

CA - Plainston 12 - Oct - 79

Brief in opposition to motion for  
certification of an appeal pending  
unheard in the appellate division

⊕ correspondence, ⊕ affidavit

pgs = 14

CA001854B

LAW OFFICES  
STONAKER AND STONAKER  
41 LEIGH AVENUE  
P. O. BOX 570  
PRINCETON, NEW JERSEY 08540

JOSEPH L. STONAKER  
JANICE B. STONAKER

TELEPHONE 921-2155  
AREA CODE 609

November 16, 1979

RECEIVED

NOV 21 1979

Clerk, Supreme Court of New Jersey  
State House Annex  
P. O. Box 1480  
Trenton, New Jersey 08625

RE: Urban League of Greater New Brunswick, et al v.  
The Mayor and Council of the Borough of Carteret,  
et al  
Docket No. 16,492. Term 79

Dear Sir:

Enclosed please find original and eight (8) copies of Brief in Opposition to Petition for Certification on behalf of the Township of Plainsboro, together with additional nine (9) copies of Brief and Appendix filed with Appellate Division.

Very truly yours,

Joseph L. Stonaker

JLS/blt  
Encls.

cc: Attorneys for Plaintiffs - Petitioners  
Attorneys for Defendants - Respondents

C.M.R.R.R.

CA001854B

RECEIVED

MAR 6 1978

JOSEPH L. STONAKER  
ATTORNEY AT LAW  
245 NASSAU STREET  
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ASSOCIATE  
QUIDA C. M. YOUNG

TELEPHONE: 921-2155

AREA CODE 609

P.O. Box 570  
Princeton, New Jersey, 08540

March 1, 1978

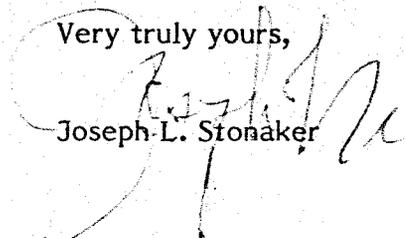
Ms. Elizabeth McLaughlin, Clerk  
Appellate Division  
Superior Court of New Jersey  
C.N. 006  
P.O. Box 1300  
Trenton, New Jersey, 08625

RE: Urban League of Greater New Brunswick v. Carteret, et al.

Dear Ms. McLaughlin:

The Township of Plainsboro joins in the arguments raised by the Township of East Brunswick in their letter of February 9, 1978 relying on the recent Appellate Division decision of Prime Feather and Down Company vs. Board of Adjustment of the Township of Marlboro, decided January 30, 1978.

Very truly yours,

  
Joseph L. Stonaker

JLS:nc

cc: All Attorneys of Record

RECEIVED

OCT 15 1977

JOSEPH L. STONAKER  
ATTORNEY AT LAW  
245 NASSAU STREET  
PRINCETON, NEW JERSEY 08540

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October 12, 1977

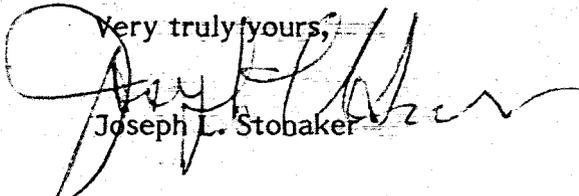
Ms. Florence R. Peskoe, Clerk  
Supreme Court of New Jersey  
State House Annex  
Trenton, New Jersey, 08625

RE: Urban League of Greater New Brunswick, et al.,  
v. The Mayor and Council of the Borough of Carteret, et al

Dear Ms. Peskoe:

Please find enclosed for filing in the above-captioned case the original and nine copies of Defendant, Township of Plainsboro's Statement In Opposition To Motion For Certification Of An Appeal Pending Unheard In the Appellate Division. My check is enclosed to cover cost.

An additional copy of the Motion and a stamped self-addressed envelope is provided so that you may return a stamped copy of the Statement to me.

Very truly yours,  
  
Joseph L. Stonaker

JLS:nc  
Enclosures

cc: Superior Court of New Jersey  
Appellate Division

RECEIVED

OCT 15 1977

SUPREME COURT OF NEW JERSEY

URBAN LEAGUE OF GREATER NEW	)	DOCKET NO.
BRUNSWICK, et al.,	)	TERM 1977
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	
	)	
THE MAYOR AND COUNCIL OF THE	)	
BOROUGH OF CARTERET, et al.,	)	Sat Below:
	)	
Defendants.	)	Hon. David-D. Furman, J.S.C.

