of high future ground water potential. The report further states on Page 75

> "Within Middlesex, possibilities for developing additional ground water supplies are found in the unconsolidated sand and gravel aquifers of the south. An estimated uptapped (sic.) potential of 42 mgd lies there in predominantly

undeveloped areas of Cranbury, Jamesburg, Madison, Monroe, Plainsboro and South Brunswick Townships, and generally shown on Figure 9. The plan alternative recognizes this potential by redistributing trend growth along with its impervious surfaces off of these aquifer recharge areas."

The testimony elicited at the trial indicated that the agricultural activity conducted in Cranbury Township was completely compatible with the preservation of this aquifer and that any form of development would, to some extent, have a negative effect on the aquifer. The need to preserve this valuable resource has been recognized by the County Planning Board and should be recognized by this Court.

C. Pollution of the Millstone River. Mr. Russell Nerlick, of the New Jersey Department of Environmental Protection, Bureau of Water Resources, testified at length concerning the existing pollution of the Millstone River, which forms the entire southern boundary of the Township of Cranbury for a distance of 7 miles. The Township Engineer testified that the entire Township drains into the Millstone River. Mr. Nerlick also testified concerning two existing studies to come up with solutions to this pollution problem. The first is being conducted by the Upper Millstone Water Management Study Group, a joint project of five municipalities in which Cranbury is a participant. He also testified as to a study being undertaken involving the New Jersey Department of Environmental Protection, the Middlesex County Planning Board and the Federal Environmental Protection Agency. It was anticipated that the studies

would be completed within two years. In the meantime, the Department of Environmental Protection is not permitting the expansion or development of any waste water treatment facilities affecting the Millstone, and in Mr. Nerlick's opinion, it would be foolish to rezone any municipality to permit intensive development affecting the Millstone until the conclusion of these studies.

For this reason, it is submitted that, at least as far as Cranbury Township is concerned, this important environmental factor should delay the implementation of any action by this Court until such time as a sound environmental basis to support such actions can be established.

In summary, the Middlesex County Planning Board has stated its policy of limiting the development of the southern portion of Middlesex County as handling the future development and growth of the County in the most economical manner in terms of costs of provision of infrastructure and the most efficient in terms of preserving the County's critical natural resources. This approach is spelled out in P49 and is highlighted by the Revised Population Forecasts (DCr1), which show a population projection for the Township of Cranbury in the year 2000 of only slightly more than 7,000 people, which means that even in the year 2000, the Township will have substantially maintained its rural characteristics.

In this law suit, in which Plaintiffs seek to impose a regional solution, it certainly makes sense for the Court

to follow a regional plan adopted by the County as the most economic and efficient way of handling the County's housing problems. The necessity of preserving the best farmland in the County, and, at the same time, conserving a valuable future source of potable water and avoiding the danger of further polluting an already environmentally impacted river are certainly factors which would militate in favor of following the County's Long Range Plan Alternative.

POINT TWO

PLAINTIFFS LACK STANDING TO ASSERT FEDERAL CLAIMS

A. State Courts lack jurisdiction on Federal Claims whenever the United States Supreme Court would not have jurisdiction to review.

It is clear that state courts may hear federal claims where they exercise concurrent jurisdiction with the federal judiciary. 1J. Moore, Federal Practice ¶ .6 (2d. ed. 1974). Moreover, state courts may exercise jurisdiction over federal questions even where federal district courts are deprived of jurisdiction as in the situation where a case lacks the requisite amount in controversy. e.g. 28 U.S.C. Sec. 1331. But the issue before this Court is whether a state court may entertain a plaintiff's federal claims when that particular plaintiff's claims are beyond the jurisdiction of the entire federal judiciary.

To assert that on substantive federal questions the United States Supreme Court is the final judicial authority, but on matters of procedure with respect to federal questions, state courts are free to apply their own standards, would be an oversimplification. An example to the contrary is that in Federal Employees' Liability Act cases a state cannot apply its usual rule that pleadings are to be construed strictly against the pleader, but rather state courts must construe pleadings liberally in favor of the pleader. Brown v. Western Ry. of Alabama, 338 U.S. 294, 94 L. Ed. 100 70 S.Ct. 105 (1949).

Charles Alan Wright, in his hornbook, Law of Federal Courts, questions whether there is any area of procedure that a state could regulate itself if a federal issue is involved and maintains if any such area exists, it is de minimus. C. A. Wright, Law of Federal Courts, Sec. 45 (2d ed. 1970).

In fact, this particular issue of justiciability has not been decided. In Doremus v. The Board of Education, the New Jersey Supreme Court decided a statute had not violated the First Amendment; the United States Supreme Court dismissed the appeal without reaching the federal question because it lacked Article III case or controversy jurisdiction. Doremus v. The Board of Education, 342 U.S. 429 (1952). However, the Court expressly stated that it had not decided the issue whether a state could decide a federal question beyond the jurisdiction of the United States Supreme Court. Id. at 434. Professor David P. Currie, Professor of Law at the University of Chicago, raises a question as to the serious consequences which could arise if this issue were decided in the affirmative. In his text, Federal Courts, Cases and Materials, he asks what would be the consequences for the federal system if res judicata effect were given to state court decisions affecting federal rights, thus depriving the system of an ultimate arbiter. D. Currie, Federal Courts, Cases and Materials 70 (1968). He suggests that the full faith and credit requirement would prevent federal courts from ignoring such decisions. Such a chaotic situation was

clearly not intended by the framers of the Constitution. Consequently, the only conclusion which can be reached is that any federal issue beyond the jurisdiction of the United States Supreme Court must have been meant to be beyond the jurisdiction of the state courts by implication from the constitutional framework itself.

