

CA - South River

3/1/76

transcript of proceedings

Pg 7

CA002161S

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY

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URBAN LEAGUE, et al. :

Plaintiffs.

-vs- :

CARTERET, et al, Excerpt Re South River :

Defendants. :

. :

New Brunswick, New Jersey
March 1, 1976

B E F O R E:

HONORABLE DAVID D. FURMAN, JSC

A P P E A R A N C E S:

DANIEL SEARING, ESQ.,
Attorney for the Plaintiffs.

ROBERT RAFANO, ESQ.,
Attorney for the Borough of South River.

Daye F. Fenton,
Official Court Reporter.

1 MR. RAFANO: At this point I'd like to
2 make a motion to the Court to exclude the Borough
3 of South River from any further proceedings in that
4 I think it's been demonstrated to the Court, your Honor,
5 that it has sufficiently met the low and moderate
6 income housing needs of the region, the County and
7 that the amount of developable land is of such
8 an insignificant amount that it falls within the
9 category of a nondevelopable community and should
10 be permitted to withdraw from the case, at this time.

11 THE COURT: Let me say, Mr. Rafano, that
12 the view of the Court has been that even though there
13 is no appreciable vacant land area within the
14 municipality that where there are restrictions on
15 multi-family housing, recognizing that some multi-
16 family housing development probably will continue,
17 restrictions that are themselves patently invalid,
18 such as bedroom restrictions or exclusionary in
19 some significant impact other than bedroom restrictions,
20 I have granted dismissals in favor of municipalities,
21 subject to their making revisions of those provisions
22 of the ordinance.

23 Now, with respect to South River, I would
24 suppose that if the provisions as to multi-family housing
25 are amended to make multi-family housing, as of right

1 rather than special exception, and the single family
2 in the business, in the commercial district, thus
3 eliminating the finding that the unit is in effect
4 self sustaining or advantageous to the municipality,
5 eliminating the fifteen foot percent ceiling which
6 has been kind of a dead letter, anyway, for a
7 number of years, eliminating the room restrictions
8 which are parallel to the challengable patently invalid
9 bedroom restrictions, reducing the minimum lot size from
10 four acres to say two acres and permitting housing
11 units on three stories, I would think that, if
12 those restrictions were made, the remaining, the
13 only remaining challengable feature of the / ordinance
14 be of the 92.5 acres now vacant, available for
15 single family. There is no provision anywhere for
16 the small lot, the modest lot and floor area, for
17 instance, 75, 100 square foot, 75 foot front, 850,
18 900 floor area. I would, I would think myself that
19 I would look favorably upon a zoning ordinance of
20 South River which made the amendments or the corrections
21 of multi-family provisions and also provided
22 significant acreage, perhaps 30, 35, 40 acres on which
23 there could be more modest single family, then in
24 that event the, with those revisions South River
25 would be entitled to a dismissal.

1 MR. RAFANO: Your Honor, I can represent
2 to the Court that I will make every effort and present
3 this situation to the governing body of South River
4 as soon as possible and would make these recommendations
5 to the governing body for any corrections and can
6 report the same back to the Court and if satisfactory
7 I will assume they would even go so far as perhaps
8 even before the case is over, to implement these
9 with zoning changes.

10 THE COURT: Allright, then, I am saying now
11 as a kind of a declaratory ruling that the, if
12 the Borough does amend, you might say remedy the,
13 amend the ordinance, remedy the several objections
14 that I've referred to, proximately as I have suggested,
15 there will be
16 that/a dismissal in favor of the Borough.

17 So, I can only say to you, as I said to Mr. Vail
18 and Mr. Lerner and Mr. Spritzer, that it would be
19 a decision then on your part to the extent to which
20 you continue to participate in this trial.

21 MR. RAFANO: Yes, your Honor.

22 THE COURT: I have in effect ruled without
23 hearing from Mr. Searing and you may put anything
24 on the record you wish, at this time.

25 MR. SEARING: We would reserve the right,
your Honor, to object to the declaratory ruling,

1 conditional dismissal pending the changes recommended
2 by the Court. At this point, your Honor, is aware of
3 our concern regarding other affirmative actions
4 which Plaintiffs feel are desirable and I don't
5 want to lose that possibility by agreeing at this
6 time to something that the Borough has yet to do,
7 your Honor. That's all.

8 THE COURT: Let me ask you this, Mr. Searing,
9 of course we haven't come into the stage of the
10 trial where we're dealing specifically with remedy
11 but are you contemplating that one of the remedies
12 that you will seek is an order directing various
13 municipalities to take steps to qualify for subsidized
14 housing or ordering that they establish public
15 housing authorities or that they file declarations of
16 need or specific steps. Are you contemplating that
17 you will seek that as part of the remedy here?

18 MR. SEARING: Your Honor, we would like to
19 so contemplate, yes.

20 THE COURT: I don't know that that has been
21 clear to me so far and I can't speak of course for
22 defendants attorneys. If that is so, then you'll
23 have to present that and if there are objections
24 there will have to be rulings made.

25 MR. SEARING: We understand ^{that} /but as I

1 understand your Honor's comments that that time
2 has not yet come.

3 THE COURT: No, no.

4 MR. SEARING: Thank you, your Honor.

5 THE COURT: So that with specific reference
6 to the Borough of South River that in addition to
7 what I have said and what Mr. Rafano has suggested
8 that he would cooperate on, you would consider the
9 possibility that they might be ordered to pursue
10 subsidies, grants, necessary steps to improve their
11 present housing style.

12 MR. SEARING: Yes, your Honor.

13 MR. RAFANO: And for that purpose if
14 the municipality is satisfied with these recommendations
15 the Borough of South River remain in the case but
16 only for these specific remedial purposes that Counsel
17 has just referred to.

18 THE COURT: I think with specific reference
19 to the present sub-standard units because this would,
20 if these restrictions are made, Mr. Rafano, it
21 would mean that there is was virtually no land that was
22 not zoned so as to provide some opportunity for
23 decent low and moderate income housing and it would,
24 the only remaining question would be, would there
25 be some order again or judgment or sanctions

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against the municipality with respect to pre-existing
sub-standard housing.

(Whereupon the Court heard other matters.)

* * * *

CERTIFICATE

I, DAYE F. FENTON, hereby certify that the
foregoing is a true and accurate transcript
of the proceedings as taken by me
stenographically at the time and place
hereinbefore set forth.

Daye F. Fenton
DAYE F. FENTON, CSR