

CA - Plainsboro

4/~~11~~/76  
15

cover letter

reply brief by Δ, Mayor + Twp

Pi. 919

Pg 8

CA001840<sup>1</sup>B

RECEIVED

APR 19 1976

JOSEPH L. STONAKER  
COUNSELLOR AT LAW  
245 NASSAU STREET  
PRINCETON, NEW JERSEY 08540  
TELEPHONE: 921-2155  
AREA CODE 609

*Plainsboro*

April 15, 1976

Honorable David D. Furman  
Middlesex County Court House  
New Brunswick, New Jersey, 08903

RE: Urban League of Greater New Brunswick, et als.  
vs. The Mayor and Council of the Borough of  
Carteret, Docket No. C-4122-73

Dear Judge Furman:

Enclosed please find original and copy of Reply Brief  
by Defendant, Mayor and Township Committee of the Township of  
Plainsboro, with reference to the above captioned matter.

Very truly yours,

  
Joseph L. Stonaker

JLS:nc  
Enclosures

cc: Daniel A. Searing, Esquire

RULS-ML-91

CA001841B

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. )

RECEIVED

APR 19 1976

---

REPLY BRIEF BY DEFENDANT, MAYOR  
AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PLAINSBORO

---

Joseph L. Stonaker  
245 Nassau Street  
Princeton, New Jersey, 08540  
609-921-2155

Table of Contents

Page No.

Argument-

Point I: The Remedy For Exclusionary Zoning Is Legislative, Not Judicial. . . . . 1

Point II: Plainsboro Township Is Developing In Accordance With The Middlesex County Plan. . . . . 4

Point III: Plainsboro Township Is Taking Affirmative Action To Meet The Need For Low and Moderate Income Housing. . . . . 6

Conclusion - . . . . . 7

Table of Citations

Jackman v. Bodine, 53 N.J. 585 (1969) . . . . . 3

Pascack Association v. Mayor and Council of Township of Washington, 131 N.J. Super. 195 (Law Div. 1974) . . . . . 1

Robinson v. Cahill, 67 N.J. 333 (1975) . . . . . 3

So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) . . . . . 1,2,4,5,6

Executive Order No. 35 . . . . . 2

Seton Hall Law Review, Vol. 7, Fall 1975, No. 1 . . . . . 2

POINT I: THE REMEDY FOR EXCLUSIONARY ZONING IS LEGISLATIVE, NOT JUDICIAL.

The Supreme Court in the Mt. Laurel case provided no specific relief, but left it to the Township of Mt. Laurel to take appropriate action.

" We are not at all sure what the trial judge had in mind as ultimate action with reference to the approval of a plan for affirmative public action concerning the satisfaction of indicated housing needs and the entry of a final order requiring implementation thereof. Courts do not build housing nor do municipalities. That function is performed by private builders, various kinds of associations, or, for public housing, by special agencies created for that purpose at various levels of government. The municipal function is initially to provide the opportunity through appropriate land use regulations and we have spelled out what Mount Laurel must do in that regard. It is not appropriate at this time, particularly in view of the advanced view of zoning law as applied to housing laid down by this opinion, to deal with the matter of the further extent of judicial power in the field or to exercise any such power. See, however, Pascack Association v. Mayor and Council of Township of Washington, 131 N.J. Super. 195 (Law Div. 1974) and cases therein cited, for a discussion of this question. The municipality should first have full opportunity to itself act without judicial supervision. We trust it will do so in the spirit we have suggested, both by appropriate zoning ordinance amendments and whatever additional action encouraging the fulfillment of its fair share of the regional need for low and moderate income housing may be indicated as necessary and advisable. (We have in mind that there is at least a moral obligation in a municipality to establish a local housing agency pursuant to state law to provide housing for its resident poor now living in dilapidated, unhealthy quarters.) So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt Laurel, 67 N.J. 151 (1975), at p. 192.

As in Mt. Laurel, the attack on the zoning ordinances of the twenty-three municipalities is general in nature and does not involve a specific project in each municipality. Therefore, the Court in this case should take the same

approach as Mt. Laurel, invalidating the zoning ordinances of those municipalities that have exclusionary devices and looking to the municipalities to provide the means for housing for all economic groups.

