

~~10-18-77~~

South River

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UL v. Carter

Letter opposition to Ps motion for
addtl relief as to conditionally
dismissed Ds.

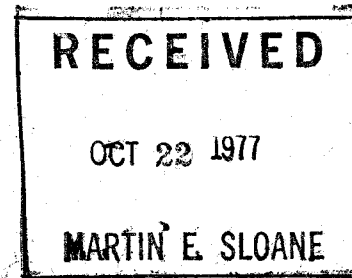
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Schwartz & Schiappa
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Joseph P. Schiappa
Gary M. Schwartz

October 18, 1977



Honorable David D. Furman
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: Urban League v. The Mayor and Council of the Borough
of Carteret, Docket No. C-4122-73

Dear Judge Furman:

This letter memorandum is submitted in lieu of a formal affidavit and brief in opposition to plaintiff's motion scheduled for October 21, 1977 regarding additional relief as to the conditionally dismissed municipalities.

Plaintiffs, at Page 3 of their brief, erroneously state that defendant Borough of South River maintains an exclusionary zoning law and land use policies and practices. This Court, in conditionally dismissing the Borough of South River from the litigation herein, found that any such exclusionary practices would be eliminated by amendment of the zoning ordinance of this defendant; such an amendment, in accordance with the Court's findings, was adopted by the Borough of South River and hence, by decision of this Court, South River no longer maintains any exclusionary zoning law, contrary to plaintiffs statement.

Plaintiffs mislead the Court when they state that, taken together, the conditionally dismissed municipalities have a substantial aggregate of vacant acres. South River has 92 vacant residential acres remaining for development, since it is a "substantially built up" municipality. Approximately 37 of these acres were rezoned, under this Court's order, to 7,500 square foot residential lots.

2 N. Woodland Ave. (cor. of Rte. 18), East Brunswick, NJ 08816 (201) 545-7300

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Honorable David D. Furman

(Parenthetically, plaintiffs discussion of vacant acreage in industrial and related zones, at Page 4 of their brief, is preposterous, in light of your Honor's ruling that the Borough of South River was not required to rezone any industrial acreage to residential use. Once again, plaintiffs attempt to erode your Honor's ruling by seeking a re-trial of the litigation in the form of a motion.) Moreover, plaintiffs consented to a conditional dismissal of the Borough of South River without reserving any right to further seek a fair share allocation of low and moderate income housing as to this defendant. They are not entitled to such relief, as this Court held in the main litigation, and they are quite improperly seeking such relief on this motion, the issue having been treated and disposed of at trial. The decision of the Appellate Division, referred to by plaintiffs at Page 2 of their brief, referred only to additional relief relating to the settlement agreement between this defendant and plaintiffs. Nowhere in that settlement agreement, and ultimately the order dismissing South River, was there any reservation of a right by plaintiffs to again seek a fair share allocation as to this defendant.

This defendant further relies on the legal authority cited in the letter memorandum of Rubin & Lerner, Esqs., attorneys for defendant Highland Park in support of the position taken herein by defendant Borough of South River.

Respectfully submitted,

GARY M. SCHWARTZ
Borough Attorney
Borough of South River

GMS/ez

cc: All attorneys