

UL v. Carteret (S. Plainfield

11/10/75

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+ cover letter ~~1/10/75~~

P.i. 984
pgs ~~10~~ 6

CA 002127D

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NOVEMBER 10, 1975

HON. DAVID D. FURMAN, J.S.C.
COURT HOUSE
NEW BRUNSWICK, NEW JERSEY

RE: URBAN LEAGUE OF GREATER NEW BRUNSWICK,
ET AL V. BOROUGH OF CARTERET, ET AL
DOCKET NO. C 4122-73

DEAR JUDGE FURMAN:

ENCLOSED HERewith PLEASE FIND ORIGINAL AND THREE
COPIES OF PRETRIAL MEMORANDUM ON BEHALF OF THE DEFENDANT,
BOROUGH OF SOUTH PLAINFIELD.

RESPECTFULLY YOURS,

SANFORD E. CHERNIN

SEC:WMK

ENCLS.

CC: ALL ATTORNEYS OF RECORD

CA002127D

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ATTORNEY FOR DEFENDANT, MAYOR AND COUNCIL OF THE BOROUGH OF SOUTH
PLAINFIELD

Plaintiff
URBAN LEAGUE OF GREATER NEW BRUNSWICK,
ET ALS,

vs.

Defendant

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

SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C 4122-73

CIVIL ACTION

PRETRIAL MEMORANDUM OF
DEFENDANT, BOROUGH OF
SOUTH PLAINFIELD

- (1) CLASS ACTION BROUGHT TO DECLARE ZONING ORDINANCE OF THE BOROUGH OF SOUTH PLAINFIELD AND 22 OTHER MUNICIPALITIES IN MIDDLESEX COUNTY TO BE INVALID AND UNCONSTITUTIONAL. THE LEAGUE OF WOMEN VOTERS HAS JOINED AS AMICUS CURIAE.
- (2) NONE
- (3-4) ANNEXED HERETO.
- (5) NONE
- (6) NONE
- (7) VALIDITY OF ZONING ORDINANCES OF THE BOROUGH OF SOUTH PLAINFIELD;
EFFECTIVE PREJUDICE TO LOW AND MIDDLE INCOME FAMILIES RESULTING FROM RESTRICTIVE APPLICATION OF ZONING ORDINANCES;
ALLEGED UNCONSTITUTIONALITY OF ZONING ORDINANCE;
LEGALITY AND CONSTITUTIONALITY UNDER BOTH THE FEDERAL AND STATE CONSTITUTIONS AS IT PERTAINS TO THE VARIOUS FORMS OF RELIEF DEMANDED AND REQUESTED BY PLAINTIFFS;

VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CLAUSES OF BOTH THE NEW JERSEY CONSTITUTION AND THE UNITED STATES CONSTITUTION;
APPLICABILITY OF DECISION OF "SOUTHERN BURLINGTON COUNTY N.A.A.C.P., ET ALS V. ETHEL LAWRENCE, ET ALS V. TOWNSHIP OF MOUNT LAUREL" AS TO "FAIR SHARE" AND REGIONAL APPLICATION OF DECISION;
ILLEGALITY, CONSTITUTIONALITY AND JURISDICTION OF THIS COURT TO INSTRUCT A MUNICIPAL BODY IN THE MANNER AND FORM OF ITS FISCAL EXPENDITURES;
VALIDITY OF STANDING AND STATUS OF PLAINTIFF AND MEMBERS OF PLAINTIFF'S GROUP TO SUE EITHER INDIVIDUALLY OR AS A CLASS;
STATUS OF LEAGUE OF WOMEN VOTERS TO ACT IN CAPACITY OF AMICUS CURIAE;
COURT SHOULD ISSUE INSTRUCTIONS TO AMICUS CURIAE THAT BRIEFING SHOULD EXPLORE THE ISSUES AND SHOULD NOT ADVANCE THE POSITION OF ANY OF THE PARTIES TO THIS LITIGATION.

- (8) NONE
- (9) IT IS REQUESTED THAT THE VARIOUS MUNICIPAL DOCUMENTS SUCH AS THE ZONING ORDINANCE AND MASTER PLAN TOGETHER WITH APPROPRIATE MAPS BE ADMITTED INTO EVIDENCE WITHOUT NEED OF FORMAL PROOF.
- (10) UNLIMITED.
- (11) AS DIRECTED BY THE COURT.
- (12) AS DIRECTED BY THE COURT.
- (13) NONE
- (14) SANFORD E. CHERNIN
- (15) 10 WEEKS.
- (16) TO BE DETERMINED BY THE COURT.
- (17)
- (18) PLAINTIFF HAS NOT SUBMITTED ANY EXPERT WITNESSES AND THE RIGHT TO DEPOSE SUCH EXPERTS SHOULD BE RESERVED TO SUCH TIME, PRIOR TO TRIAL, WHEN THEY ARE DISCLOSED TOGETHER WITH COPIES OF SUCH EXPERTS' REPORTS. THERE ARE ADDITIONALLY CERTAIN

ANSWERS TO INTERROGATORIES AND REQUESTS FOR ADMISSIONS
WHICH SHOULD BE COMPLETED SHORTLY.