The desirability of a legislative remedy is reduced to five clear convincing reasons in a recent Law Review article.

" . . . First, the impact of legislation is much broader than that of court-ordered change. . . .

Second, the input into legislation can substantially exceed that which goes into judicial determination, both in quantity and quality. . . .

. . . the expertise, funds for research, and even time available to the legislature greatly exceed what the court may have. . . .

Third, in complex fields such as land-use planning there is also the advantage that legislation can be monitored by administrative agencies and revised if found deficient. . . .

Fourth, exclusionary zoning is a highly sensitive issue. It touches the lives of most citizens. Legislators can compromise without eviscerating principles; courts must decide cases, usually on an all-or-nothing basis. Moreover, legislators often try to explain legislation and to persuade the public of its benefits; judicial opinions are rarely written for the man in the street. Thus, statutes frequently encounter less resistance than court orders.

Finally, it is not in the long-run interest of any democracy to commit its major decisions to the one branch of government that is not elected. . . ."

The preferred legislative remedy would expand the constituency which, directly or indirectly, elects those responsible for zoning and planning decisions. . . ."

Seton Hall Law Review, Vol. 7, Fall 1975, No. 1, p. 5-7

At the time of the writing of this brief, Governor Byrne has announced that he has taken executive action to implement the requirements of the Mt. Laurel decision. In an executive order, No. 35, dated April 2, 1976, Governor Byrne has ordered the Division of State and Regional Planning to allocate housing goals for each County and Municipality in the State before February 2, 1977. The municipalities would be given the right to determine the

the method of meeting these housing goals. In the event that the municipalities did not meet the housing goals, the State would withhold awarding State and Federal aid to the offending municipalities.

The Governor's action is a desirable method of attacking the problem of exclusionary zoning. It will provide a State wide housing allocation allotment. In developing that plan all municipalities in the State will have input into the administrative procedure before the plan is finalized. In the Statewide plan, no one municipality would be inundated by low and moderate income housing just because that municipality has been subject to judicial review. The order also provides for strong incentive to each municipality to meet the need for low and moderate income housing.

Any remedy this Court may impose would effect only the municipalities in Middlesex County still subject to the jurisdiction of the Court. As testified to by Dr. Lawrence Mann, there is a debate between professional planners as to how to arrive at a fair share plan. He testified that the best approach would be to lock the six leading experts in the same room and those experts would come out with a majority and a minority report as assistance to the Court. This is to vague a method to be implemented by judicial fiat.

The Plaintiff relied on both Robinson v. Cahill, 67 N.J. 333 (1975) and Jackman v. Bodine, 53 N.J. 585 (1969) which mandated Statewide remedies. In the case at bar, no such Statewide remedy is available to the Court. As argued previously, many of the municipalities in Middlesex County fall into different regions and sub-regions, other than the Middlesex County region. Therefore, if the Court mandated such a remedy, this would be grossly unjust,

since the other municipalities in the other regions or sub-regions do not have the responsibility for providing for low and moderate income housing merely because they have not been involved in litigation.

POINT II: PLAINSBORO TOWNSHIP IS DEVELOPING  
IN ACCORDANCE WITH THE MIDDLESEX COUNTY PLAN.

Justice Hall, in the Mt. Laurel decision, encouraged a regional approach to planning,

" <sup>22</sup>This court long ago pointed out ' . . . the unreality in dealing with zoning problems on the basis of the territorial limits of a municipality.' Duffcon Concrete Products, Inc. v. Borough of Cresskill, supra (1 N.J. at 513). It is now clear that the Legislature accepts the fact that at least land use planning, to be of any value, must be done on a much broader basis than each municipality separately. Note the statutes establishing county planning boards, with the duty to prepare a county master plan and requiring that board's review and approval of certain subdivision, N.J.S.A. 40:27-1 to 8; authorizing voluntary regional planning boards, N.J.S.A. 40:27-9 to 11; creating state planning and coordinating functions in the Department of Community Affairs and its Division of State and Regional Planning, N.J.S.A. 52:27D-6 and 9 and 13:1B-5.1 and 15.52; and providing for New Jersey to join with New York and Connecticut in the establishment of the Tri-State Regional Planning Commission with extensive area planning functions, N.J.S.A. 32:22B-1 et seq. (Federal statutes and regulations require many federal grants for local public works and installations to have the approval of regional planning agencies, consistent with comprehensive area plans.) Authorization for regional zoning - the implementation of planning -, or at least regulation of land uses have a substantial external impact by some agency beyond the local municipality, would seem to be logical and desirable as the next legislative step." So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, supra, at p. 189.

and, Middlesex County is the logical regional planning entity.

