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Metuchen's Answer

Pgs. 12

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Martin A. Spritzer

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-----)
URBAN LEAGUE OF GREATER NEW BRUNSWICK,
a non-profit corporation of the State
of New Jersey, CLEVELAND BENSON,
FANNIE BOTTS, JUDITH CHAMPION, LYDIA
CRUZ, BARBARA TIPPETT, KENNETH TUSKEY,
JEAN WHITE, on their own behalf and
on behalf of all others similarly
situated,

) SUPERIOR COURT OF
) NEW JERSEY:
) CHANCERY DIVISION
) MIDDLESEX COUNTY
) DOCKET NO. C-4122-73 ✓

) Civil Action

) Plaintiffs,)

) ANSWER

vs.)

MAYOR AND COUNCIL OF THE BOROUGH OF
METUCHEN,)

) Defendant.)
-----)

Defendant, Mayor and Council of the Borough of Metuchen,
by way of answer to the complaint, says:

1. This defendant denies the allegations contained in
Paragraphs 1, 2 and 3.

2. This defendant has insufficient knowledge either to
admit or deny the allegations contained in Paragraphs 4, 5, 6,
7, 8, 9, 10 and 11, and puts plaintiffs to their proof thereof.

3. This defendant denies the allegations contained in Paragraph 12.

4. This defendant admits the allegation contained in Paragraph 13.

5. This defendant admits the allegations contained in Paragraph 14 of the Factual Allegations sections of the complaint.

6. This defendant has insufficient information either to admit or deny the allegations contained in Paragraphs 15, 16, 17, 18 and 19.

7. This defendant denies the allegations contained in Paragraph 20.

8. This defendant has insufficient information either to deny or affirm the allegations contained in Paragraphs 21 and 22.

9. This defendant denies the allegations contained in Paragraphs 23, 24, 25, 26, 27, 28, 29 and 30.

10. This defendant has insufficient information to either affirm or deny the allegations contained in Paragraph 31.

11. This defendant denies the allegations contained in Paragraphs 32, 33, 34 and 35, to the extent that they are directed against this defendant.

FIRST SEPARATE DEFENSE

The complaint should be dismissed on the grounds that plaintiffs do not constitute a class.

SECOND SEPARATE DEFENSE

The complaint should be dismissed because defendants do not constitute a class as defined by the rules of Court.

THIRD SEPARATE DEFENSE

The complaint should be dismissed on the grounds that the plaintiffs have failed to present a justifiable issue before the courts under the Declaratory Judgment Act.

FOURTH SEPARATE DEFENSE

The complaint should be dismissed on the grounds that it fails to set forth a claim upon which relief can be granted.

FIFTH SEPARATE DEFENSE

None of the plaintiffs allege that they are residents, taxpayers of or employees in the Borough of Metuchen; nor do they allege that the Borough of Metuchen had any knowledge or notice of the housing and employment conditions relating to said plaintiffs, or any conditions, ordinances or regulations of the Borough of Metuchen allegedly adversely affecting said plaintiffs. Said plaintiffs are therefore barred from any claim against the Borough of Metuchen because of laches, waiver and estoppel.

SIXTH SEPARATE DEFENSE

None of the plaintiffs have any standing to sue the Mayor and Council of the Borough of Metuchen.

SEVENTH SEPARATE DEFENSE

The complaint should be dismissed on the grounds that the matters referred to in plaintiff's complaint are properly the subject of legislation and any grievances which plaintiffs have should be directed to the elected officials of the legislature.

EIGHTH SEPARATE DEFENSE

The complaint should be dismissed because plaintiffs have failed to exhaust their administrative remedies in accordance with the rules of court and the laws of the State of New Jersey.

NINTH SEPARATE DEFENSE

The zoning ordinances of the Borough of Metuchen have been enacted to reflect the criteria required by N.J.S.A. 40:55-32. They are in accord with existing conditions, geographical, topographical, ecological, economic and sociological, and properly reflect the needs of the Borough and the region. They comport with all State and Federal statutes and laws and are neither unconstitutional on their faces or as applied.