---

STATEMENT IN OPPOSITION TO MOTION FOR CERTIFICATION OF AN APPEAL  
PENDING UNHEARD IN THE APPELLATE DIVISION

---

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

Attorney for Defendant, Township of  
Plainsboro

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey:

The Plaintiff organization and individuals move for certification of their appeal and cross-appeal pursuant to R. 2:12-2. As grounds for their motion, Plaintiffs recite the long procedural history of this matter which commenced with the trial before the Honorable David D. Furman, J.S.C., in February of 1976. The Trial Court's judgment was entered July 9, 1976. Timely appeals and cross-appeals were filed by both defendants and plaintiffs in the Appellate Division, the last briefs due from any party to the Appellate litigation having been filed on or before October 3, 1977. Plaintiffs conclude their argument for certification with two brief paragraphs of conclusory statements.

The grounds justifying certification of appeals pending unheard in the Appellate Division under R.2:12-2 are found in R. 2:12-4. Certification is possible only if:

" . . . the appeal presents a question of general public importance which has not but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; . . . the decision under review is in conflict with any other decision of the same or higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. . . ."

While conceding that the sheer number of co-defendant municipalities gives the case at bar a geographically broad impact, this case is of no greater public importance than many other cases in which the actions or inactions of municipalities are judicially questioned. Any case involving a number of municipal governments would, under Plaintiff's apparent definition, qualify as a case of "great public importance". Such a result cannot be the intent of R.2:12-4.

in its use of the phrase "general public importance".

Further, Plaintiffs argue that questions of law raised in the case at bar present issues of first impression in New Jersey. Yet this Court has just recently decided a number of cases dealing with exclusionary zoning. Surely those recent decisions ought to result in a reluctance by this Court to grant certification to similar zoning cases pending unheard in the Appellate Division. The application of this Court's newly promulgated case law to the facts presented in the present litigation is properly the business of the Appellate Division.

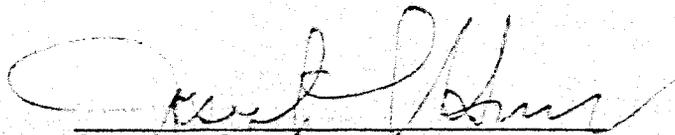
The Plaintiffs also state that the "unique nature" of the case at bar will cause the parties to seek this Court's review ultimately. This is a conclusion to which the Plaintiffs have leaped as if by faith. Given the sheer size of this case, it is very doubtful that the case as presently pending before the Appellate Division would appear on review before this Court in its present form. Judicial restraint should clearly temper the discretionary powers of this Court under R.2:12-2.

Finally, Plaintiffs have failed to show that they are in fact suffering any irreparable harm to their constitutional rights pending adjudication of this matter. Plaintiffs were unable to show irreparable harm at the time Plaintiffs opposed the Stay of Judgment ordered by the Appellate Division. They are still unable to show what grievous injury suffered by them justifies certification of the case prior to review by the Appellate Division.

#### CONCLUSION

For the reasons stated above, Defendant, Township of Plainsboro respectfully requests this Court to deny the Motion for Certification made by Plaintiffs pursuant to R.2:12-2.

Dated: October 12, 1977

  
Joseph L. Stonaker  
Attorney for Defendant, Township  
of Plainsboro.

## CERTIFICATION

I hereby certify that service of this Statement in Opposition to Motion For Certification of An Appeal Pending Unheard In the Appellate Division was made by mailing the original and nine copies to the Clerk of the Supreme Court of New Jersey, and two copies of the Statement to counsel for the Plaintiffs listed below:

Marilyn Morheuser  
45 Academy Street  
Newark, New Jersey, 07102

Baumgart & Ben-Asher  
134 Evergreen Place  
East Orange, New Jersey, 07018

Martin E. Sloane  
Roger C. Rosenthal  
Arthur D. Wolf  
National Committee Against Discrimination in Housing, Inc.  
1425 H Street, N.W.  
Washington, D.C., 20005

and two copies of the Statement to counsel for the Co-Defendants listed below:

Peter J. Selesky, Esq.  
Attorney for Defendant, Mayor and Council of the Borough of  
Carteret  
22 Kirkpatrick Street  
New Brunswick, New Jersey, 08903

