

UL v CA

Monroel

09/18/84

Transcript of Proceedings.  
re. Monroel's rezoning effort

pgs. 18

CA 002284S

SUPERIOR COURT OF NEW JERSEY  
OCEAN COUNTY: CHANCERY DIVISION  
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al,

Plaintiffs,

Civil Action

vs.

TRANSCRIPT OF PROCEEDINGS

BOROUGH OF CARTERET, et al,

Defendants.

Toms River, New Jersey  
September 18, 1984

**B E F O R E :**

HONORABLE EUGENE D. SERPENTELLI, J.S.C.

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

WARREN, GOLDBERG & BERMAN, ESQS.  
BY: BARBARA J. WILLIAMS, ESQ.  
Attorneys for Urban League

CLAPP & EISENBERG, ESQS.  
BY: FREDERIC S. KESSLER, ESQ.  
Attorneys for Lori Assocs.

BISGAIER & PANCOTTO, ESQS.  
BY: CARL S. BISGAIER, ESQ.  
Attorneys for Monroe Developers, et al

HUTT, BERKOW, HOLLANDER & JANKOWSKI, ESQS.  
BY: STEWART M. HUTT, ESQ.  
Attorneys for Great Meadows

THOMAS R. FARINO, JR., ESQ.  
Attorney for Township of Monroe

WILLIAM TIPPER  
President, Monroe Township Council

MICHAEL LIEBOWITZ  
Monroe Township Councilman

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THE COURT: So the record might be clear,  
on July 27, 1984 this Court issued a letter  
opinion that fixed the fair share of low and  
moderate homes for Monroe Township in order to  
satisfy its Mount Laurel obligation, and based  
upon the Township's admission that its ordinances  
did not comply with Mount Laurel, the Court  
also directed that the Township revise its  
ordinances within ninety days.

Miss Carla Lerman was appointed as a  
master to assist the Township in its efforts.

Now, on Thursday, September 13 I had a  
conversation with Mr. Farino, Township Counsel,  
that the governing body has decided that it  
will not engage in any ordinance revision and  
therefore not comply with the Court's order.

Mr. Farino, does that accurately state  
where we are at?

MR. FARINO: May it please the Court,  
good morning, Your Honor.

THE COURT: Good morning.

MR. FARINO: Yes, it does.

THE COURT: All right.

And as a result of that, I advised  
Mr. Farino that I would like him to appear before

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1 the Court today for the purpose of determining  
2 how the matter should proceed, and I also  
3 notified all counsel, if not, belatedly to  
4 Mr. Kessler's office, for which I apologize.  
5 I confirmed that request by letter dated  
6 September 14, 1984 and in that letter I also  
7 invited, but did not order that the mayor or  
8 other members of the governing body attend this  
9 hearing if they wished to do so.

10 Now, before I proceed, does counsel for  
11 the plaintiffs wish to be heard?  
12 MR. BISGAIER: No, Your Honor. I would  
13 just like the record to reflect that I did submit  
14 a letter request regarding relief in this matter  
15 and that letter continues as to my position on  
16 behalf of my client.

17 MISS WILLIAMS: I would just like to add  
18 that that letter also reflects the position at  
19 this point of the Urban League and we have  
20 nothing further to add at this point.

21 THE COURT: Mr. Kessler?

22 MR. KESSLER: No, Your Honor.

23 THE COURT: Mr. Hutt?

24 MR. HUTT: No, Your Honor.

25 THE COURT: Mr. Farino?

1 MR. FARINO: Just briefly, Your Honor, I  
 2 would like the record to reflect that the Township  
 3 of Monroe, in response to Your Honor's request,  
 4 does appear this morning. In the presence of  
 5 Your Honor, representing the Township of Monroe,  
 6 are William Tipper, President of the Monroe  
 7 Township Council, and Michael Liebowitz, who is  
 8 a member of the five-man governing body in the  
 9 Township of Monroe.

10 Just briefly, Your Honor, to summarize  
 11 the position of the Township of Monroe as a  
 12 defendant in this matter, as I know it as of this  
 13 morning, following Your Honor's letter opinion  
 14 dated July 27, 1984, the mayor and governing  
 15 body of Monroe Township did engage in substantial  
 16 deliberation regarding the content of that  
 17 letter opinion and the various courses of action  
 18 available to the Township. The chief executive  
 19 of Monroe Township, Mayor Peter P. Caribaldi,  
 20 took the strong position that he would not endorse  
 21 any effort at a rezoning in the Township of  
 22 Monroe aimed at producing a compliant zoning  
 23 ordinance.

