

CA - South Amboj 21-Nov-74

Answer by the City of South Amboj.

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DAVID D. FURMAN, J.S.C.

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201-721-2430
Attorney for Defendant City of South Amboy

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

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, etc., et al.

Plaintiffs,

Civil Action

vs.

ANSWER

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

Defendants.

The defendant City of South Amboy, a Municipal Corpora-
tion of the State of New Jersey, located in the County of
Middlesex and State of New Jersey, in answer to the Complaint,
says:

I. AS TO PRELIMINARY STATEMENT

1. Answering paragraph 1, this defendant does not
have knowledge or information sufficient to form a belief con-
cerning the status or condition of the persons alluded to therein

and therefore it denies the allegations of said paragraph. This defendant particularly denies that it engages in any exclusionary zoning and land use policies and that it deprives any children of equal educational opportunities.

2. Paragraph 2 is denied.

3. This defendant denies that the plaintiffs are entitled to any relief under the New Jersey or federal constitutions, or under the Enabling Act permitting the zoning of lands and their uses in the State of New Jersey.

II. AS TO PLAINTIFFS

4. Answering paragraphs 4 through 6 and 8 through 11, this defendant does not have knowledge or information sufficient to form a belief concerning the allegations in said paragraphs and therefore it denies said allegations. It particularly denies that it engages in any exclusionary or discriminatory zoning or land use practices. Insofar as the allegations of paragraph 7 are concerned, this defendant says that 12 Eulner Street is in the Borough of Sayreville and not in the City of South Amboy. This defendant denies the remaining allegations of paragraph 7.

III. AS TO CLASS ACTION ALLEGATIONS

5. Paragraph 12 is denied.

6. Paragraph 13 is admitted.

IV. AS TO FACTUAL ALLEGATIONS

7. The allegations contained in the first and last sentences of paragraph 14 are admitted. This defendant does not have knowledge or information sufficient to form a belief

concerning the remaining allegations in said paragraph, which it therefore denies.

8. Paragraph 15 is admitted and further answering said paragraph, this defendant alleges that its zoning and land use practices may not legally or otherwise be controlled by any directive adopted by the Federal Office of Management and Budget.

9. Paragraph 16 is admitted.

10. Answering paragraph 17, this defendant admits that from 1960 to 1970 the population of Middlesex County increased. This defendant does not have knowledge or information sufficient to form a belief as to the remaining allegations in said paragraph, which it therefore denies.

11. This defendant does not have knowledge or information sufficient to form a belief concerning the allegations of paragraph 18 and therefore denies same.

12. Paragraph 19 is admitted.

13. To the extent that the allegations of paragraph 20 purport to be relative to the City of South Amboy, said allegations are denied.

14. This defendant does not have knowledge or information sufficient to form a belief concerning the allegations contained in paragraphs 21, 22, and 23, and therefore denies same.

15. Paragraph 24 is admitted and further answering said paragraph, it is alleged that the state of affairs described therein is characteristic generally of the entire nation.

16. Paragraph 25 is admitted.

17. This defendant does not have knowledge or information sufficient to form a belief concerning the allegations contained in paragraphs 26, 27, and 28, and therefore denies same.

18. Insofar as the allegations of paragraph 29 purport to be directed against the City of South Amboy, they are denied.

19. This defendant does not have knowledge or information sufficient to form a belief concerning the allegations contained in paragraphs 30 and 31.

20. Paragraphs 32, 33, 34, and 35 are denied.

V. AS TO APPENDIX

21. Answering those allegations contained in the Appendix annexed to the Complaint and directed to this defendant, it is admitted that the City of South Amboy prohibits mobile homes and allows apartments only by special permit, as provided, by the Statutory Zoning Enabling Act. This defendant further says that it has a Public Housing Authority which is adequate for the needs of the area. The City of South Amboy further says that its residentially zoned land is almost completely developed, with most of the homes on lots ranging in size from 25 feet front and 100 feet deep up through 50 feet front and 100 feet deep, with several lots slightly in excess thereof.

This defendant also says that the remaining vacant land within the city is owned by the railroads, which are in bankruptcy and under the protection of the U.S. District Court for the eastern district of Pennsylvania, which court has issued an injunction specifically prohibiting any person, natural or

artificial, from taking any action prejudicing the rights of the bankrupt railroads or their creditors.

