

CA - ~~(P. 111) 259.?~~
Monroe

10-20-76

CL joining Motion of S. Plaintiff & motion to
consolidate

- w/ Motion - brief of Monroe

~~- w/ CL Motion of Plaintiff~~

~~- w/ Motion of Appeal~~

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Monroe

RECEIVED *Siegel & Farino*
Counsellors at Law

OCT 29 1976

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MEMBER: N. J. AND PATENT BARS

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October 22, 1976

Elizabeth McLaughlin, Clerk
Appellate Division
Superior Court of New Jersey
State House Annex
Trenton, New Jersey 08625

RE: Docket No. A-4759-75
Urban League
Docket Nos: A-4721-75, A-4723-
A-4722-75, A-4720-75, A-4681-
A-4685-75, A-4759-75, & A-468-
Cross Appeals: Edison, Old
Bridge, and North Brunswick

Dear Madam:

Please be advised that I join the Motion for Stay pending appeal previously filed by Chernin & Freeman, Esqs., attorneys for South Plainfield. I also join in the Motion to Consolidate all pending docket numbers arising out of the trial before Judge Furman.

Enclosed is a brief on behalf of the Township of Monroe in support of Motion for Stay pending appeal.

Very truly yours,

TR Farino, Jr.

THOMAS R. FARINO, JR.
Township Attorney

*all
please
10/22/76*

TRF:jb
encls.
cc: All attorneys of record

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-4685-75

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiff-Respon-
dents,

vs.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al,

Defendants-Appellants.)

BRIEF OF DEFENDANT-APPELLANT, TOWNSHIP OF MONROE
IN SUPPORT OF MOTION FOR PERMANENT STAY

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PROCEDURAL HISTORY

Defendant-Appellant, the Township of Monroe, adopts the procedural history as set forth in the Brief submitted by the Township of Cranbury in support of its Motion for a Permanent Stay. In addition, it notes that the attorney for the Township of Cranbury, William C. Moran, Jr., appeared on behalf of Cranbury, East Brunswick, Monroe, Piscataway, Plainsboro, Sayreville, South Brunswick and South Plainfield on application for a temporary stay pending appeal. Judge Baruch S. Siedman signed an Order on September 30, 1976 which stayed the trial Court's judgment of July 9, 1976 until such time as a full panel of the Appellate Division should have an opportunity to consider and decide the pending motion for a stay pending appeal. That Motion was filed by Sanford E. Chernin, Esq., attorney for South Plainfield, on behalf of all eight municipalities which have filed appeals in this matter.

In the trial of this matter, the Court noted that only Monroe and Old Bridge Townships offered adequate housing opportunities for their blue collar workers. In addition, it was the opinion of the Court that Monroe Township's present zoning ordinance was deficient under Mt. Laurel in that there was a mal-distribution into industrial and low density residential uses rather than high density residential uses. Additionally, the Court found that Monroe zoning ordinance prohibited new multi-family housing except in planned retirement communities and that its vacant acreage, exceeding 20,000 acres

was virtually pre-empted by industrial and rural residential zones. In the later, the restrictions including 30,000 square foot lot sizes, were found to inhibit low and moderate income housing. The Court further found that the Township was over-zoned for industry by approximately 5,000 acres. The Court then ordered the Township of Monroe to provide its fair share allocation of 1333 dwelling units plus an allocation to correct present imbalance of 23 units for a total of 1356 dwelling units for persons of low and moderate income by 1985.

The Township of Monroe in conjunction with its Professional Planner, Planning Board, Township Engineer, and municipal Council is presently in the final stages of adopting a new comprehensive zoning plan for the municipality which plan specifically addresses those deficiencies which exist in the present comprehensive zoning plan as determined by the Court in the Urban League litigation. The approach of the Township of Monroe in addressing the aforementioned deficiencies involves three phases:

1. Rehabilitation of existing sub-standard housing through community development revenue sharing funding;
2. Reduction of industrially zoned acreage by approximately 4,000 acres; and
3. Achieving the fair share allocation thru the addition of multi-family zones along with increased densities in the existing residential zones.

Consistent with this aforementioned approach, the

presently proposed comprehensive zoning plan for Monroe Township now undergoing several sessions of public hearings within the municipality, contains the following zones designed to comply with the order of the Court in the Urban League litigation:

1. Residential R-30 Zone which permits PUD's;
2. Residential R-20;
3. Residential R-10;
4. Residential - Mixed which permits multi-family developments;
5. Planned Retirement Community which permits multi-family dwelling with age restrictions;
6. Planned Unit Development which permits multi-family dwellings;
7. Neighborhood Commercial;
8. General Commercial; and
9. Light Impact Industrial.