24 There was additional deliberations by the  
 25 governing body subsequent to the mayor's early

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1 position and as late as last Wednesday, the  
2 governing body, by official action in the form of  
3 a resolution, unanimously endorsed the position  
4 of the mayor in seeking to adopt the position  
5 of essentially inaction and not embark upon a  
6 rezoning process.

7 THE COURT: Fine.

8 Let me say first I want the record to  
9 be clear that whatever the Court is about to say  
10 should not in any way reflect adversely upon  
11 counsel for Monroe Township. I know that both  
12 directly and indirectly through my conversation  
13 with Mr. Farino and the representations made to  
14 the Court by plaintiff's counsel, Mr. Farino has  
15 acted in every respect professionally appropriately.  
16 He has advised me of the general outlines of  
17 his advice to the governing body and I believe  
18 that he has performed his task as an officer of  
19 the court as well as counsel for the defendants  
20 in an entirely appropriate manner.

21 Secondly, let me say that I'm grateful  
22 that Mr. Tipper and Mr. Liebowitz are present.  
23 I had several reasons for requesting the  
24 attendance of the mayor and members of the  
25 governing body: First I wanted to be sure that

1 they fully understood the order of the Court,  
2 its scope, the authority under which it is issued  
3 and the obligation of the Court to insure its  
4 order and to enforce its order;

5 Secondly, I wanted to reiterate the  
6 consequences which may flow from the decision  
7 not to revise the ordinance;

8 And third, and most importantly, I hope  
9 that having had the opportunity to talk personally  
10 to representatives of the Township, that a  
11 better understanding of this Court's function  
12 and the consequences of noncompliance, as  
13 compared to revising the ordinance under protest,  
14 would result and that Monroe's elected officials  
15 would reconsider their decision based upon what  
16 I perceive to be a real fact that the refusal  
17 to comply could result in circumstances even  
18 less satisfactory to the residents of Monroe  
19 Township than would a revision under protest.

20 Now, first let me address myself to the  
21 Court's order. As noted already, the Court's  
22 order requires revision of the land use  
23 regulations in the town within ninety days so  
24 that those regulations will comply with Mount  
25 Laurel II. This is necessary because Monroe has

1 stipulated, has admitted for the record that  
 2 its ordinances do not comply and it is necessary  
 3 because the Court has found that Monroe has a  
 4 fair share obligation to provide low and moderate  
 5 housing.

6 Now, Mount Laurel is the judiciary's  
 7 response to unconstitutional zoning and it has  
 8 always been the province of the Courts to  
 9 interpret the law and to determine its  
 10 constitutionality. Generally, it is the  
 11 province of the Legislature to write the law  
 12 and the executive to implement it. Our courts  
 13 have explicitly recognized that in this sense  
 14 of the law, there are powerful reasons to leave  
 15 the matters involved in these cases to the  
 16 Legislature and to the executive branch of  
 17 government, but our Supreme Court has also  
 18 recognized that if there is a failure to act  
 19 in those branches of government and constitutional  
 20 rights are thereby impinged, then the Court  
 21 must enforce the constitution.

22 Our Supreme Court has reiterated its  
 23 position in the closing pages of the Mount Laurel  
 24 opinion and I'd like to quote from page 352.  
 25 The court says, "while we have always preferred

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1 legislative to judicial action in this field,  
2 we shall continue, until the Legislature acts,  
3 to do our best to uphold the constitutional  
4 obligation that underlies the Mount Laurel  
5 doctrine. That is our duty. We may not build  
6 houses, but we do enforce the constitution."

7 Now, as a trial judge, I am duty bound  
8 to obey the Supreme Court's directives and to  
9 enforce them and all public officials who take  
10 an oath to abide by the constitution of this  
11 state are equally bound. We all have a right  
12 to disagree with Mount Laurel and you have a  
13 right to petition the Legislature for appropriate  
14 redress, but your remedy in the interim does  
15 not include the option to refuse to comply with  
16 the constitution that you have sworn to uphold.