The City of South Amboy further says that its public schools have been on double sessions in excess of ten years, and that it has no room for additional children in the public schools without further aggravating that problem.

FIRST SEPARATE DEFENSE

None of the plaintiffs, be they individuals, or the corporation, has the standing to bring this action as a taxpayer in the City of South Amboy or against the City of South Amboy.

SECOND SEPARATE DEFENSE

The plaintiffs do not legally and/or procedurally constitute a class with sufficient and valid standing to bring a class action.

THIRD SEPARATE DEFENSE

The defendants named in this suit do not constitute a sufficiently representative class so as to constitute procedurally or factually a class action.

FOURTH SEPARATE DEFENSE

On its face, the complaint seems to ask for a declaratory judgment, and the subject matter of this suit does not legally constitute a justiceable question within the purview of the Declaratory Judgment Act.

FIFTH SEPARATE DEFENSE

This suit asks the court to violate federal and state constitutions which safeguard the Doctrine of Separation of

Powers by asking the court to usurp legislative and executive powers.

SIXTH SEPARATE DEFENSE

The complaint fails to state a cause of action upon which relief can be granted.

SEVENTH SEPARATE DEFENSE

Indispensable parties to this suit have not been named or served, and for that reason the complaint should be dismissed.

EIGHTH SEPARATE DEFENSE

The defendant City of South Amboy shares nothing in common with the co-defendants either factually or legally. South Amboy's physical development and its zoning law is different and unique.

NINTH SEPARATE DEFENSE

The City of South Amboy's zoning law is completely valid and constitutional.

TENTH SEPARATE DEFENSE

The City of South Amboy's physical development is well within the standards of fairness and legality.

ELEVENTH SEPARATE DEFENSE

South Amboy very recently underwent a complete zoning study, adopted a Master Plan, and implemented the zoning ordinance to update viable and legal zoning requirements with the result that its diversity, density, and environmental obligations are fully met.

TWELFTH SEPARATE DEFENSE

The complaint is based partially upon recent studies conducted by various state agencies. From these various studies, the plaintiffs borrow liberally from those conclusions which they feel are supportive of their allegations and aims, but the complaint totally ignores many fundamental bases, findings, and hypotheses which militate against their position.

THIRTEENTH SEPARATE DEFENSE

The amalgam of defendants are not representative of a class, an area, or a group that shares even similarly the characteristics of social, economical, or geographical common denominators.

FOURTEENTH SEPARATE DEFENSE

Implicit and fundamental to the relief sought in the complaint is a massive injection of economic aid that is beyond the pale or contemplation of this type of litigation.

FIFTEENTH SEPARATE DEFENSE

None of the plaintiffs, jointly or severally, have applied for (and, of course, none have been refused) any relief from any aspect of the South Amboy Zoning Code. Prerequisite for any relief is the requirement that all administrative remedies be exhausted. This the plaintiffs failed to do. The suit is therefore premature as to South Amboy.

SIXTEENTH SEPARATE DEFENSE

The City of South Amboy does not have an excessive amount of land zoned industrial.

SEVENTEENTH SEPARATE DEFENSE

The various federal and state requirements which relate

to public housing lie beyond the legal scope of zoning and zoning boards.

EIGHTEENTH SEPARATE DEFENSE

This court has no jurisdiction to require this defendant to legislate changes in its zoning ordinance.

NINETEENTH SEPARATE DEFENSE

This defendant may not be compelled to legislate jointly or in conjunction with other municipalities in respect to zoning and land use practices.

TWENTIETH SEPARATE DEFENSE


This court lacks jurisdiction to compel this defendant to construct public housing accommodations or to seek public funds for that purpose.

TWENTY-FIRST SEPARATE DEFENSE

The complaint is defective in that neither it nor the subsequent pleadings of the plaintiffs reveal notice to the Attorney General of the State of New Jersey as required by the Rules of Court, since this suit is an attack on the constitutionality of N.J.S.A. 40:55-32, et seq.

WHEREFORE, the defendant City of South Amboy demands judgment dismissing the complaint, with prejudice, costs of court, attorney's fees, and interest as provided by the Rules of Court and the statutes and cases made and provided.

Dated: November 18, 1974



JOHN J. VAIL
Attorney for Defendant
City of South Amboy