TENTH SEPARATE DEFENSE

Plaintiffs allege "Metuchen's zoning ordinance prohibits mobile homes and permits multi-family use on only an insignificant amount of land. This defendant denies its zoning ordinance prohibits mobile homes; but even if such prohibition exists, it has been upheld and is permitted by law. In addition thereto, because of the unique characteristics of Metuchen, its dense population, the lack of vacant land and all the existing geographical, topographical, ecological, economic and sociological conditions in the Borough, a prohibition of mobile homes is appropriate in Metuchen under the criteria set forth for zoning under N.J.S.A. 40:55-32.

ELEVENTH SEPARATE DEFENSE

This defendant denies that the Metuchen zoning ordinance permits multi-family use on only an insignificant amount of land. This defendant asserts there is only an insignificant amount of vacant land available for any use in Metuchen. Of that land, a significant portion is zoned for multi-family use, including such uses as garden apartments, townhouses and housing for senior citizens of moderate income. Furthermore, four additional areas of the Borough, primarily devoted to one-family and business uses, permit garden apartments. As a matter of fact, 25% of the

residents in Metuchen live in rental units. Considering the fact that Metuchen is only 2.9 square miles, and has the fifth densest population in Middlesex County, the zoning provisions for multi-family homes are in accord with the zoning criteria of N.J.S.A. 40:55-32, as well as properly reflecting the existing conditions in the Borough.

TWELFTH SEPARATE DEFENSE

Plaintiffs allege that "Metuchen subjects single-family detached units to minimum floor area requirements from 1,000 to 1,400 square feet." The minimum floor area requirements of 1,000 to 1,400 square feet are based on zoning considerations respecting density, as permitted in N.J.S.A. 40:55-32, and for reasons of health to prevent over congestion. Neither the plaintiffs nor any one else have presented evidence to this defendant that the said minimum requirements are unreasonable or what the proper minimum floor area requirements are for the Borough of Metuchen. There is no record of the plaintiffs or any one else requesting changes in the zoning ordinance to permit either mobile homes, or to have the ordinance provide for a lesser minimum living area. The said requirements are valid and are not the cause of any of the alleged damage suffered by plaintiffs.

THIRTEENTH SEPARATE DEFENSE

Plaintiffs allege "Metuchen has not established a public housing authority." Neither the plaintiffs nor any other person has requested that this defendant establish a public housing authority, or that low income and moderate income housing could be provided by means of a public housing authority. The lack of any public housing authority is not the cause of any injury to plaintiffs; and plaintiffs are barred by laches and estoppel from making any claim in respect to the lack of said authority.

FOURTEENTH SEPARATE DEFENSE

A significant number of low and moderate income persons, both white and non-white live in Metuchen. The Metuchen population in respect to minority groups, is in accord with the average of Middlesex County; there is no discrimination in respect to minority groups in Metuchen's housing.

FIFTEENTH SEPARATE DEFENSE

The complaint should therefore be dismissed against the Borough of Metuchen, as neither its ordinances nor any other part of the community discriminates against minority groups and low or moderate income people, and any failure to obtain housing in Metuchen is the same for white middle income and high income groups. The housing conditions of which plaintiffs complain are

caused not by the zoning ordinances in Metuchen, but by factors not in control of the Borough Council of the Borough of Metuchen, including but not limited to the following:

1. Housing laws and policies of the Congress of the United States.
2. Housing policies of HUD.
3. Housing policies of the President of the United States.
4. Monetary policies of the Federal Reserve System.
5. Monetary policies of the United States, state and federal banks, and savings and loan associations.
6. Housing laws and policies of the New Jersey Legislature.
7. Housing policies of the Governor of the State of New Jersey.
8. Housing policies of the Department of Community Affairs of the State of New Jersey, the New Jersey Housing Finance Agency, and other agencies of the State of New Jersey.
9. Housing policies and construction policies of builders' associations.
10. Individual builders and labor unions in the State of New Jersey and elsewhere.
11. Failure of the Middlesex County Board of Freeholders, the Middlesex County Planning Board, the Regional Planning

Association, and all other regional groups to plan and provide for proper housing for all citizens of the State of New Jersey.

