

U.L. v. Carteret - Helmetta

Feb. 24, 1977

- Letter w/ Supplemental Brief in Opp. To Petition for Certification

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February 24, 1977

Clerk of the Supreme Court
State House Annex
Trenton, NJ 08625

Re: Urban League of Greater New Brunswick,
et al., v. The Mayor and Council of
the Borough of Carteret, et al.

Gentlemen:

Enclosed please find an original and eight (8) copies
of a Supplemental Brief in Opposition to Petition for
Certification, on behalf of defendant-respondent, Borough
of Helmetta, for filing.

Yours truly,

RICHARD F. PLECHNER

By Alan A. Davidson

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CC: Martin E. Sloane, Esq. (w/enc.)
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Lawrence Lerner, Esq. "
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ARGUMENT

The Borough of Helmetta wishes, by this memorandum, to supplement its earlier brief by incorporating the recent decision of this Court in Osborne et al. v. Township of Madison (A-80/81, decided January 26, 1977).

Justice Conford set out in the landmark ruling that, "we deem it well to establish at the outset that we do not regard it as mandatory for developing municipalities whose ordinances are challenged as exclusionary to devise specific formulae for estimating their precise fair share of the lower income housing needs of a specifically demarcated region" (Slip opinion at 14-15). He then added, "Municipalities do not themselves have the duty to build or subsidize housing."

The basis for the plaintiff's petition herein is grounded upon the refusal of the trial court to order "affirmative action" on the part of the 11 conditionally dismissed municipalities, including Helmetta. The above language would appear quite strong in eliminating the argument of plaintiff on an ultimate appeal. But the Supreme Court went even farther and disposed of the issue once and for all.

Justice Conford phrased the attitude of the Court as follows:

"While we have described the sponsorship of public housing projects as a moral obligation of the municipality in certain specified circumstances, (citation omitted), we have no lawful basis for imposing such action as obligatory."
(Slip opinion at 85)

He added that density bonus provisions are valid, (Slip opinion at 86) but cited problems with the concept of "rent skewing" in the absence of legislative authorization (Slip opinion at 44-45).

Overall, the opinion has the effect of eliminating the legal basis for plaintiff's contentions on appeal, if, in fact, certification was granted. As no cause of action exists, it is therefore urged that this Court deny plaintiff's petition for certification.

CONCLUSION

For the reasons stated above, it is requested that the petition for certification be denied.

Respectfully submitted,

RICHARD F. PLECHNER

By


Alan A. Davidson