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Brief dealing with the specific attributes of Piscataway Township and its Zoning Ordinance

pgs. 23

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

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al, Plaintiffs,	:	
-vs-	:	Civil Action
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et als, Defendants.	:	

BRIEF DEALING WITH THE SPECIFIC ATTRIBUTES OF PISCATAWAY TOWNSHIP AND ITS ZONING ORDINANCE

SACHAR, BERNSTEIN, ROTHBERG,
SIKORA & MONGELLO, P. A.
700 Park Avenue, P. O. Box 1148
Plainfield, New Jersey 07061
Attorneys for Defendant, Piscataway
Township

DANIEL S. BERNSTEIN
On the Brief

POINT I

THE PLAINTIFFS' PROOF ON THE UNREASONABLENESS OF PISCATAWAY'S ZONING ORDINANCE WAS EXTREMELY LIMITED

The only witness who testified on behalf of the plaintiffs as to the unreasonableness of all of the zoning ordinances was Allan Mallach.

While Mallach was not a professional planner, the plaintiffs used him as an expert on planning and zoning.

While Mallach was not a realtor, the plaintiffs used him as an expert on housing needs.

While Mallach was not a builder, the plaintiffs used him as an expert on housing costs.

While Mallach was not a government official, the plaintiffs used him as an expert on government programs.

How did Mallach study the reasonableness of the zoning ordinances of each of the defendant municipalities? He merely read the ordinances and then pontificated as to their reasonableness. Mallach did no field work as to each of the defendant municipalities.

Mallach's cursory examination of Piscataway's Zoning Ordinance was the sole basis of the plaintiffs' charge that it was exclusionary.

POINT II

UNDER THE PLAINTIFFS' CRITERION, PISCATAWAY IS NOT A DESIRABLE PLACE TO RESIDE

The plaintiffs claim that Piscataway is an exclusionary community. Yet under their own standards, Piscataway is not a desirable residential community.

The plaintiffs presented three so-called expert witnesses--Dr. Lawrence D. Mann, Mr. Allan Mallach, and Mr. Ernest Erber. Dr. Mann taught at Rutgers University, which is located in New Brunswick and Piscataway. While teaching at that institution, Dr. Mann first lived in South Brunswick and then chose to live in the more affluent community of Princeton. Allan Mallach is presently living in Pennington in Mercer County. When Ernest Erber was living in New Jersey, he resided in the Milburn-Livingston area. It is ironic that none of the plaintiffs' experts chose to live in Middlesex County. However, it is quite understandable. Douglas Powell described Middlesex County as a blue collar county. Each of the plaintiffs' witnesses chose to live in a more affluent setting.

It is unlikely that either of the two white plaintiffs would choose to live in Piscataway Township. Judith Champion is attending Rutgers University which is located in New Brunswick and Piscataway Township. Yet, she has never resided in Piscataway. Miss Champion has testified that she does not wish to live in a community which has racial distur-

bances in its schools. This is a polite way of saying that she does not want her children to attend a school where there are a number of minority students, since the communities which Miss Champion chose to avoid include New Brunswick, Perth Amboy, and Jamesburg. When Miss Champion was advised that there were racial disturbances in Piscataway schools, she indicated that this would make her reluctant to locate in Piscataway.

Kenneth Tuskey resides in South Brunswick Township. He wants to live in a community which has more blacks. Mr. Tuskey was advised by the author of this brief to relocate in either New Brunswick, Perth Amboy, or Piscataway. Each of these communities has a large number of blacks and other minorities. Tuskey's reply was that he did not want to live in any of these communities. He wanted the blacks to move into his development in South Brunswick. Obviously, Tuskey is interested in token middle class black neighbors, rather than the lower income blacks who live in Piscataway. Based on their own testimony, it is extremely unlikely that either Champion or Tuskey will ever move to Piscataway Township.

What type of person is likely to live in Piscataway? One of the two black plaintiffs, Cleveland Benson, resided in Piscataway. The Benson household, which included 11 people, found an acceptable dwelling unit in Piscataway Township for $250.00 per month. While Benson would have liked more room, he was satisfied with his quarters.

The plaintiffs' experts, who presumably know something about the desirability of communities, all chose not to live in Middlesex County. How then, can they call Middlesex County exclusionary? The two white plaintiffs would not consider living in Piscataway. Can they call Piscataway an exclusionary community?

Cleveland Benson and the other 10 members of his household reside in Piscataway. How can Piscataway be considered exclusionary when it provides living quarters for the Bensons?

