

CA - South Plainfield 21-May-76

Outline of Objections to the
various forms of relief requested
by the Plaintiffs.

Page = ~~10~~ 5

CA002146A

S. Plainfield

CHERNIN AND FREEMAN
A PROFESSIONAL CORPORATION
Counsellors at Law

SANFORD E. CHERNIN
HOWARD FREEMAN

FRANKLIN STATE BANK BUILDING
FRANKLIN MALL OFFICE
1848 EASTON AVENUE
SOMERSET, NEW JERSEY 08873
(201) 469-5576

RECEIVED

MAY 21 1976

MAY 18, 1976

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

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

DEAR JUDGE FURMAN:

I AM IN RECEIPT OF A NOTICE OF MOTION RETURNABLE WITH NO DATE SUBMITTED BY ATTORNEY FOR PLAINTIFFS AND WOULD IMMEDIATELY LIKE TO ADVISE THE COURT THAT I AM IN TOTAL OPPOSITION TO THE REQUESTS CONTAINED IN THE MOTION AND TO THE FORM OF THE JUDGMENT SUBMITTED IN CONJUNCTION THEREWITH. THE FOLLOWING IS AN OUTLINE OF MY OBJECTIONS TO THE VARIOUS FORMS OF RELIEF REQUESTED.

I.

THIS REQUEST IS FAR TOO BROAD AND OVERALL EMBRACING. IT FAR EXCEEDS THE JUDGMENT OF THIS COURT DIRECTED TO ANY OF THE DEFENDANTS AND SPECIFICALLY TO THE BOROUGH OF SOUTH PLAINFIELD. IN THE INSTANCE OF THE BOROUGH OF SOUTH PLAINFIELD'S CASE, THE COURT DECLARED THAT PORTION OF THE ORDINANCE UNCONSTITUTIONAL TO THE EXTENT THAT IT PRECLUDED A SUFFICIENT NUMBER OF LOW AND MODERATE INCOME PEOPLE FROM HAVING AVAILABLE ACCESS TO VACANT LAND. THE COURT ENJOINED THE BOROUGH TO MAKE PROVISIONS TO HAVE SUCH AMOUNT OF LAND AVAILABLE FOR USE. THE REMAINDER OF THE ORDINANCE REMAINS INTACT. FURTHER, TO INCLUDE THE REFERENCE TO THE INTENT AND PURPOSE OF FUTURE REZONING IS FAR TOO VAGUE AND SUBJECTIVE AND CANNOT BE PREDETERMINED PRIOR TO THE ENACTMENT OF ANY ZONING AMENDMENTS. TO GO ALONG WITH THE SUGGESTION MADE BY ATTORNEY FOR PLAINTIFFS WOULD BE TO ASSUME THAT THE COURT HAS DECIDED THAT THE SPECIFIC PURPOSE OF THE EXISTING

-2-
MAY 18, 1976

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

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

ORDINANCE AS WELL AS FUTURE AMENDMENTS WOULD BE DESIGNED TO SPECIFICALLY EXCLUDE LOW AND MODERATE INCOME PERSONS. COUNSEL IMPROPERLY REQUESTS AN "IN FUTURO" DETERMINATION.

II.

AGAIN, THE REQUESTED PORTION OF THE JUDGMENT IS FAR TOO VAGUE AND BROAD. THE VARIOUS JUDGMENTS TO BE ENTERED SHOULD BE SPECIFIC AS TO EACH DEFENDANT MUNICIPALITY AND SHOULD DELINEATE THOSE PARTICULAR ASPECTS OF THE ZONING ORDINANCE DEEMED INVALID BY THE COURT'S JUDGMENT. THEY WILL OF NECESSITY VARY WITH EACH AND EVERY MUNICIPALITY. THE WAY THIS PROPOSED JUDGMENT IS DRAFTED WOULD LEAVE TOO MUCH OPEN TO DISPUTE AND INTERPRETATION.

III.

1. I OBJECT TO THE ABSOLUTE TIME PERIOD OF 90 DAYS FOR THE TOTAL COMPLETION AND ACCOMMODATION OF THE PROVISION FOR THE INCLUSION OF 1,749 UNITS FOR NEW LOW AND MODERATE INCOME HOUSING. I AM SURE THAT THE COURT IS AWARE OF THE PRACTICAL DIFFICULTIES IN OBTAINING THE SERVICES OF A PLANNER (SOUTH PLAINFIELD HAS NO FULL TIME PLANNER) WHOSE OPINION AND GUIDANCE MUST BE OBTAINED IN THE FIRST INSTANCE. THEREAFTER, THE ORDINANCE MUST BE REVIEWED AND REVISED IN ACCORDANCE WITH STATUTORY LAW AND ADOPTED. THE TIME TABLE OF 90 DAYS WOULD SEEM SOMEWHAT SHORT. I THINK THAT THE VARIOUS MUNICIPALITIES SHOULD HAVE LEAVE TO APPLY FOR AN EXTENSION OF THIS PERIOD IF THEY CAN EXHIBIT TO THE COURT THAT THEY WILL MAKE BONA FIDE ATTEMPTS TO COMPLY WITH THE COURT'S DIRECTIVE. FURTHER, THE 90 DAY PROVISION APPLIES ONLY TO THAT PORTION OF THE ALLOCATION REQUIRED TO CORRECT THE COUNTY IMBALANCE. TO REZONE IN A WAY TO ACCOMMODATE THE TOTAL ALLOCATION BY 1985 WILL REQUIRE A GREAT DEAL MORE TIME THAN 90 DAYS. IT HAS OFTTIMES BEEN SAID THAT THE DIFFICULT CAN BE ACCOMPLISHED PROMPTLY BUT THE IMPOSSIBLE MAY TAKE A LITTLE LONGER.

