

CA - Donellen

2/23/76

Transcript of the proceedings of 2/23/76 before Judge Furman

5 pages

CA 001280 \$

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION MIDDLESEX COUNTY
Docket No. C 4122-13

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URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et als.,

Plaintiffs,

-vs-

MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et als.,

Defendants.

New Brunswick, New Jersey
February 23, 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.

DENNIS CUMMINS, JR., ESQ.,
Attorney for Dunellen.

FILED
FEB 26 1976
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1 THE COURT: All right. The fundamental
2 question has arisen at this stage of the case, we're
3 dealing with the Mount Laurel decision of the New
4 Jersey Supreme Court and of course I also have
5 in mind my own decisions in Madison Township cases
6 which have not been overruled or reversed in
7 higher courts.

8 I indicated and I believe, Mount Laurel
9 reaches the same rationale that Zoning Ordinances
10 in municipalities where there is substantial or
11 significant acreage available, vacant for, vacant
12 and developable, which excludes the opportunity for
13 low and moderate income housing, including multi-
14 family housing, are invalid, they're contrary to
15 the overriding general welfare, including housing
16 needs which does not stop at the municipal boundary.

17 The test set in the Oakwood case and again I
18 believe adopted in the Mount Laurel case, is that
19 each municipality need not zone all of its vacant
20 land for low and moderate income housing but has
21 an obligation to provide a fair share, the fair share
22 is not, not specifically defined in Mount Laurel and
23 that of course leaves open some questions of
24 interpretation.

25 In the Madison Township case, the second case,

lu

1 I took into account that the present low income
2 population was such and such percent, I believe 12
3 percent and moderate income was 19 percent, I recognize
4 that there were very few jobs, relatively, in Madison
5 Township but that somehow 12 percent low income
6 population had found jobs either in the Township or
7 outside and also means of transportation and that it
8 seemed to me that the fair share was not less than
9 housing opportunity for low income or of 12 percent
10 of all potential housing units on vacant and developable
11 land and the same type of reasoning was applied to the
12 moderate income group, based on that percentage of
13 the population.

14 I suggested, however, that that should not
15 necessarily be, originate an inflexible formula.

16 Now, we're deciding in the proofs against
17 Dunellen that there is virtually no available land
18 area, concededly no more than 14 acres, five of which
19 is zoned for industry, that there/^{is}now a high
20 density population of 7000 to a square mile or ten to
21 an acre. Although we have no proofs as to the present
22 break-down of the population as to income groups, low
23 income, moderate income, I have not heard any specific,
24 I have heard nothing to suggest contrary to what might
25 be the supposition, that such high density housing

1 then recess for the day.

2 On the subject of mobile homes, unlike the
3 general subject of exclusionary zoning, at the trial
4 level, I am bound by a decision of the Supreme Court
5 which upheld a zoning ordinance, excluding mobile
6 homes anywhere throughout a large, substantially
7 undeveloped township. So, at least at the trial
8 level it would ^{be} quite an extraordinary result to hold
9 it, the Borough of Dunellen zoning ordinance was
10 invalid, in not specifically authorizing mobile
11 homes, contrary to a Supreme Court case with facts
12 much more favorable to the possibility of mobile
13 homes and the opportunity for mobile homes, which
14 nevertheless upheld their exclusion.

15 So, I have difficulty at the trial level
16 on that particular point. I think that's the only
17 point in the Plaintiff's proofs in which it would
18 be that type of problem. I would suggest to the
19 Plaintiffs that testimony maybe offered here, the
20 ultimate result here maybe, may nevertheless have to
21 be an alligance to the Vickers case on the one
22 subject of mobile homes but of course giving the
23 Plaintiffs the record on which they could attempt
24 at an overruling of the Vickers case, the
25 Supreme Court of New Jersey.

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CERTIFICATE

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

Daye F. Fenton
DAYE F. FENTON, CSR