B. Plaintiffs lack standing in any Federal Forum to assert the federal issues herein.

Defendant, Township of Cranbury, asserts that the Plaintiffs in this action would not have standing to maintain their federal claims in any federal court and, therefore, for the reasons just stated, this Court lacks jurisdiction to hear Plaintiffs' federal claims. The case of Warth v. Seldin sets forth the criteria for standing to challenge a zoning ordinance on federal grounds. Warth v. Seldin, 43 U.S.L.W. 4906 (U.S. June 25, 1975). The Plaintiffs in that case consisted of the following: (1) a non-profit corporation, whose purpose was to foster action to alleviate housing shortages; (2) individual taxpayers from Rochester; (3) Rochester area residents with low or moderate income; (4) Rochester Home Builders Association, which was comprised of several residential construction firms; and (5) a Housing Council, a non-profit corporation consisting of organizations interested in housing problems. These plaintiffs brought an action for declaratory and injunctive relief against Penfield, a suburb of Rochester, New York, claiming the town's zoning ordinance

by its terms and as enfo-ced, effectively excluded persons of low and moderate income from living in the town. Similar to the Plaintiffs before this Court, the Plaintiffs in the Rochester case grounded their federal claims on constitutional rights and 42 U.S.C. §§ 1981 and 1982. The Rochester case also involved 42 U.S.C. § 1983, whereas this present case includes 42 U.S.C. §§ 3601 et seq. In Warth, the United States Supreme Court found that none of the above mentioned Plaintiffs met the standing requirements necessary to confer jurisdiction on the Court.

The seven individual Plaintiffs in the instant case assert standing as persons of low and moderate income and, in some cases, as a member of a minority group, in the same manner as several of the Plaintiffs in the Warth case. In Warth, the Supreme Court assumed that the Penfield zoning ordinance "had the purposes and effect of excluding persons of low and moderate income", and that such, if proved, "would be adjudged violative of the constitutional and statutory rights of the persons excluded". Id. at 4909.

However, the Court, proceeding on this above assumption, found that the Plaintiffs were not able to show a direct injury and summarized their lack of standing in the following manner:

> "But the fact that these petitioners share attributes common to persons who may have been excluded from residence in the town is an insufficient predicate for the conclusion that petitioners themselves have been excluded, or that the respondents' assertedly illegal actions have violated

> their rights. Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent. Unless these petitioners can thus demonstrate the requisite case or controversy between themselves personally and respondents, none may seek relief on behalf of himself or any other member of the class." Id. at 4909-4910.

The Court indicated that the desire to live in Penfield, the expenditure of effort to locate housing there and that such efforts proved fruitless do not amount to direct personal injury to Plaintiffs caused by the municipality. The Court did note that the Plaintiffs were not residents nor had ever resided in Penfield. Id. at 4910. Such facts also hold true for the present Plaintiffs with respect to the Township of Cranbury. Despite the fact that the Supreme Court also assumed that the Defendant municipality's zoning actions contributed, perhaps even substantially, to the cost of housing, this assumption was still not sufficient to prove that the petitioners sustained a direct injury as a result of the municipality's zoning practices. The Court pointed out that the petitioners' desires to live in the Defendant municipality "always depended on the efforts and willingness of third parties to build low and moderate cost housing". Id.

Although acknowledging that the indirectness of the injury does not preclude standing, the Court stated it does make it substantially more difficult. The opinion recognized that the petitioners claimed the municipality's enforcement of the ordinance against third parties had the result of

precluding the construction of housing suitable to their needs at prices they might be able to afford. But the Court stated that Plaintiffs failed to show any attempt at a specific project which would supply housing within their needs, and of which they were the intended residents; without such specificity "the facts alleged fail to support an actionable causal relationship between Penfield's zoning practices and petitioners' asserted injury". Id. at 4911. If there is no showing that such a project was attempted, the Court could only conclude as it did in Warth that individuals with certain financial situations and housing needs, the same financial situations and housing needs as the Plaintiffs in the case before this Court, are unable to reside in the Defendant municipality because of the economics of the area housing market rather than the municipality's assertedly illegal acts. Id.

In summary, with respect to the Plaintiffs in Warth, the Supreme Court stated:

> "They rely on little more than the remote possibility, unsubstantiated by allegations of fact, that their situation might have been better had respondents acted otherwise, and might improve were the court to afford relief.
>
> We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm him, and that he personally would benefit in a tangible way from the court's intervention. Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of "a real need to exercise the power of judicial review", "or that relief can be framed" no broader than required by the precise facts to which the court's ruling would be applied. Id.