12. Ordinances and laws, if any, of all of the municipalities in the State of New Jersey.

SIXTEENTH SEPARATE DEFENSE

The complaint should be dismissed because all of the above parties mentioned are indispensable parties and have not been made parties to this suit by plaintiffs.

SEVENTEENTH SEPARATE DEFENSE

The venue of this action should be removed to the United States District Court in view of the fact that a substantial Federal question is presented based upon the United States Constitution.

EIGHTEENTH SEPARATE DEFENSE

The defendant, Mayor and Council of the Borough of Metuchen, have taken affirmative steps to meet the housing needs of its residents in keeping in the character of its community and without placing discriminatory restrictions on persons who wish to move into Metuchen. A study authorized by the Mayor and Council entitled, "Zoning for Multi-Family Housing in Metuchen, N.J. 1973", by Boorman and Dorram, Inc., Consultants, affirmed that there is very little vacant land in Metuchen and that

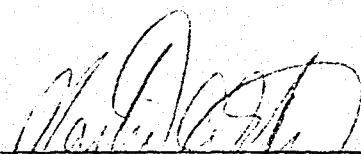
Metuchen as a community has a balance of housing types for persons of varied incomes. To meet housing needs instead of restrictive zoning, the Mayor and Council in 1973 added one multi-housing area, and in 1974, amended the zoning ordinance to permit town-houses in another area. Previously the Council had added zones to permit senior citizen moderate income housing. Further, the Mayor and Council of the Borough of Metuchen has helped the cause of existing multi-family housing by enacting a rent control ordinance. To help combat any discrimination in respect to the rights of minorities to obtain equal opportunities in housing, the Borough Council of the Borough of Metuchen in 1969 was the first municipality in Middlesex County to enact a fair housing ordinance.

Permitting high rise apartments of over three stories in the Borough of Metuchen would be a possible method of increasing multi-family units in the Borough. However, this defendant denies that the creation of high rise zones would provide the type of housing plaintiffs demand. The Borough of Metuchen had permitted high rise apartments for ten years, and no high rise apartments for any income, minority or majority group, was constructed in the Borough. In addition thereto, the voters of the Borough of Metuchen on referendum held November 1973, agreed to limit the

Metuchen. Nowhere do plaintiffs allege in their complaint that the Metuchen ordinance should be amended to permit high rise apartments. In the event such a demand is made, this defendant asserts as defenses that such a court order would violate the home rule rights of the Borough of Metuchen, would deprive the residents of the Borough of Metuchen of equal rights under the law, would deprive the residents of the Borough of Metuchen of the right to maintain the character of their community free from environmental disadvantages of high rise apartments, such as traffic, over congestion, density, air pollution, and undesirable visual intrusion, and would finally be inequitable in respect to the Borough of Metuchen, until and unless all the vacant land in the 25 other municipalities of Middlesex County with a lesser density than Metuchen, provided suitable low rise multi-family housing under proper zoning and other controls for plaintiffs and any other persons plaintiffs represent.

WHEREFORE, defendant demands that the complaint be

dismissed and this defendant be awarded court costs and attorney's fees.



MARTIN A. SPRITZER
Attorney for Defendant, Mayor and
Council of the Borough of Metuchen

I hereby certify that a copy of the within Answer was served within the time period allowed by Rule 6:6-1 and that a copy of same was served upon the attorney for plaintiffs by certified mail on this 11th day of September, 1974.



MARTIN A. SPRETZER