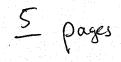


2/23/76

Transcript of the Proceedings of 2/23/76e before Judge Firman



CA 0012805

· ·	SUPERIOR COURT OF NEW JERSEY	
1	CHANCERY DIVISION 11DDLESEX COUNTY Docket No. C 4122-/3	
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4	URBAN LEAGUE OF GREATER NEW BRUNSWICK, et als.,	
5	NEW DRUMSWICK, EL dIS.,	
6	FLB 26 976 Plaintiffs.	
7		
8	La Ste de Martes en de	
	-vs-	
9		
10	MAYOR AND COUNCIL OF THE	
11	BOROUGH OF CARTERET, et als.,	
12		
13	Defendants.	
14	New Brunswick, New Jersey February 23, 1976	
15		
16	BEFORE: HONORABLE DAVID D. FURMAN, JSC	
17	ADDEADANCEC.	
18	APPEARANCES:	
19	DANIEL SEARING, ESQ., Attorney for the Plaintiffs.	
20	Accorney for the flatherits.	
21	DENNIS CUMMINS, JR., ESQ., Attorney for Dunellen.	
22	Accorney for bunchiell, .	
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'Lee COURT: All right. The Lendamental question has arisen at this stage of the case, we're dealing with the Mount Laurel decision of the New Jersey Supreme Court and of course I also have in mind my own decisions in Madison Township cases which have not been overruled or reversed in higher courts.

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

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

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In the Madison Township case, the second case,

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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 devolopable
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/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
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then recess for the day.

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On the subject of mobile homes, unlike the general subject of exclusionary zoning, at the trial level, I am bound by a decision of the Supreme Court which upheld a zoning ordinance, excluding mobile homes anywhere throughout a large, substantially undeveloped township. So, at least at the trial level it would quite an extraordinary result to hold it, the Borough of Dunellen zoning ordinance was invalid, in not specifically authorizing mobile homes, contrary to a Supreme Court case with facts much more favorable to the possibility of mobile homes and the opportunity for mobile homes, which nevertheless upheld their exclusion. So, I have difficulity at the trial level on that particular point. I think that's the only point in the Plaintiff's proofs in which it would be that type of problem. I would suggest to the Plaintiffs that testimony maybe offered here, the ultimate result here maybe, may nevertheless have to be an alligance to the Vickers case on the one

subject of mobile homes but of course giving the

Plaintiffs the record on which they could attempt

at an overruling of the Vickers case,

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.

Nave F. Fextor DAYE F. FENTON, CSR