17 Now, what are the consequences of  
18 continuing on the course which has been presently  
19 determined in Monroe? I'd like to make them  
20 clear. I believe Mr. Farino has done that  
21 already, but I want it to be certain, as a  
22 matter of public record, exactly what may flow  
23 from what Monroe has now decided to do.

24 Some of the powers given to me are  
25 expressly set forth in the Mount Laurel II opinion

1 at pages 285 and 286, but I want to note  
 2 parenthetically that those listed powers are not  
 3 intended to be exclusive. A court always has  
 4 the inherent power to shape the remedy to meet  
 5 the wrong and the scope of remedies in dealing  
 6 with constitutional violations are only limited  
 7 by reasonableness.

8 Now, the court in Mount Laurel II  
 9 addresses itself to the remedies for noncompliance  
 10 and lists four of them. I'd like to go over  
 11 them and perhaps discuss in layman's terms some  
 12 of the potential scope of those four remedies.

13 First the court says that the trial court  
 14 may order the municipality to adopt such  
 15 ordinances and resolutions as will enable it to  
 16 meet its Mount Laurel obligation.

17 I am not reading this verbatim, but that's  
 18 a capsulization of what the court says. Now,  
 19 what does that mean? This could involve the  
 20 Court appointing experts to draw resolutions  
 21 or ordinances. The experts could select the  
 22 Mount Laurel sites they deem appropriate, subject  
 23 to court review, and the Court could implement  
 24 the ordinances by court order if the governing  
 25 body refuses to adopt the ordinances.

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1 Next the court says that the Court may  
2 order that certain types of projects or  
3 construction be delayed until the ordinances  
4 are revised or until part of the fair share is  
5 constructed, in whole or in part, or firm  
6 commitments are made to build it. Now, this  
7 would include or could include the enjoining of  
8 the granting of any variances, any site plan  
9 approvals, any subdivisions, any sewer and  
10 water connections, any reservation of water or  
11 sewer capacity or, in fact, the issuance of  
12 any new building permits in the township.

13 Third, the Supreme Court says that the  
14 trial court could declare the land use regulations  
15 of the township to be null and void in whole or  
16 in part so as to relax or eliminate building  
17 and use restrictions in all or selected portions  
18 of the township.

19 What does that mean? That means that  
20 the trial court could, if it so ordered, direct  
21 that the building in Monroe Township would be  
22 unrestricted; that anyone could build anything  
23 where they wanted to, or alternatively, the  
24 Court could modify the existing building  
25 restrictions in the town so as to permit construction

1 at much greater densities or with much fewer  
2 construction limits or follow whatever course  
3 the Court deems reasonable to accomplish the  
4 goals of Mount Laurel.

5 Fourthly, the Court may order that  
6 particular applications to construct lower  
7 income housing be approved. This would mean  
8 that the Court would bypass all municipal  
9 reviews, give approval to those applications  
10 the Court deemed appropriate and direct that  
11 building permits be issued.

12 I want it to be clear that presently  
13 Mount Laurel construction, like any other  
14 building, is subject to local review; it is  
15 subject to the applicable site plan ordinances,  
16 subdivision ordinances and any other land use  
17 regulations that exist in the town. So the  
18 mere fact that one is granted the right to  
19 build, granted a builder's remedy and the right  
20 to build some low and moderate housing, doesn't  
21 mean that the land use regulations become  
22 inoperative.

23 Monroe Township would still have the  
24 right to review the manner in which they were  
25 going to be built and to assure, within the limits

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1 of Mount Laurel, that they comply with the  
2 ordinances of the community. By refusing to  
3 revise its ordinance, Monroe abdicates that  
4 option.

5 Now, finally I'd like to address myself  
6 to why I think it is in the best interest of  
7 this Township to reconsider the action it's  
8 taken. It has to be conceded that the options  
9 that I have discussed, and others I haven't  
10 discussed but will consider, could have a very  
11 significant impact on Monroe well beyond that  
12 which the Court has already ordered. The  
13 direction that Monroe rezone or amend its zoning  
14 ordinance will not in and of itself result in  
15 the construction of a single house in Monroe.  
16 Such a rezoning under Mount Laurel II does not  
17 prejudice the town's right to appeal the Court's  
18 order and no construction will take place until  
19 all avenues of appeal are exhausted and then  
20 only if this Court's order is sustained.

