

CA - Metuchen

4/23/76

letter re: 4/13/76 D's brief,

it's disagreement w/ ~~some general~~

~~legal positions~~

w/ aff. desc't

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pg 9

CAC01546L

**NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.**

1425 H Street, N.W., Washington, DC 20005 • (202) 783-8150

April 23, 1976

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Honorable David D. Furman  
P. O. Box 788  
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick v.  
The Mayor and Council of the Borough of  
Carteret, et al. Docket No. C 4122-73

Dear Judge Furman:

On April 13, 1976, defendant Metuchen submitted a brief on behalf of itself and 11 other substantially built-up municipalities. Plaintiffs submit this letter to register their disagreement with several of the factual and legal assertions contained in that brief. Plaintiffs also submit a separate attachment dealing specifically with defendant Helmetta.

First, it is plaintiffs' understanding that, contrary to the defendants' assertion, the Court has granted no motions to dismiss. Rather, the Court indicated that it would entertain such motions subject to a number of conditions precedent, including elimination of the exclusionary provisions from the defendants' zoning ordinances and their possible participation in programs for the rehabilitation of existing housing. In addition, as the Court -- and the defendants -- are aware, plaintiffs have consistently reserved the right to retain the defendants for purposes of any affirmative relief the Court may order.

In this connection, defendants' contention that they are not liable is in direct conflict with the clear implication of the Court's consistent rulings requiring, among other things, that their various exclusionary zoning provisions must be eliminated before the Court will entertain any

FIELD OFFICE:

NCDH IS A PUBLICLY-SUPPORTED ORGANIZATION, AND CONTRIBUTIONS ARE TAX DEDUCTIBLE.

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motions to dismiss. In plaintiffs' view, the Court's recognition of the existence of these exclusionary zoning provisions constitutes at least an implicit holding that defendants are in violation of the New Jersey State Constitution under the standards established by the Supreme Court in the Mt. Laurel case. It is plaintiffs' further view that this constitutional violation provides a firm basis for the additional relief that plaintiffs have requested.

Second, plaintiffs disagree with defendants' contention that once they amend their zoning ordinances they are immunized from any further orders for relief. As plaintiffs pointed out in their initial brief, the essential wrong done to plaintiffs by the defendant municipalities, including the 12 substantially built-up municipalities, is the exclusion of standard housing in which plaintiffs and the class they represent can live. Maintenance of exclusionary zoning provisions is the principal device by which this wrong has been effected. It is plaintiffs' position that for purposes of providing an effective remedy, the Court should address itself not merely to the particular devices by which the wrong was done, but to the wrong itself.

Third, the defendants seek to discredit the statistical data developed by the Tri-State Regional Planning Commission regarding sub-standard housing, asserting that these data were based on a "computerized formula." Plaintiffs point out that it was clearly established through testimony at trial that the formula was developed and validated on the basis of on-site inspections of the condition of housing units, conducted by the Bureau of the Census in the 1960 Census. As such, the Tri-State data, as well as data from the state and County studies, all of which were so validated, provided a sound data base.

Fourth, plaintiffs disagree with defendants' contention that "there is no reason for the court to frame an order requiring the municipalities to do what they are already doing." Metuchen Brief at 26. Defendants also characterize their participation in the Community Development Revenue Sharing Act as an "existing good faith effort." Id.

Plaintiffs point out that it is well settled that good faith efforts to end discrimination are no bar to court orders for affirmative relief. See, e.g., United States v. International Bro. of Elec. Wkrs., L. No. 38, 428 F.2d 144, 151 (6th Cir. 1970). Contrary to defendants' suggestion, plaintiffs have no objection to the continuation of defendants' cooperative efforts under the Community Development Revenue Sharing Act. Plaintiffs do object, however, to defendants'

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implication that these efforts are sufficient to remedy the constitutional wrong they have committed. Nor does the record support this implication.

Fifth, defendants urge that "the court should not reverse its ruling that the substantially developed municipalities do not have to provide for their fair share of any regional need for low and moderate income housing." Metuchen Brief at 27. Defendants also contend that "to require these defendants to participate in a fair share remedy at this time would be grossly unfair ... ." Id.

Plaintiffs point out, first of all, that the Court made <sup>\*/</sup> no such ruling. Therefore, no such reversal would be involved. Moreover, each of the defendants has had full opportunity to counter plaintiffs' evidence on their unconstitutional conduct, and ample notice that plaintiffs intended to present evidence on fair share remedies. Any absences by the defendants were purely voluntary.

Defendants also had full opportunity to present such defenses as they wished. The Court will recall that in response to statements made by the attorney for defendant Carteret, the Court specifically afforded Carteret the opportunity to present its defense. Similarly, following completion of plaintiffs' evidence on remedy, the Court afforded similar opportunities to any other defendants that had not previously presented defenses. Neither Carteret nor any of the other defendants chose to avail themselves of that opportunity. Accordingly, defendants' protest of unfairness is without foundation.