2. THIS PARAGRAPH SHOULD INCORPORATE THE SPECIFIC TIME TABLE INDICATED IN THE COURT'S OPINION. DEPENDING ON THE PARTICULAR MUNICIPALITY INVOLVED, THE TIME TABLE FOR ULTIMATE REZONING TO ACCOMMODATE THE ALLOCATION FOR 1985 WILL VARY. THIS PARAGRAPH IS TOO BROAD IN SCOPE AND INDEFINITE.

-3-
MAY 18, 1976

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

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

3. THERE WAS NO SPECIFIC INJUNCTION IN THE COURT'S JUDGMENT AS TO THE TYPE OR KIND OF ACCOMMODATION WHICH SHALL BE MADE BY WAY OF ZONING AMENDMENTS. SO LONG AS THE MUNICIPALITY DEVELOPS A NEW PLAN WHICH WILL REASONABLY ACCOMMODATE ITS VARIOUS ALLOCATIONS AS TO LOW AND MODERATE INCOME PEOPLE, THEY WOULD BE IN FULL CONFORMITY AND COMPLIANCE WITH THE COURT'S DETERMINATION. THE WAY THIS PORTION OF THE JUDGMENT IS DRAFTED WOULD HAVE THE EFFECT OF COMPELLING EACH MUNICIPALITY TO INCLUDE EACH AND EVERY ITEM SUGGESTED AS PART OF THE REVISION. THIS IS AN INCORRECT INTERPRETATION OF THE COURT'S OPINION.

C. (1) THE PROPOSED FORM OF JUDGMENT IS WHOLLY IN CONFLICT WITH THE COURT'S OPINION. WHILE IT IS TRUE THAT THE COURT DIRECTED REHABILITATION OF SUBSTANDARD UNITS, IT IN NO WAY REQUIRED THE MUNICIPALITIES TO AFFIRMATIVELY PARTICIPATE. QUITE OBVIOUSLY, THESE UNITS ARE PRIVATELY OWNED. PUBLIC FUNDS CANNOT BE UTILIZED FOR SUCH PURPOSE. THE MOST THAT THE MUNICIPALITY CAN DO WOULD BE TO ENFORCE VARIOUS STATE AND LOCAL LAWS TO SEE TO IT THAT THE OWNERS OF SUCH UNITS COMPLY WITH EXISTING LAWS. FURTHER, THE REFERENCE TO THE 1976 APPLICATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANTS SUBMITTED BY OTHER MUNICIPALITIES SHOULD IN NO WAY BE BINDING UPON SOUTH PLAINFIELD. THE POWERS OF ANY MUNICIPALITY ARE LIMITED AS TO WHAT THEY CAN OR CANNOT DO TO CAUSE THE RESURRECTION OF THE VARIOUS SUBSTANDARD UNITS.

(2) THERE IS NO WAY THAT ANY MUNICIPALITY CAN ESTABLISH A TIME TABLE FOR ASSURING THE RESURRECTION OF DELAPIDATED UNITS. THEY HAVE NO POWER TO DO SO IN THE FIRST INSTANCE AND CAN ONLY EXERT ITS POLICE POWER IN AN ATTEMPT TO GET THE OWNERS TO DO WHAT THE LAW REQUIRES.

(3) THERE IS NO INJUNCTIVE INDICATION IN THE COURT'S JUDGMENT THAT ANY OF THE MUNICIPALITIES ARE OBLIGED TO PARTICIPATE IN STATE OR FEDERAL SUBSIDY PROGRAMS. THE ATTEMPT BY PLAINTIFFS TO DRAFT THE ORDER FOR JUDGMENT IN THIS FORM IS A TOTAL DISTORTION. IT WOULD APPEAR THAT THEY DESIRE TO DO IN SECRETARIAL FORM WHAT THEY COULD NOT DO IN THE COURTROOM. THE COURT SPECIFICALLY REFUSED TO ORDER ANY OF THE MUNICIPALITIES TO EXPEND PUBLIC MONIES FOR ANY PRIVATE PURPOSE. IT IS QUITE OBVIOUS THAT ANY FEDERAL OR STATE PROGRAM REQUIRING DOLLAR FOR DOLLAR PARTICIPATION BY THE MUNICIPALITY IS NOT WITHIN THE SCOPE OF THE COURT'S OPINION. THIS PROVISION IN THE PROPOSED DRAFT OF THE JUDGMENT SHOULD BE DELETED ENTIRELY.