The Middlesex County Planning Board has recognized that Plainsboro Township is a rural community and it should not be forced into development to



increase urban sprawl. Although there is land vacant in Plainsboro Township, it does not mean that the land is developable. Apart from the question of vacant land which is being actively and seriously used for agricultural use, there is other land that is vacant and cannot be developed because of ecological, topographic and the lack of necessary infra structure. Middlesex County recognized this by including Plainsboro Township in Ring C of its Master Plan. As a matter of fact, of the communities designated in Ring C, Plainsboro Township is projected for the least amount of population. To require Plainsboro Township at this juncture to suddenly increase densities for more housing would be contrary to good planning and would destroy the integrity of the Middlesex County Master Plan.

If we are to truly look to a regional planning concept and the County Planning Board is the only logical regional planning authority, than Plainsboro Township, which is scheduled for modest density increases in the County Plan, should be required to assume modest density increases for low and moderate income housing, It is submitted that Plainsboro Township is affirmatively planning, implementing and mandating such modest increases for low and moderate income families.

As Justice Hall pointed out in the Mt. Laurel decision, at p. 190-191:

"There is no reason why developing municipalities like Mount Laurel, required by this opinion to afford the opportunity for all types of housing to meet the needs of various categories of people, may not become and remain attractive, viable communities providing good living and adequate services for all their residents in the kind of atmosphere which a democracy and free institutions demand. They can have industrial sections, commercial sections and sections for

every kind of housing from low cost and multi-family to lots of more than an acre with very expensive homes. Proper planning and governmental cooperation can prevent over-intensive and too sudden development, insure against future suburban sprawl and slums and assure the preservation of open space and local beauty. We do not intend that developing municipalities shall be overwhelmed by voracious land speculators and developers if they use the powers which they have intelligently and in the broad public interest. Under our holdings today, they can be better communities for all than they previously have been."

POINT III: PLAINSBORO TOWNSHIP IS TAKING AFFIRMATIVE ACTION TO MEET THE NEED FOR LOW AND MODERATE INCOME HOUSING.

Plainsboro Township is taking affirmative action to make housing available for all economic levels. Mr. Moran, from Princeton University, testified that within the Forrestal Center, 20% of its 600 town house units are to be for low and moderate income housing. This was a requirement of both the Plainsboro Township Planning Board, in its resolution of approval, and the Middlesex County Planning Board. William Roach, the Planner for Plainsboro Township, testified that the proposed master plan would include single family modular housing which is designed to provide 200 units for the needs of low and moderate income families.

Plainsboro Township, with extensive multiple family apartment zone (in which the one and two bedroom restrictions have been eliminated), single family modular housing zone, its mandate to have 20% of the Forrestal Center units in low and moderate income housing with cluster zoning provision and its R-85 and R-200 single family zones, makes reasonably possible an appropriate, variety and choice of housing for all classes of people.

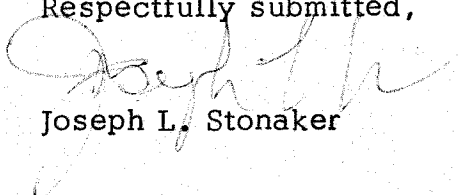
Plainsboro Township has voluntarily joined as one of the 20 municipalities participating in the Middlesex County Application for Community Development Block Grant funds. Some of the funds from the grant are for housing for low and moderate income families.

Douglas Powell testified at the trial that his staff had determined that those municipalities participating in the Community Development Block Grant application had a need of approximately 5200 units of new housing for low and moderate income families. Therefore, since Plainsboro is providing 320 units of low and moderate housing, it is providing its fair share of those 20 municipalities participating in the county's cooperative plan.

#### CONCLUSION

For the reasons set forth above, the remedies requested by the Plaintiffs in this action should not be ordered by this Court.

Respectfully submitted,

  
Joseph L. Stonaker