POINT III

PISCATAWAY TOWNSHIP IS EFFECTED BY THE DEPRECATING INFLUENCES OF NEW BRUNSWICK AND PLAINFIELD

In Dr. Mann's opinion, the cities will continue to deteriorate and their remaining white, middle class residents will move farther and farther away from them. The next area to suffer the same fate will be the suburbs immediately surrounding the cities.

Piscataway is in the unenviable position of being between two declining urban centers, New Brunswick and Plainfield. Under Dr. Mann's theory, Piscataway will be the next area to decline. Empirically, Dr. Mann's theory has been substantiated by Mr. Robert Eodice, a realtor and appraiser. According to Eodice, the proximity of Plainfield has depreciated real estate values in Piscataway. Only reasonable standards in Piscataway's Zoning Ordinance will halt the spread of urban blight from New Brunswick and Plainfield.

POINT IV

PISCATAWAY HAS A SUBSTANTIAL MINORITY POPULATION

At the close of the defendant Piscataway Township's case, the author of this brief read into evidence statistics which were supplied by the plaintiffs. These statistics showed that in 1970 Piscataway had a total population of 36,418, out of which 3,839 were of minority groups. Also read into evidence were the statistics on public school enrollment during the fall of 1972. In Piscataway, minority students comprised 15.7% of the total enrollment.

Interrogatory No. 7(a) which was propounded on the plaintiffs was also read into evidence. It indicated:

> "(a) The number and percentage of minority population growth of the defendant, Township of Piscataway.
>
> | Year | Minorities |
> |---|---|
> | 1960 | 1,542 |
> | 1970 | 3,839 |
>
> As (an) increase of 2,297 minorities, or 148.9 percent."

These statistics indicate that Piscataway has a substantial and growing minority group. The plaintiffs have equated minorities with low income groups. If this is true, then Piscataway has a large number of low income people living within its borders.

POINT V

OVER HALF OF THE EXISTING HOUSING STOCK IN PISCATAWAY CONSTITUTES LOW AND MODERATE INCOME HOUSING

Joseph J. Carr is the Municipal Planner for the Township of Piscataway. He has not only had extensive experience in municipal planning, but also has a background in real estate and appraisal work. His office, Suburban Planning Associates, produced studies which were marked DP-18 and DP-19 in evidence. According to DP-18, there were 325 single family residences sold in Piscataway in 1975. Of all of these residences, 32.9% sold for under $40,000.00, while only .6% of the sales were above $70,000.00. As modest as these figures are, they are skewed upward because of the inclusion of 71 new homes. As a general rule, new homes sell for substantially more money than existing homes. The second chart on DP-18 is restricted to the sale of existing one-family homes, and excludes new homes. Of the total of 254 homes, 41.7% sold for less than $40,000.00, while .8% sold for more than $70,000.00. According to Carr, a modestly priced home by present standards is one that sells for less than $45,000.00. He indicated that if one were ultra-conservative, the figure of $40,000.00 could be used.

DP-19 indicates the total housing stock in Piscataway contains 11,193 dwelling units. Of this total, approximately one-third are taken up by apartment units. Carr testified that the apartments in Piscataway

provided low and moderate income housing. The apartments were built in the 1960's and have a density of between 16 to 18 units per acre. The apartments lack most of the amenities which are associated with apartments of more recent vintage. The plaintiffs introduced into evidence a summary of the rentals for the apartments in Piscataway, and the defendant Piscataway placed in evidence a breakdown of all of the rentals for the major apartment complexes in Piscataway. In only one complex does rent exceed $300.00 a month and that is only for 12 units which contain three bedrooms. The rentals were referred to by the Judge as being "modest". Based on these factors, Carr stated that the 3,288 apartment units in Piscataway constituted low and moderate income housing. Rutgers has innumerable dormitories in Piscataway. These will be more fully discussed in a later section of this brief. Rutgers also has 420 units of family apartments. These apartments must be occupied by at least two persons, who are related by either marriage or a parent-child relationship. The rentals on these apartments range from $150.00 per month for an efficiency apartment to $225.00 per month for the more expensive two bedroom units. Based on the fact that most of these apartments are occupied by graduate students who are not particularly affluent, and based on the rents, Carr classified these units as low and moderate income housing. Carr first assumed that a modestly priced house would sell for under $45,000.00. He then assumed that the homes which were