-4-

MAY 18, 1976

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

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

IV.

A. THIS PROVISIO IS SO FAR BEYOND THE COURT'S OPINION THAT COMMENT SEEMS SOMEWHAT UNNECESSARY. HOWEVER, WHEN THE ATTORNEY FOR PLAINTIFFS MAKES AN ATTEMPT TO FURTHER ENCUMBER THE COURT'S OPINION, COMMENT BECOMES NECESSARY. THE MANNER AND METHOD BY WHICH THE VARIOUS MUNICIPALITIES SHALL IMPLEMENT THE COURT'S OPINION HAS BEEN LEFT WITHIN ITS REASONABLE DISCRETION. IT IS NOT THE BUSINESS OF PLAINTIFFS TO OBTAIN THE VARIOUS SPECIFIC INFORMATION REQUESTED AS TO THOSE NUMBER OF EMPLOYEES AND/OR OFFICIALS OF ANY MUNICIPALITY WHO WILL OR SHALL FROM TIME TO TIME BE WORKING UPON THE PROJECT. THE SUGGESTION SEEMS TO BE THAT THE PLAINTIFFS ACT AS A SUPERVISING ARM OF THE COURT. THIS IS UTTERLY RIDICULOUS. THE COURT HAS RETAINED JURISDICTION AND THE PLAINTIFFS WILL HAVE AVAILABLE ACCESS TO THE COURT UNDER PROPER CIRCUMSTANCES. THE OBLIGATION OF EACH MUNICIPALITY IS TO THE COURT AND NOT TO THE PLAINTIFFS. .

B. THE SUGGESTION OF 15 DAYS FOR THE SUBMISSION OF ANY REPORTS ARE NOWHERE REFLECTED IN THE COURT'S OPINION. I HAVE THE IMPRESSION THAT PLAINTIFFS' ATTORNEYS AND ALL OTHER ATTORNEYS ARE READING TWO DIFFERENT OPINIONS. ONCE MORE, THE VARIOUS MUNICIPAL OBLIGATIONS FLOW TO THE COURT AND NOT TO THE PLAINTIFFS.

C. SEE REFERENCE TO PART B.

D. SEE REFERENCE TO PART B.

V.

THE SUGGESTIONS OF COSTS IS NOT AN APPROPRIATE AWARD TO BE MADE AT THIS TIME NOR AT ANY FUTURE TIME UNLESS THE FUTURE CONDUCT OF ANY MUNICIPALITY BE DEEMED IN VIOLATION OF THE COURT'S JUDGMENT. APPARENTLY, PLAINTIFF SEEKS TO PUT BACK IN TOTO WHAT HE WAS NOT ABLE TO OBTAIN DURING THE COURSE OF THE TRIAL. THE COURT HAS ALREADY RULED ADVERSELY TO THE PLAINTIFFS AS TO THE PRIMARY ISSUE OF COSTS AND THIS AVENUE SHOULD BE FORECLOSED ONCE AND FOR ALL.

-5-

MAY 18, 1976

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

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

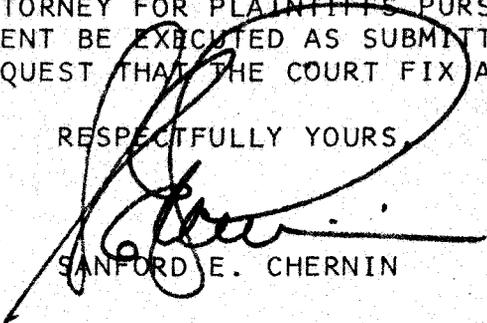
VI.

THIS DOES NOT APPLY TO THE BOROUGH OF SOUTH PLAIN-
FIELD AND NO COMMENT WILL BE MADE.

I HAVE TAKEN THIS OPPORTUNITY TO EXPRESS MY VIEWS
IN THIS FASHION. I EXPRESSLY OPPOSE THE MOTION AND FORM OF
JUDGMENT AS SUBMITTED.

IF THE ATTORNEY FOR PLAINTIFFS PURSUES HIS REQUEST
THAT THE FORM OF JUDGMENT BE EXECUTED AS SUBMITTED, I WOULD
OPPOSE THE SAME AND REQUEST THAT THE COURT FIX A DATE FOR ARGUMENT.

RESPECTFULLY YOURS,



SANFORD E. CHERNIN

SEC:WMK

CC: ALL ATTORNEYS OF RECORD