In addition, as above mentioned, the municipality has taken active steps to obtain funding from State and Federal sources for the re-habilitation of existing housing as well as to effect the reduction in industrial zoned land of approximately 4,000 acres.

ARGUMENT

POINT ONE

A STAY SHOULD BE GRANTED BY THE APPELLATE DIVISION AS A FAILURE TO GRANT SAME PENDING APPEAL WILL CAUSE IRREPARABLE HARM TO DEFENDANT TOWNSHIP OF MONROE AND ITS CITIZENS WHILE THE CONVERSE WILL CAUSE NO DISCERNABLE INJURY

If the full part of the Appellate Division should refuse to grant a stay pending exhaustion of defendant's appeal herein, the Township of Monroe would in essence be without benefit of a municipal zoning ordinance. As such, it is conceivable that applications could be made for uses not presently permitted under the existing zoning ordinance in the absence of same. If denials of said applications were to take place on the part of municipal officials, it is conceivable that a multiplicity of law suits could be accordingly generated. The Township would possibly be thrown into a chaotic situation resulting in permanent and irreversable damage.

As mentioned in the procedural history of this brief, the Township of Monroe is presently in the process of adopting a new master plan. A requirement of literal compliance with the trial court's judgment, would effectively invalidate all of the municipality's efforts in connection with same. If the Township of Monroe is required to amend its zoning ordinance according to the order of the trial court and applications for development are reviewed and ultimately passed based upon said amendments, the very group whose interests were intended to

be benefited from the trial Court judgment could find themselves in a damaging position by way of a trial Court reversal upon appeal. Builders and developers would claim that they had acquired vested rights under the amended ordinance and an argument by the municipality that the rationale of the trial Court was incorrect would only lead to litigation and irreparable harm.

In effect, the denial of the stay of the trial Court judgment pending the outcome of appeal, would require the municipality to amend its zoning ordinance prior to a final determination whether said ordinance, is, in fact, unconstitutional as determined by the trial Court. The municipality would be obliged to expend considerable sums of money in formulating new ordinances and plans all of which could be rendered useless and moot if the defendant municipality prevails upon appeal.

POINT TWO

UNTIL SUCH TIME AS THE SUBSTANTIVE ISSUES TO BE RAISED ON APPEAL ARE HEARD, ANY ONE OF WHICH MAY RESULT IN A REVERSAL OF THE TRIAL COURT JUDGMENT, THE STATUS QUO SHOULD BE MAINTAINED

The Township of Monroe should not be required to expend large sums of money for the purpose of adopting a new zoning scheme which at this point could subject the municipality to the danger of operating under a judicially imposed ordinance which if overturned on appeal could work irreparable harm upon the municipality. Until such time as the issues raised on appeal are disposed of, the status quo should be maintained.

The Township of Monroe is prepared to raise at least the following issues upon appeal:

1. The definition of the term "region". The Supreme Court in Mt. Laurel 67 New Jersey 151, 336 A. 2d. 713 (1975) stated that the county unit was unrealistic for purposes of defining a region.
2. The trial Court finding of the need for low and moderate income housing.
3. The authority of the trial Court to order affirmative relief in the first instance.
4. The allocation formula used by the trial Court in meeting the low and moderate income housing need. The trial Court's formula would appear to be arbitrary and capricious.
5. The trial Court's certification of this matter as a class action.

CONCLUSION

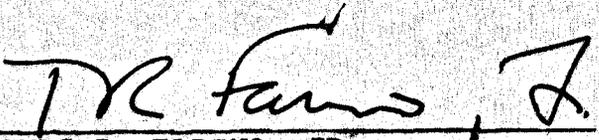
For the reasons set forth above, it is respectfully submitted that a stay should be granted pending appeal.

Respectfull submitted,


THOMAS R. FARINO, JR.
Attorney for Defendant-Appellant
Township of Monroe

CERTIFICATION

I hereby certify that service of this Brief was made by mailing the original and four copies to the Clerk of the Appellate Division, Superior Court, two copies of the Brief to counsel for Plaintiff and one copy each to all counsel of record.


THOMAS R. FARINO, JR.
Attorney for Defendant-Appellant
Township of Monroe