(19) NONE

DATED: NOVEMBER 10, 1975

/s/ SANFORD E. CHERNIN
SANFORD E. CHERNIN
ATTORNEY FOR BOROUGH OF
SOUTH PLAINFIELD

(3-4) FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT, BOROUGH OF SOUTH PLAINFIELD

THE BOROUGH OF SOUTH PLAINFIELD IS ONE OF THE SMALLER MUNICIPALITIES IN MIDDLESEX COUNTY WHOSE POPULATION IS LESS THAN 25,000. THE GREATEST PORTION OF THE RESIDENTIAL AREA HAS ALREADY BEEN BUILT UPON AND THE REMAINING RESIDENTIAL AREA IS ZONED INTO SMALL SIZE LOTS. THE ENTIRE CHARACTER OF THE BOROUGH IS ADAPTED TO LOW AND MIDDLE INCOME PEOPLE. THERE ARE NO ESTATES, FARMS OR LARGE LAND HOLDINGS AVAILABLE IN THE MUNICIPALITY. A GREAT PORTION OF THE MUNICIPALITY IS TRAVERSED BY THE RAILROAD WHICH OWNS AN ENORMOUS AMOUNT OF REAL ESTATE ADJOINING AND ADJACENT THERETO. THIS REAL ESTATE PHYSICALLY AND FINANCIALLY AFFECTS THE CHARACTER OF THE MUNICIPALITY AND, BECAUSE THE RAILROAD IS PRESENTLY BANKRUPT AND IN THE HANDS OF RECEIVERS, NOTHING MUCH CAN BE DONE BY WAY OF COLLECTING INCOME OR TO COMPEL THE RAILROAD TO IMPROVE ITS PROPERTY IN ORDER TO EFFECT AN IMPROVEMENT IN THE VARIOUS LANDS WHICH MIGHT OTHERWISE BE AVAILABLE FOR USE. THE MERE EXISTENCE OF THE RAILROAD HAS TENDED TO CONVERT LAND OTHERWISE AVAILABLE FOR RESIDENTIAL USE INTO SLUM AREA, GARBAGE AREA, SWAMP AREA, FLOOD AREA, COMMERCIAL OR INDUSTRIAL AREA. FURTHER, THE BOROUGH OF SOUTH PLAINFIELD SEEMS TO BE A TIDAL BASIN FOR THE GREEN BROOK, THE BOUND BROOK AND VARIOUS BRANCHES OF OTHER STREAMS. THE ENTIRE COMMUNITY IS WELL AWARE OF THE FACT THAT SOUTH PLAINFIELD BECOMES

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FLOODED REGULARLY DURING EVERY SEASON AND MUCH OF THE MUNICIPALITY BECOMES INUNDATED AND IS NOT AVAILABLE FOR RESIDENTIAL USE. THIS CONDITION IS PRESENTLY UNDER STUDY. BECAUSE OF THE FLOODING CHARACTERISTICS OF THE VAST AREAS OF THE MUNICIPALITY, NO ONE IS PERMITTED TO BUILD HOMES OR OTHER STRUCTURES WHICH WILL HAVE AN IMPACT UPON THE ALREADY WET CHARACTER OF THE BOROUGH.

THE ONLY AREA AVAILABLE AND SUITABLE FOR PUBLIC USE LIES TOWARD THE SOUTH END OF THE BOROUGH WHICH IS BOUNDED BY INTERSTATE HIGHWAY 287 AND HEAVILY TRAFFICKED ARTERIES WITH TOTAL OCCUPATION BY COMMERCIAL AND INDUSTRIAL FACILITIES. THE REMAINING PHYSICAL ASPECTS OF THE LAND IN THE SOUTHSIDE OF TOWN CAPABLE AND SUITABLE FOR RESIDENTIAL USE HAVE BEEN ZONED INTO SMALL LOTS. THE MUNICIPALITY FEELS THAT THERE IS NO NEED NOR DEMAND FOR A FURTHER LOT SIZE REDUCTION AND THAT TO COMPEL SUCH INCREASE IN PER SQUARE FOOT OCCUPANCY WOULD CAUSE A PHYSICAL, ENVIRONMENTAL AND HEALTH HAZARD AND SHOULD BE AVOIDED AT ALL COSTS. THE MUNICIPALITY FEELS THAT THERE ARE REASONABLE OPPORTUNITIES FOR PEOPLE OF ALL INCOME LEVELS TO ACQUIRE HOUSING IN THE MUNICIPALITIES EXCEPT ON A "GIVE AWAY" BASIS. THE MUNICIPALITY DENIES THAT THE ORDINANCE IS OVERLY RESTRICTED OR OPERATES IN A PREJUDICIAL FASHION.