Finally, plaintiffs stress that exemption of the substantially built-up municipalities from an order for affirmative relief, including participation in a fair share allocation plan, may result in serious inequities. As plaintiffs have previously pointed out, relief limited to elimination of restrictive zoning provisions, alone, may not result in the

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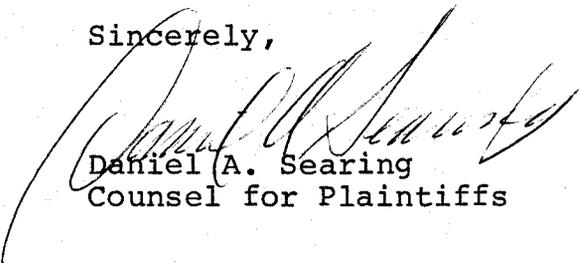
<sup>\*/</sup> In any case, R. 4:42-2, Judgement Upon Multiple Claims, specifically provides that in cases of multiple claims "... any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before entry of judgment adjudicating all the claims.

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provision of low and moderate income housing. Only if all the defendant municipalities -- substantially built up, as well as less developed -- are subject to the same order for affirmative relief, can there be reasonable assurance that the constitutional wrong in which they all participated will be remedied, on the basis of equity and fairness to all parties.

We hope these views will be of assistance to the Court.

Sincerely,



Daniel A. Searing  
Counsel for Plaintiffs

DAS:ld

cc: All Defense Counsel

ATTACHMENT

The Borough of Helmetta was included among the substantially built-up municipalities in part because it contended, during trial, that there was no land upon which housing could be built.

As the attached Affidavit of Robert Maglies shows, there are at least seven acres zoned residential which are available for development and at least one other parcel where some housing could be accommodated. During trial, the Borough did not see fit to offer into evidence any of the information which affiant presents, or even to acknowledge the existence of a parcel of seven vacant acres zoned residential.

Because of the exclusionary nature of Helmetta's zoning ordinance, multi-family units were not permitted on these or any other sites. But now, when Helmetta amends its zoning ordinance, multi-family units will be permitted.

Clearly, Helmetta does have the capacity to accommodate further housing units. Mr. Maglies' Affidavit shows that once multi-family units are permitted, he will undertake the construction of such units on his property. (It should be noted that the rental rates cited are without any governmental assistance.)

With this in mind, plaintiffs are quite concerned that Helmetta be included in a County-wide fair share plan. As part of this plan, Helmetta should commit itself to set aside a certain proportion of any residential units built on these acres or on any other parcel to accommodate low and moderate income persons.

STATE OF NEW JERSEY:

: ss.

AFFIDAVIT

COUNTY OF MIDDLESEX:

ROBERT MAGLIES, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the owner of two parcels of land in Helmetta, New Jersey, totalling approximately nine acres, seven acres of which are located in a residential zone and approximately two acres are located in a business zone.

2. Only one family dwellings are permitted under the present Ordinance in Helmetta. Anything beyond that is not a permitted use.

3. I have tried several times to build on my property, but have been turned down as it is not a permitted use.

4. I own almost 300 apartment units in Middlesex County; New Brunswick, Milltown, East Brunswick, Spotswood and Jamesburg. I have no vacancies in Spotswood, East Brunswick or Jamesburg (note, Helmetta is in the center of same). At the present time I have no three bedroom units in Spotswood, East Brunswick or Jamesburg, even though I have received numerous calls for same.

5. There is a demand for rental housing in the area and I feel that I can construct apartment units that would rent for:

One bedroom.....	\$200.00
Two bedroom.....	250.00
Three bedroom.....	295.00

without any governmental help, provided the zoning and density were fair and reasonable.

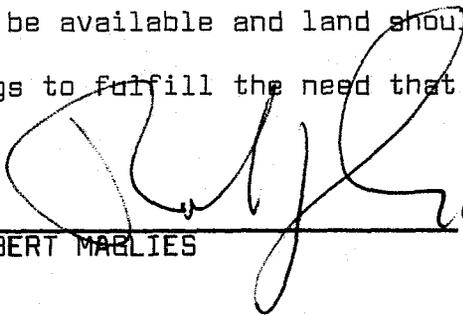
6. An average three bedroom house in this area would cost over \$500.00 per month for principal, interest and taxes, pricing out

many families that are in need of decent housing.

7. The Borough of Helmetta presently has a grant for the institution of a water system and it should be installed in approximately six months. See attached Home News articles.

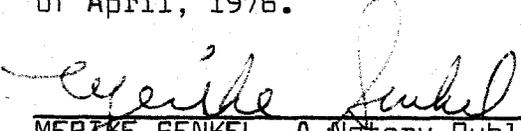
8. The Monroe Township Utilities Authority will be running a sanitary sewer main through Helmetta in the very near future.