sold in 1975 were a random sample of the value of all existing homes in Piscataway. This universe of 325 homes would overstate the value of the homes in Piscataway, since the sale of the existing homes would more nearly approximate the housing stock than would the sale of the new and existing homes. The reason for this is that the sale of new homes is disproportionately represented by the 325 units sold. Nevertheless, Carr took the figure for total homes sold and found that 53% of all one-family homes, or 3,967 homes, had a value of less than $45,000.00. Totalling the apartment units, Rutgers family apartments, and the homes which had a value of less than $45,000.00, Carr found that 67% of all dwelling units in Piscataway constituted either low or moderate income housing. Assuming that a low or moderate income family could only afford a one-family home of $40,000.00 or below, then the total number of low and moderate income units totalled 6,203, or 57% of the total units. Under either formula, it is evident that Piscataway has provided a significant amount of low and moderate income housing and in no sense could be considered exclusionary.

POINT VI

AT THE PRESENT TIME, THERE ARE A SUBSTANTIAL NUMBER OF LOW AND MODERATELY PRICED HOMES IN PISCATAWAY TOWNSHIP

Carr's figures and conclusions are substantiated by Robert Eodice, a realtor and appraiser. Eodice has sold and appraised homes in Piscataway as well as purchasing two units for investment. Eodice is a co-owner of Scotch Hills Real Estate, which is a member of the Plainfield Board of Realtors. Piscataway is in the area served by the Plainfield Board. Scotch Hills is also a member of the Somerset and Hunterdon Board of Realtors. Eodice is active in the following communities: Plainfield, Middlesex Borough, South Plainfield, Piscataway, Mountainside, Westfield, Bridgewater, Watchung, Warren, Dunellen, Scotch Plains, and Fanwood. According to Eodice, the largest supply of modestly priced homes is found in Plainfield and the second largest supply is found in Piscataway. When his agency gets an inquiry from a low or moderate income family, they are usually shown homes in either Plainfield or Piscataway. Reasons for the number of modestly priced homes in Piscataway included the influence of Plainfield and the disturbances in Piscataway's schools. Eodice reviewed the homes which were offered for sale under the multiple listing system and found that 29% had an asking price of $40,000.00 or below. This number was understated; and in his opinion, more than 29% of the homes in Piscataway had a value of less than $40,000.00. The reasonsfor the understatement are the

following:

a. There is less sales activity in the lower priced homes than in the higher priced homes.

b. Middle income families, who choose more expensive homes, have more mobility.

c. The asking price for homes is usually higher than the sales price for homes.

d. It is more common in Piscataway and in Plainfield, than in surrounding communities, for the purchasers to obtain either an FHA or VA mortgage. With these mortgages, the seller often has to pay points, which in reality lowers the sales price.

With the exception of "c", these factors would influence Carr's statistics as well as those of Eodice. Thus, one can conclude that the modest figures which Carr computed overstate the value of homes in Piscataway.

Eodice's statistics substantiate Carr's figures. Eodice's statistics also prove that modestly priced homes are presently available in Piscataway.

POINT VII

IN ASSESSING THE EXCLUSIONARY CHARACTERISTICS OF A ZONING ORDINANCE, COURTS HAVE REVIEWED THE SALES PRICE OF ONE-FAMILY RESIDENCES WITHIN THE COMMUNITY

Probably the most important exclusionary zoning case to come out of Somerset County is the case of Allan-Deane v. Tp. of Bedminster, Superior Court of New Jersey, Law Division, Somerset County, Docket Nos. L-36896-70 P.W. and L-28061-71 P.W. (1975). There the court found:

> "Of twenty-five residential sales in Bedminster Township in the year 1973, nineteen were in the $50,000 and over category and only one home sold for less than $30,000." p. 10.

Probably the most important exclusionary zoning case to come out of Monmouth County is Middle Union Associates v. Zoning Board of Adjustment of Township of Holmdel, Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1149-72 P.W. (1975). In that case the evidence disclosed:

> "Of the houses for sale in May of this year through Multiple Listing, only three were for less than $50,000." p. 18.

Since both of the aforementioned cases are unreported, copies of the Opinions accompany this brief. In both of these cases, the plaintiffs proved that municipalities were exclusionary by indicating the sales price of homes within the defendant community. However, these proofs

should not be limited to plaintiffs. In Piscataway, the price of one-family homes is substantially less than either Bedminster or Holmdel. The Court should take cognizance of the numerous moderately priced homes when reviewing the reasonableness of the zoning ordinance. Although a judgment should not be rendered against the Piscataway Zoning Ordinance, in the event that one is, the existing housing stock should certainly go toward mitigating any judgment which might be imposed.

