

CA - Plainsboro

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Memorandum of Law by Defendant, Mayor and Township
Committee of Plainsboro

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RULS-MTL-168

CA001816D

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

URBAN LEAGUE OF GREATER NEW)
BRUNSWICK, et als.,)
)
 Plaintiffs,)
)
 vs.)
)
 THE MAYOR AND COUNCIL OF THE)
BOROUGH OF CARTERET, ET als.,)
)
 Defendants.)
)

MEMORANDUM OF LAW BY DEFENDANT,
MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PLAINSBORO

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POINT I: PLAINTIFFS LACK STANDING TO SUE

Although the New Jersey Courts are not bound by Federal Law with regard to standing, the U.S. Supreme Court case of Warth v. Seldin, 422 U.S. 490 (1975) should be taken into consideration when evaluating the standing of the Plaintiffs in the instant action. In that case, an attack was made on the zoning in a Rochester suburb. Plaintiffs in that action were a variety of individual and public interest groups. However, there were no plaintiffs who were local residents. There was also no allegation in the complaint that there was a denial of a permit for a specific housing project. The majority held that the non-residents did not have the necessary standing to maintain the action. In the case at bar there is no allegation that any of the Plaintiffs are residents of Plainsboro Township, nor did they attempt to obtain housing in Plainsboro Township. There is also no proof they were denied a building permit for any specific housing project in Plainsboro Township.

The Court in the case of So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) held that standing to sue was available to present residents who were in need of better housing, former residents who had been forced to move elsewhere for lack of suitable housing and non-residents living in sub-standard central city housing in the region who desired to move to Mt. Laurel. There is no evidence in the record that any of the Plaintiffs are residents of Plainsboro Township, were former residents of Plainsboro Township who were forced to move elsewhere, or non-residents who desired to move to

Plainsboro Township. Therefore, the Plaintiffs are without standing to maintain this action against Plainsboro Township.

POINT II: PLAINSBORO TOWNSHIP IS NOT IN A REGION LIMITED TO MIDDLESEX COUNTY, THEREFORE, SINCE ALL THE EVIDENCE IS DIRECTED AT MIDDLESEX COUNTY AS THE REGION IT DOES NOT APPLY TO PLAINSBORO TOWNSHIP.

Plainsboro Township is the most southern municipality in Middlesex County. It is adjacent to West Windsor Township and Princeton Township in Mercer County. It is approximately 11 miles from the City of Trenton. It has no shopping facilities within its borders and most of its residents seek employment in the Princeton-Trenton area. There is no public transportation facilities in Plainsboro Township, however, there is an adequate public transportation system available in Princeton for commutation to Trenton and New York. Its region would be more clearly defined as including some of its immediate neighbors in Middlesex County, such as South Brunswick Township and Cranbury Township, and Trenton, West Windsor and Princeton. The testimony in the record pointed out that class plaintiffs sought housing near their places of employment and where public transportation was available. Very little employment exists in Plainsboro and there is no public transportation. Trenton and Princeton have a greater effect on Plainsboro Township than New Brunswick and Perth Amboy. The Trenton Region is "the area from which, in view of available employment and transportation, that population of the Township would be drawn, absent invalid exclusionary zoning." Oakwood at Madison, Inc. v. Twp. of Madison, 128 N.J. Super 438 (Law Div. 1974).

Justice Hall in the Mt. Laurel case, supra, at p. 189, defined the region as follows:

" The composition of the applicable 'region' will necessarily vary from situation to situation and probably no hard and fast rule will serve to furnish the answer in every case. Confinement to or within a certain county appears not to be realistic, but restriction within the boundaries of the state seems practical and advisable."

Plainsboro Township should not be confined to Middlesex County. The effect on Plainsboro Township of the housing demand from the northern part of Middlesex County is minimal. There is no public transportation connection between Plainsboro Township and the northern municipalities in the County. There is no evidence that any of the residents of Plainsboro Township seek employment in the northern municipalities in the County.

Plaintiffs have elected to restrict themselves to Middlesex County as the "region", but, Plainsboro Township cannot be confined to that region. Therefore, any evidence in the record limited to Middlesex County as the region should not be applicable to Plainsboro Township.

POINT III: PLAINSBORO TOWNSHIP IS NOT A DEVELOPING MUNICIPALITY WITHIN THE DEFINITION SET FORTH IN THE MT. LAUREL DECISION.