9. For the foregoing reasons I ask that Helmetta not be severed as sewer and water will soon be available and land should be zoned for multiple family dwellings to fulfill the need that presently exists.

  
ROBERT MABLIES

(L.S.)

Sworn and subscribed to  
before me this 6th day  
of April, 1976.

  
MERIKE SENKEL, A Notary Public  
of the State of New Jersey  
My Commission Expires April 21, 1977

## Would draw from mill's system

# Helmetta OKs water pact

By RUDY LARINI

Home News staff writer

HELMETTA — The borough council last night approved an agreement in principle with General Cigar Co., Inc., to obtain municipal water.

The council also added nearly \$2,000 to the 1976 municipal budget — with most of the increase to be spent on the purchase of a used police car from the state police.

The five-year agreement with General Cigar, which took over the Helme Products Co. last year, is not a binding contract since the borough has yet to pass a bonding ordinance to finance the \$220,000 municipal water system. Federal funds will cover \$65,000 of the cost.

Borough Attorney Richard Plechner said the bonding ordinance will not be introduced until the water agreement has

been approved by General Cigar's board of directors.

Borough officials expect the board to consider the agreement at its April 1 meeting.

Plechner said last night's council resolution was meant to show the borough's "good intention and good faith to agree to a binding contract."

"Otherwise, we'd be bouncing contracts off one another forever," he said, explaining both sides submitted several proposed contracts before an agreement was reached on the one approved last night.

The contract would grant the borough a 100-year lease on the snuff mill's water system — including two wells, a storage tank, treatment facilities, underground pipes and heat and power plant.

In exchange, the borough would pay General Cigar about

\$18,000 — or roughly enough to reimburse the company for its share of the water line assessment for the proposed water main to be installed along Lake Avenue, where the company owns a 44-acre tract.

The five-year service agreement with General Cigar would entitle the borough to up the 100,000 gallons of water daily at a cost of 77 cents per 1,000 gallons.

The snuff mill would purchase water at a bulk rate of 75 cents per 1,000 gallons.

It also would receive free 5,000 gallons a week of untreated water for manufacturing operations.

The contract would obligate the borough to provide free water for the approximately 70 houses owned by General Cigar for the life of the agreement or until they are sold.

General Cigar would agree to lease the borough a 100-foot-square tract as the future site of a new water storage tower.

Plechner said the company would be responsible for operating the water system, including routine maintenance and minor repairs. After the five-year contract expires, the borough would decide if it wanted to operate the system.

He said the 77-cent water rate should be "nonprofit" in that General Cigar should break even on its operating costs over the five years.

The budget amendment increased the 1976 figure to \$210,082 and would add about another cent to the two-cent increase in the local government tax rate of 34 cents per \$100 of assessed valuation. The total rate is \$3.07.

# Projects may be linked

**HELMETTA** — Last week's regional sewerage agreement between Jamesburg and the Monroe Municipal Utilities Authority (MUA) came as good news to many borough residents.

Nearly ready to seek bids on a municipal water system, the borough now may be able to install both sewer and water lines simultaneously, saving both money and the inconvenience of having borough roads ripped up twice.

Mayor Patricia Boyles said she was anxious to meet with MUA officials to sign a service contract for the Manalapan Brook regional sewerage project now that a signed contract between Jamesburg and the MUA appears imminent.

Authority officials met with the Jamesburg Borough Council Monday and reached an interim agreement whereby the borough would pay the MUA a minimum of \$115,000 annually for sewerage service.

MUA Chairman Rocco D'Armiento said the authority negotiated a service contract with Helmetta last year under former Mayor John Verb, but new talks must be held with the Boyles' administration.

Borough Engineer Donald Brundage said the borough would like to install the \$220,000 water system and the nearly \$1 million sanitary sewage collection system at the same time, provided the start of the water system project would not have to be delayed more than three or four months to coincide with the sewer project.

The borough is to receive \$65,000 in federal community revenue sharing funds for the water system and 75 per cent federal funding for the sewer system.

Before the borough can solicit bids on the water lines, it must have a signed contract with the General Cigar Co. for a 100-year lease on the company-owned water system and a five-year service agreement for the purchase of water.

General Cigar's board of directors approved the agreement Thursday and it must now be accepted by the borough council.

The borough cannot sign the contract with General Cigar, according to attorney Richard Plechner, until it passes a bonding ordinance to finance construction of the water system.

Borough officials say they hope to do this at the April 14 council meeting.

Municipal water and sewerage facilities have been pressing needs in the borough, particularly in the Bakerville area, for nearly a decade.

Much of the municipality has a high water table, and several homeowners on Borghaus Road and Baker Drive often had to endure the commingling of their well water and sewage from their septic systems.

The situation has required constant monitoring by the Middlesex County Board of Health.

— RUDY LARINI