CA - South Plainfield 10-June-75

CLC
Plaintiff's memo in opposition to Defendant South Plainfield's motion to Join the City of Plainfield as Necessary Party, plus cover letter.

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David H. Ben-Asher
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June 10, 1975

Honorable David D. Furman
Post Office Box 788
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick, et al. v. Mayor and Council, Borough of Carteret, et al. Docket No. C-4122-73

Dear Judge Furman:

Enclosed please find an original and two copies of Plaintiffs' Memorandum in Opposition to Defendant South Plainfield's Motion to Join the City of Plainfield As Necessary Party, to be heard on June 13, 1975.

Sincerely,

David H. Ben-Asher
Attorney for Plaintiffs

DAS:blt

Enclosure

cc: All defense counsel

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

'75 JUN 17 PM 1:18

FRANK SCHATZMAN
CLERK

FILED

JUN 13 1975

DAVID D. FURMAN, J.S.C.

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.

Plaintiffs,

v.

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

Defendants.

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MEMORANDUM IN OPPOSITION

TO DEFENDANT SOUTH PLAINFIELD'S MOTION

TO JOIN THE CITY OF PLAINFIELD

AS NECESSARY PARTY

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## INTRODUCTION

On May 12, 1975, the Borough of South Plainfield moved to join the City of Plainfield as a necessary party, either as a direct defendant or by way of a third party complaint. Plaintiffs oppose this motion because the City of Plainfield is simply not needed for a just adjudication of the issues addressed in this case. For purposes of this memorandum it is helpful to review some of the early procedural history of this litigation.

On July 23, 1974, one organizational and seven individual plaintiffs, representing low-and moderate-income persons, brought suit against 23 of the 25 municipalities in Middlesex County. The complaint alleges that the defendants have, through various land use practices, effectively excluded low-and moderate-income people, both white and nonwhite. Plaintiffs seek to enjoin the municipalities from continuing to engage in the lawful conduct, and to require them to design and implement plans which would correct the effects of such unlawful conduct.

The present motion to join another party is not the first time in this litigation such motions have been made. In October, 1974, many of the defendants moved to join New Brunswick, Perth Amboy, Middlesex County, municipalities in the vicinity of the defendants, and the State of New Jersey as parties needed for a just adjudication. These motions were denied by the Court on November 1, 1974. In January, 1974, several defendants again moved to join Middlesex County and the State of New Jersey. This was denied by the Court on January 17, 1975. In March, 1974, this Court, pursuant to motions made by several defendants, joined New Brunswick and Perth Amboy as third parties defendant. Now, defendant South Plainfield moves to join the City of Plainfield as a party needed for a just adjudication.

## ARGUMENT

Although the motion does not specify, it appears that defendant South Plainfield is invoking that section of R. 4:28-1 that says in pertinent part that a person shall be joined as a party if "in his absence complete relief cannot be accorded among those already parties." R. 4:28-1

This motion is similar to that brought by defendants in October 1974 to join all other towns in the immediate region of defendants. This Court then rejected defendants' contentions that parties outside the boundaries of the county were necessary for complete relief. In the present matter, one defendant has singled out one neighboring community in immediate proximity to itself, but in Union County. After pointing to common boundaries and common traffic-ways between Plainfield and South Plainfield, defendant's counsel asserts that South Plainfield is more in the sphere of influence of Plainfield than that of New Brunswick and Perth Amboy.* Movant has not raised anything not already considered and rejected by this Court in earlier argument. Previously, plaintiffs stressed that the zoning ordinances and land use practices of the other municipalities were not under challenge; so it is with Plainfield. Plaintiffs also noted that for the purposes of effecting complete relief against the 23 defendants, municipalities in other counties were not needed; so it is with Plainfield.

The only apparently new argument advanced by defendant South Plainfield is that the discussion of "region" in Southern Burlington County NAACP v. Township of Mount Laurel, A-11, Sup.Ct. of N.J., (Mar 24, 1975), indicates that all municipalities within the region should be parties to the litigation. Mt. Laurel did hold that a municipality must provide an opportunity for low and moderate income housing "at least to the extent of the municipality's fair share of the present and prospective regional need therefore." Id at 26 (emphasis added). While this is a recognition that a municipality must look beyond its boundaries and the boundaries of its county to determine its housing responsibilities, the Court did not hold

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* Chernin affidavit, para. 7

that surrounding municipalities need be joined to effect relief. Indeed, the Supreme Court did not require the joinder of municipalities surrounding Mt. Laurel in that case.

The thrust of the Court's discussion about region was for another purpose entirely. Whenever "region" was mentioned, it was coupled with defining and calculating the demand for housing in the individual municipality or municipalities whose zoning is challenged.

> 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. (This is not to say that a developing municipality can ignore a demand for housing within its boundaries on the part of people who commute to work in another state.) Id. at 49.

The importance of regional implications of zoning has been evident since Duffcon Concrete Products Inc. v. Borough of Cresskill, 1 N.J. 509 (1949). It has not meant that challenge to the zoning provisions of one municipality necessitates the joining of all other municipalities within a set radius of miles or parties. This Court recognized this quite clearly in Oakwood at Madison, Inc. v. Township of Madison, 128 N.J. Super 438 (1974) in discussing municipal responsibilities.

> The region, <u>the housing needs of which must be reasonably provided for</u> by Madison Township, is in the view of this Court, not coextensive with Middlesex County. Rather, it is the area from which, in view of available employment and transportation, the population of the township would be drawn, absent invalidly exclusionary zoning (emphasis added). <u>Id</u>. 441.

Plaintiffs have never alleged that the "region" which must be considered in calculating defendants' housing responsibilities is co-extensive with Middlesex County. Rather, the county is a common housing and labor market area in the eight county Northeastern New Jersey region. Complaint paragraphs 17 and 18 make clear that this is the area from which population would be drawn, absent exclusionary practices.

As so defined, the City of Plainfield is already within the region, and its impact upon defendants can be readily computed. That the growth of South Plainfield is directly affected by the waxing and waning of Plainfield (Chernin affidavit, para. 6) is patent. The <u>legal</u> significance is that such fact must be included in calculating the fair share of South Plainfield and other defendants, not that one is a satellite of the other and must be included in this litigation as a defendant. The zoning and other land use practices of Mt. Laurel were challenged and found wanting; the surrounding region is defined solely to provide a basis for fair share calculation. The zoning and other land use practices of twenty-three municipalities are challenged in the instant case; the Northeastern New Jersey region will be used to help compute fair share. It is not appropriate to bring in Plainfield or any other municipality outside the county, by specific designation, because its presence as a party is unnecessary. Such a designation would merely open the door to an ever increasing spiral of regions and sub-regions, diluting plaintiffs claim against the named defendants.

## CONCLUSION

Plaintiffs therefore respectively request that the Court deny defendant's motion to join the City of Plainfield.

Respectfully submitted,

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Dated: June 10, 1975