POINT VIII

PISCATAWAY IS NOT PROVIDING ITS SHARE OF UPPER INCOME DWELLING UNITS

Out of 325 homes which were sold in Piscataway in 1975, only two had a price of more than $70,000.00. Under statistics that were supplied to the Court by plaintiffs' experts, one can expect to purchase a home which will cost two and a half times one's salary. Under this formula, one would expect a junior executive who was earning over $28,000.00 to purchase a home which would cost at least $70,000.00. Clearly, Piscataway has been negligent in failing to meet the housing needs of its more affluent citizens.

Mount Laurel indicated that a developing community must meet the housing needs of all citizens. Piscataway has failed to meet the needs of its wealthy citizens.

The Court in the present matter could direct the Township of Piscataway to provide more land in the one acre residential zone. As an alternative, the Court could allow Piscataway to retain its present zoning, and give the community a chance to become better balanced by providing one-half and one-third acre lots. Using the latter approach, which this author feels is preferable, Piscataway will not become an exclusive residential community. However, by allowing for more substantial homes, Piscataway will become better balanced.

POINT IX

PISCATAWAY HAS TAKEN AFFIRMATIVE STEPS TO PROVIDE LOW AND MODERATE INCOME HOUSING FOR ITS ELDERLY

A resolution of need has been adopted for senior citizen housing. A commission has been appointed to obtain a site and funding for between 300 and 400 units of senior citizen housing. The commission is bipartisan, and according to Mr. Carr, has the support of both political parties in Piscataway Township.

POINT X

PISCATAWAY DESERVES A CREDIT FOR THE 1,000 ACRES OF UNZONED LAND WHICH ARE HELD BY RUTGERS UNIVERSITY

The documents which were introduced into evidence show that there are approximately 1,600 vacant acres of residential land in Piscataway and that in addition, Rutgers University owns approximately 1,000 acres. In the case of Rutgers v. Piluso, 60 N.J. 142 (1972), Piscataway attempted to impose its zoning ordinance on the lands in Piscataway which were owned by Rutgers. In particular, Piscataway was concerned with the married students quarters which produced school children which Piscataway had to educate. The court found that Rutgers, as an instrument of the State, was immuned from the local zoning ordinance. This decision removed any zoning impediment to the thousand acres of land which are presently owned by Rutgers.

The defendant municipality feels that even if none of the other mitigating circumstances were present, the existence of 1,000 unzoned acres of land which could be utilized for residential purposes makes the Piscataway Zoning Ordinance reasonable. It should be noted in this regard that Rutgers already has 420 family apartments in Piscataway and by September of 1976 will have 4,346 beds for single students. Piscataway has to provide services for these students, but does not receive commensurate tax revenue. In that sense, the students are less beneficial to the municipality than other types of low and moderate income

households, since the other types usually pay real estate taxes, either directly or indirectly in their rental payments.

One of the four plaintiffs in the present case, Judith Champion, was a Rutgers University student. If the Court did not take the Rutgers lands into account, it would be placing Piscataway in an untenable position. The municipality would get no credit for low and moderate income students who are living on campus. However, if any particular student wished to move off campus, the municipality would be considered as having an unmet housing need for these students.

The Middlesex County Planning Board in Volume 20 of the Master Plan on page 68 indicated that there was a substantial body of low and moderate income students who needed housing. If these students choose to locate on campus, Piscataway deserves a credit for them; and Piscataway also deserves a credit for the land which could be devoted to student housing.

It should also be pointed out that one of the plaintiffs in the *Allan-Deane* case lived in student housing at Rutgers University. She had unsuccessfully looked for housing quarters in Somerset County. If that plaintiff had standing to complain about a lack of housing in Somerset County, then New Brunswick and Piscataway have a right to consider her as a low income individual living within their borders.

Piscataway Township is not looking for a declaration that the Rutgers land is properly zoned. The court in the Piluso case has already determined that it is not subject to the zoning powers. What Piscataway is looking for is credit for the 1,000 unzoned acres which could and are being used for student housing. Piscataway Township did not choose to remove its zoning restrictions from the 1,000 acres which was held by Rutgers. That decision was made by the New Jersey Supreme Court. However, this Court should not be concerned with the manner in which the zoning control was removed. This Court should be concerned with the fact that Piscataway has 1,000 acres which can be fully devoted to the construction of low and moderate income housing. No other municipality in Middlesex County, and probably no other municipality in the New York Metropolitan area, has this burden. Piscataway deserves credit for it. The existence of the 1,000 acres of unzoned land should give the municipality carte blanche to zone the remaining 1,600 acres of residential land as it sees fit.