Therefore, in compliance with the reasoning of the United States Supreme Court, the Plaintiffs in the instant case can have no standing to question the Zoning Ordinance of the Township of Cranbury. The status of the Urban League must rise or fall on whether or not the individual Plaintiffs have the prerequisites to be granted standing. An association may assert the rights of its members, but the denial of standing to the low and moderate income persons in Warth precluded standing for the non-profit corporation whose purpose was to foster action for the alleviation of housing shortages. Id. at 4912. This corporation also alleged, however, that a portion of its membership actually resided in the Defendant town. Standing was also denied on this count since it could not be shown that any of the individual members had sustained a direct injury. Id. at 4913. In the same manner, standing must be denied to the Urban League of Greater New Brunswick, since none of its members has alleged any direct injury suffered as a result of the asserted unconstitutionality of the Township of Cranbury's Zoning Ordinance.

With respect to Plaintiffs' claims under 42 U.S.C. §§ 3601 et seq., the Supreme Court in Warth did not have this issue before it. However, the Supreme Court's broadest ruling as to standing to litigate under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 et seq., was in its decision in Trafficante v. Metropolitan Life Insurance Co. 409 U.S. 205 (1972). In that case, two residents of an

apartment complex alleged that the owner had discriminated against rental applicants on the basis of race in violation of § 804 of the Civil Rights Act of 1968, 42 U.S.C. § 3604. The Court decided the residents of the housing unit had standing to sue. Id. at 212. Nevertheless, the standing issue in this case is consistent with the analysis in Warth. The Court in Trafficante was dealing with a specific incident, discrimination in a housing project, a concrete tangible injury in which court action itself would produce the remedy. The lower federal courts have also followed this approach with respect to standing under Title VIII and addressed its application to specific projects. E.g., Parkview Heights Corp. v. City of Blackjack, 467 F. 2d 1208 (8th Cir. 1972); Sisters of Providence of St. Mary of the Woods v. City of Evanston, 335 F. Supp. 396 (N.D. Ill. 1971). Of course, the reason for the consistence on standing with respect to Warth and Trafficante is because of the constitutional dimension best expressed by the Supreme Court in Warth as follows:

> "In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf. Baker v. Carr, 369 U.S. 186, 204 1962." The Art. III judicial power exists only to redress or otherwise to protect against injury

> to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action...." Warth, supra. at 4908.

The Plaintiffs in the case before this Court cannot show the concrete facts demonstrating that the challenged practices harm them. The lack of standing resulting from the failure to show a specific housing opportunity of which they were deprived deprives the entire federal judiciary of jurisdiction, and, consequently, this Court, as well.

POINT THREE

THE URBAN LEAGUE OF GREATER NEW BRUNSWICK LACKS STANDING AS A PLAINTIFF IN THIS ACTION

In addition to its lack of standing on the federal issues, as indicated in Point Two, the Urban League also lacks standing on the state issues, as well. Although the New Jersey Judiciary has a liberal approach to standing, it will not render advisory opinions, function in the abstract, nor entertain proceedings by plaintiffs who are mere intermeddlers, interlopers or strangers to the dispute. Crescent Park Tenants Association v. Realty Equities Corp. of New York, 58 N.J. 98, 275 A.2d 433, 437-38 (1971). Crescent Park is the leading case on the issue of standing in New Jersey for associations attempting to represent their members and others. In Crescent Park, the Association was made up of tenants of a particular apartment, and, through the Association, asserted various mismanagement charges, all of which have a common relationship to the tenant body as a whole. Certainly, the Urban League's interest in need for low and moderate income housing lacks the specificity that the Association in Crescent Park could claim. Without a particular focus, the representative nature of any association becomes obscure.

The New Jersey Supreme Court in Crescent Park pointed to the need for a very well defined association with specific, immediate and tangible goals, stating

"(N)o one may question that the Association has a real stake in the outcome of the litigation nor may anyone question that there is real adverseness in the proceeding." Id. at 439.

This loose structure, catch-all type of association, such as the Urban League, lacks the character of a particular plaintiff with specific injury and can only result in the Court addressing such an association in the abstract, something the New Jersey Judiciary has made clear it will and cannot do. Moreover, to emphasize the amorphous nature of such organizations and that their character does not lend itself to a judicial forum, the Supreme Court in Mt. Laurel would not acknowledge associations similar to the Urban League as having standing. Mt. Laurel, supra 717 n.3. Although the Court pointed out that the issue was not raised on appeal, it nevertheless, commented on the ability of other parties in the case to have standing despite the fact that such comment was mere dicta. Mt. Laurel, supra 717 n.3. In addition, because of the New Jersey Judiciary's generous recognition of suits by associations and the lower court's willingness to venture into new areas of the law in Mt. Laurel, the fact that the lower court refused to grant standing to the associations again points to the fact that such associations are not proper plaintiffs, particularly with respect to the facts in the case before this Court. Crescent Park, supra at 439. Therefore, the Urban League of Greater New Brunswick lacks standing to assert the claims based on state grounds in this case.

Respectfully submitted,

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