William C. Moran, Esq.  
Attorney for Defendant, Township Committee of the Township  
of Cranbury  
Cranbury-South River Road  
Cranbury, New Jersey, 08512

Bertram E. Busch, Esq.  
Attorney for Defendant, Township of East Brunswick  
99 Bayard Street  
New Brunswick, New Jersey, 08903

Ronald A. Winter, Esq.  
Attorney for Township of Edison  
940 Amboy Avenue  
Edison, New Jersey, 08817

Richard F. Plechner, Esq.  
Attorney for Defendant, Borough of Helmetta  
351 Main Street  
Metuchen, New Jersey, 08840

Lawrence Lerner, Esq.  
Attorney for Defendant, Borough of Highland Park  
101 Bayard Street  
New Brunswick, New Jersey, 08901

Louis J. Alfonso, Esq.  
Attorney for Defendant, Township of Old Bridge  
325 highway 516  
Old Bridge, New Jersey, 08840

Martin A. Spritzer, Esq.  
Attorney for Defendant, Borough of Metuchen  
414 Main Street  
Metuchen, New Jersey, 08840

Edward J. Johnson, Jr., Esq.  
Attorney for Defendant, Borough of Middlesex  
One Greenbrook Road  
Middlesex, New Jersey, 08846

Charles V. Booream, Esq.  
Attorney for Defendant, Borough of Milltown  
199 North Main Street  
Milltown, New Jersey, 08850

Thomas R. Farino, Jr., Esq.  
Attorney for Defendant, Township of Monroe  
181 Gatzmer Avenue  
Jamesburg, New Jersey, 08831

Joseph H. Burns, Esq.  
Attorney for Defendant, Township of North Brunswick  
103 Bayard Street  
New Brunswick, New Jersey, 08901

Daniel Bernstein, Esq.  
Attorney for Defendant, Township of Piscataway  
P.O. Box 1148  
Plainfield, New Jersey, 07061

Alan J. Karcher, Esq.  
Attorney for Defendant, Borough of Sayreville  
61 Main Street  
Sayreville, New Jersey, 08872

John J. Vail, Esq.  
Attorney for Defendant, City of South Amboy  
121 North Broadway  
South Amboy, New Jersey, 08879

Barry C. Brechman, Esq.  
Attorney for Defendant, Township of South Brunswick  
3530 State Highway 27, Suite 207  
Kendall Park, New Jersey, 08824

Sanford E. Chernin, Esq.  
Attorney for Defendant, Borough of South Plainfield  
1848 Easton Avenue  
Somerset, New Jersey, 08873

Gary M. Schwartz, Esq.  
Attorney for Defendant, Mayor and Council of the  
Borough of South River  
65 Milltown Road  
East Brunswick, New Jersey, 08816

Guido J. Brigiani, Esq.  
Attorney for Defendants, Boroughs of Spotswood and  
Jamesburg  
One Oakland Road  
Jamesburg, New Jersey, 08831

Arthur W. Burgess, Esq.  
Attorney for Defendant, Township of Woodbridge  
167 Main Street  
Woodbridge, New Jersey, 07095



Joseph L. Stonaker  
Attorney for Defendant, Township  
Plainsboro

Dated: October 12, 1977

JOSEPH L. STONAKER  
245 NASSAU STREET  
PRINCETON, NEW JERSEY 08540

(609) 921-2155

ATTORNEY FOR

Defendant-Appellant, Plainsboro Township

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4681-75

URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, ET ALS.,

Plaintiffs-Respondents.

vs.

THE MAYOR AND COUNCIL OF THE  
BOROUGH OF CARTERET, ET ALS.,

Defendants-Appellants.

Civil Action

REQUEST FOR ORAL ARGUMENT

Request is hereby made for oral argument in the above entitled matter  
in accordance with Rule 2:11-1 (b).

Original Signed By  
JOSEPH L. STONAKER

Joseph L. Stonaker  
Attorney for Defendant-Appellant, Plainsboro  
Township

I certify that on the \_\_\_\_\_ day of September, 1977, copies of the within pleading were served on the following counsel:

Barry C. Brechman, Esquire  
William C. Moran, Esquire  
Bertram E. Busch, Esquire  
Thomas R. Farino, Esquire  
William J. O'Shaughnessy, Esquire  
Marilyn Morheuser, Esquire  
Daniel S. Bernstein, Esquire

I further certify that two copies of the within pleading were served on National Committee Against Discrimination in Housing, Inc, on September , 1977.