Justice Hall in defining "developing municipalities" exempted "areas still rural and likely to continue to be so for some time yet". So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, supra, at p. 160. He also described Mt. Laurel as a community that has substantially shed its rural characteristics and undergone great population increase since World War II. The key is to determine whether there has been a substantial population increase in the last

thirty years. There is no evidence in the record to suggest that Plainsboro Township has had anything other than a relatively small increase in population during this period. Plainsboro Township is described in the record as a typical rural community with a considerable amount of agricultural land. This land is presently being farmed and has been farmed for decades. There is only a minimal amount of commercial and industrial land in actual use. Therefore, Plainsboro Township still is a rural community and has not begun to "shed its rural characteristics" like Mt. Laurel. It is therefore not within the definition of a developing municipality and hence is exempt from the application of the Mt. Laurel holding.

POINT IV: AGRICULTURAL LAND WHICH IS IN ACTIVE AGRICULTURAL USE SHOULD BE CONSIDERED DEVELOPED LAND.

Testimony supported Plainsboro Township's position that it is a viable agricultural community. The Court in Mt. Laurel did not make a distinction between agricultural land which was actively and significantly being used as such and that agricultural land which was merely in a holding pattern for development, but such a distinction should be made. Land in Plainsboro Township is, as testified to by the County Agricultural Agent, some of the most prime farm land in the State of New Jersey. The County Agent further stated that the land in Plainsboro Township is being actively farmed producing valuable crops such as soybeans, potatoes, winter wheat and other vegetables. The production of these crops are not only important to the economy and well-being of Middlesex County and the State of New Jersey,

but to the entire metropolitan region. The record further points out that there is a large viable and productive nursery (Princeton Nurseries), which has been in operation for a number of years, and serves the nursery needs of not only Middlesex County, but Princeton and Trenton regions as well. If the Court were to consider this land as available for development it would be contrary to the public policy of the State of New Jersey. That policy is not only spelled out in the New Jersey Constitution Article 8, Section 1, the Farmland Assessment Act, the Report of the Blue Print Commission on the Future of New Jersey Agriculture (1973), but in the new Land Use Act, N.J. S.A. 40:55 D- 2 (g) states as one of its purposes, " To provide sufficient space in appropriate locations for a variety of agriculture . . . to meet the needs of all New Jersey Citizens." Therefore the land in the R-200 zone is not available for development since it is being actively and seriously used for agricultural use. To eliminate this agricultural use for the development of housing would be contrary to the public policy of the State of New Jersey and would not promote the general welfare of the citizens of the State of New Jersey.

POINT V: THERE ARE VALID ENVIRONMENTAL CONSTRAINTS ON THE DEVELOPMENT OF MORE LAND IN PLAINSBORO TOWNSHIP.

Although there is some land which is vacant and not in actual and viable agricultural use, this land could not be considered available for development since there are restraints on its development by both the State of New Jersey and the U.S. Government.

Justice Hall cautioned in the Mt. Laurel case, p. 186-187:

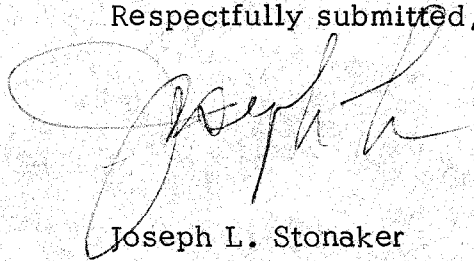
". . . This is not to say that land use regulations should not take due account of ecological or environmental factors or problems. Quite the contrary. Their importance, at last being recognized, should always be considered. Generally only a relatively small portion of a developing municipality will be involved, for, to have a valid effect, the danger and impact must be substantial and very real (the construction of every building or the improvement of every plot has some environmental impact) - not simply a makeweight to support exclusionary housing measures or preclude growth - and the regulation adopted must be only that reasonably necessary for public protection of a vital interest."

DPL 2 in evidence is a map which shows a substantial portion of the community in the flood plain area. This land should not be considered land available for development. Testimony in the record demonstrated that the New Jersey Department of Environmental Protection has issued restraints on effluent from sewage treatment plants being discharged into the Millstone River and any of its tributaries. There is only one sanitary sewer plant in Plainsboro Township. This plant employs the spray irrigation principle. The Township Engineer testified that in order to accommodate the effluent by spray irrigation a considerable amount of vacant land is necessary, which land can only be used for a limited purpose such as a golf course. To require further development in Plainsboro Township would mean that the Township would be in direct conflict with the State of New Jersey Department of Environmental Protection and the Federal Environmental Protection Agency whose policy is to further restrict development in the Millstone basin. There are, therefore, valid ecological constraints on the future development of housing in Plainsboro Township.

CONCLUSION

For the reasons set forth herein, the complaint against the Mayor and Township Committee of the Township of Plainsboro should be dismissed.

Respectfully submitted,



Joseph L. Stonaker