POINT XI

PISCATAWAY'S PLANNER ADMITS THAT CERTAIN ASPECTS OF THE ZONING ORDINANCE SHOULD BE AMENDED

Piscataway's Municipal Planner, Joseph Carr, admitted that certain aspects of Piscataway's Zoning Ordinance should be amended. He suggested that the minimum square foot requirements for all of the one-family residential zones should be reduced to 1,000 square feet, with the exception of the R-7.5 Zone, where the requirement should be reduced to 750 square feet. Carr suggested that the R-M apartment zone be amended as follows:

a. No bedroom restrictions.

b. A density of between 12 to 15 units per acre.

c. Fifty (50) feet of storage space per apartment.

d. Minimum square foot requirements of 500 feet for efficiency apartments, 600 feet for one bedroom apartments and 700 feet for two bedroom apartments.

e. Parking spaces of 1.6 per apartment. Carr noted that each apartment would need 1½ parking spaces plus an additional 10% for visitor parking.

The only other areas of Piscataway's Zoning Ordinance which the plaintiffs alleged were exclusionary are discussed in the next Point of this brief.

POINT XII

THE PLAINTIFFS WERE UNREASONABLE IN THEIR ALLEGATIONS THAT A NUMBER OF PROVISIONS OF PISCATAWAY'S ZONING ORDINANCE ARE EXCLUSIONARY

Mallach claimed that it was exclusionary for Piscataway to require air-conditioning in apartments. Carr pointed out that central air-conditioning constitutes a nominal addition to the cost of apartment construction. Also, poor people, blacks, and other minorities are bothered by the heat to the same extent as white, middle class people. Therefore, Carr considered the air-conditioning requirement to be reasonable.

Mallach also suggested that there should be no requirements as to the aesthetics of apartments. Carr suggested that requiring differences in elevations and breaks in apartments made them more attractive and did not substantially increase the cost in construction. Without aesthetic requirements, Carr felt that unattractive, barrack-like apartments would be built.

With the proposed changes in the zoning ordinance which are mentioned in the preceding Point, provision will be made for the construction of between 285 and 357 garden apartment units. However, the plaintiffs want more--more small lots, more garden apartments, more townhouses. Where does it all end?

Piscataway in the past has been nonexclusionary. It has allowed small lots and apartments. The only type of unit which has not been constructed in any quantity is townhouses. Most of the areas zoned for apartments and small lots have been developed. (See the Piscataway's exhibit which gives these figures). The plaintiffs would give no credit for these areas. They are merely looking at the undeveloped 1,600 acres. In the event that 600 acres were rezoned for apartments, and those apartments were built in 1979, other plaintiffs could come into the community and claim that there was no provision for apartments in the remaining 1,000 acres of vacant land. That is exactly what has happened in the present case. Piscataway has allowed high density residences and they have been built. The Township has already eliminated all but 82.5 usable acres in the one acre zone; and the next highest zone is 20,000 square feet. How many more modestly priced homes must be built in Piscataway? The Township has already allowed an inordinate number of low and moderate income dwelling units. However, Carr suggested that a PRD zone could be established. It would allow a mix between one-family homes and townhouses with a density of between 8 to 10 units per acre. While Piscataway's counsel and planner were willing to settle the case on the basis of 200 to 300 acres of PRD, the municipal officials which they consulted felt that 100 acres of PRD, which could yield 1,000 additional modest dwelling units, would be ample. One hundred (100) acres

of PRD could yield 100 new dwelling units per year for the next ten years. That would approximate the 100 new dwelling units which are presently being built in Piscataway, and would mean that 50% of all housing starts would be of modestly priced homes. This would not take into account the 285 to 357 apartment units which could also be constructed. Also, Rutgers University might build more dormitories and family housing on its 1,000 acres in Piscataway.

With the few exceptions mentioned in Point XI, the Piscataway Zoning Ordinance is reasonable. However, if the Court wishes to burden the municipality with additional modestly priced dwellings, then it should require Carr's proposed PRD on not more than 100 acres.

Respectfully submitted,

Daniel S. Bernstein

DANIEL S. BERNSTEIN
For the Firm
Attorneys for Defendant, Piscataway Township