Original Signed By  
JOSEPH L. STONAKER

---

Joseph L. Stonaker

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

*Plainsboro*

March 18, 1977

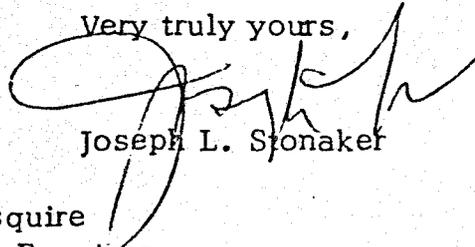
Elizabeth McLaughlin  
Clerk of the Appellate Division  
State House Annex  
Trenton, New Jersey, 08625

RE: Urban League of Greater New Brunswick, et als. v.  
The Mayor and Council of the Borough of Carteret, et als.  
Docket No. A-4681-75

Dear Ms. McLaughlin:

Enclosed please find original and five copies of Brief and Appendix for Defendant-Appellant, Township Committee of the Township of Plainsboro to be filed in your office. Also enclosed please find an original and five copies of Affidavit of Service in this regard.

Very truly yours,



Joseph L. Stonaker

JLS:nc

cc: Marilyn Morheuser, Esquire  
Baumgart & Ben-Asher, Esquires  
Martin E. Sloane, Roger C. Rosenthal and Arthur D. Wolf, Esquires  
William C. Moran, Esquire  
Bertram E. Busch, Esquire  
Thomas R. Farino, Jr., Esquire  
Daniel Bernstein, Esquire  
Alan J. Karcher, Esquire  
Barry C. Brechman, Esquire  
Sanford E. Chernin, Esquire

JOSEPH L. STONAKER  
245 NASSAU STREET  
PRINCETON, NEW JERSEY 08540

(609) 921-2155

ATTORNEY FOR Defendant-Appellant, Township Committee of the Township of

Plainsboro

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No. A-4681-75

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, ET ALS.,

Plaintiff-Respondent

vs.

THE MAYOR AND COUNCIL OF  
THE BOROUGH OF CARTERET, ET ALS.,

Defendant-Appellant.

)  
)  
)  
) Civil Action  
)  
) On Appeal From Judgment of  
) the Superior Court of New Jersey,  
) Law Division, Middlesex County  
)  
) AFFIDAVIT OF MAILING

STATE OF NEW JERSEY )  
) ss  
COUNTY OF MERCER )

JOSEPH L. STONAKER, of full age, being duly sworn according to law,  
on his oath, deposes and says:

On March 18, 1977, I mailed two copies of Brief and Appendix for

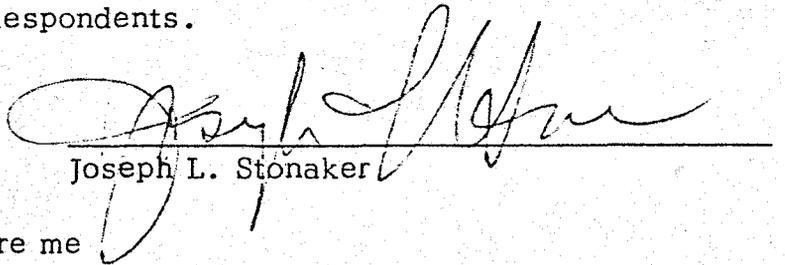
Defendant-Appellant, Township Committee of the Township of Plainsboro  
by certified mail, return receipt requested, to

MARILYN MORHEUSER  
45 Academy Street  
Newark, New Jersey, 07102

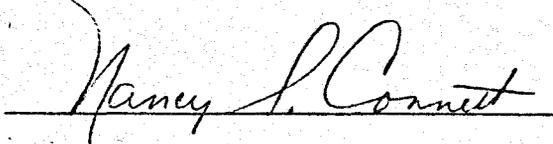
BAUMGART & BEN-ASHER  
134 Evergreen Place  
East Orange, New Jersey, 07018

MARTIN E. SLOANE  
ROGER C. ROSENTHAL  
ARTHUR D. WOLF  
National Committee Against Discrimination in Housing, Inc.  
1425 H Street, N.W.  
Washington, D.C., 20005

Attorneys for Plaintiffs-Respondents.

  
Joseph L. Stonaker

Sworn and subscribed to before me  
this 18th day of March, 1977.

  
Nancy S. Connett

NANCY S. CONNETT  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Dec. 22, 1980