21 And by that I mean, in simple language,  
22 it may be that an appellate court will disagree  
23 with the conclusions that I have reached, will  
24 find that I have erred in one way or another  
25 and that Monroe's fair share would have to be

1 modified.

2 Furthermore, in the interim, any  
3 municipality who revises its zoning ordinance  
4 under protest, and any revision is deemed  
5 automatically to be under protest if an appeal  
6 is to follow, in the interim that municipality  
7 may pursue every other avenue of relief that  
8 it deems appropriate, and I have specific  
9 reference to pursuing the political process and  
10 to encouraging the political process to work.

11 I emphasize again that our Supreme Court  
12 has hoped fondly in its opinion that those who  
13 should be doing this job would do it and it would  
14 please this Court and the Supreme Court to have  
15 that happen. It has not happened, but in the  
16 process of the passage of time Monroe has it  
17 within its capacity, along with any other  
18 municipality who feels offended with the Monroe  
19 dictates, to pursue that process and to see  
20 that legislative inaction becomes action, that  
21 a consensus occurs and that the fair share of  
22 all the municipalities of the state is pursued  
23 in that arena.

24 Now, through Mr. Farino, I request that  
25 the elected officials reconsider their action.

1 Mr. Farino, I charge you to urge them to weigh  
2 the consequences of inaction against what I'll  
3 be compelled to do if they do not act.

4 Finally, aside from the fact that they  
5 are sworn to uphold the law, I suggest that you  
6 have them consider whether they will be able  
7 to convince an informed constituency in Monroe  
8 that it was the Court and not they who brought  
9 the drastic consequences upon themselves which  
10 they will force this Court to resort to if they  
11 continue with their present course.

12 At this posture, within the limits of  
13 this Court's order, which is subject to appeal,  
14 Monroe Township still controls its destiny and  
15 I ask is it responsible for elected officials  
16 to relinquish to a court that destiny at a time  
17 when the rights of its citizens are fully  
18 protected and any action taken in compliance  
19 with the court order is without prejudice?

20 I will give the governing body a period  
21 of eight days to reconsider its position. I  
22 ask that Mr. Farino appear and all counsel for  
23 the plaintiffs appear as well on Wednesday,  
24 September 26 at 9:00 a.m., if that time is  
25 convenient, and if not, we will arrange a

1 convenient time to advise me of the Township's  
2 intention.

3 Now, in an effort to be absolutely clear  
4 about what this Court has said and what it has  
5 not said what the law requires and what  
6 protection the law provides to Monroe Township,  
7 I am requesting the court reporter to provide  
8 an expedited transcript of my comments so that  
9 they may be provided to Mr. Farino particularly  
10 and, of course, to all counsel. I authorize  
11 Mr. Farino to freely distribute to all members  
12 of the governing body -- and I know that you  
13 have a Faulkner Act form of government there  
14 and I included that governing body -- the  
15 mayor as well, of course, and to the press, to  
16 the interested residents of Monroe Township and  
17 to anyone else the comments of this Court. I  
18 think that it is unfortunate that the newspapers,  
19 none of whom are present today, will report  
20 on what I have said without having heard it  
21 firsthand. I think it is imperative that everyone  
22 understand that this Court has no desire at  
23 all to assert any power beyond that which is  
24 absolutely required by the constitution and by  
25 the dictates of Mount Laurel II. The Court has

1 no desire to be characterized in a manner it  
2 has been characterized, but it is ready to do  
3 what it has to do if the constitution is not  
4 complied with.

5 Now, I am grateful that two members of  
6 the governing body have attended. I want to  
7 make it clear that I never intended this session  
8 to be a meeting of the governing body. I  
9 invited them so that they could hear me say  
10 what I did say. I fully recognize their right  
11 to disagree with Mount Laurel. I'm not offended  
12 by it. There may be intellectual differences.  
13 I indeed have the right to disagree with Mount  
14 Laurel, too. However, as a judge who is sworn  
15 to uphold the law of this land, my right to  
16 disagree does not extend to a privilege to  
17 disregard it.

18 I would invite either member of your  
19 governing body, if they wish, to address the  
20 Court, and they shouldn't feel they have to.  
21 If they have any comments to make, I would be  
22 pleased to hear them.

23 Mr. Tipper.

24 MR. TIPPER: First, Your Honor, I would  
25 like to thank you very much for your very concise

1 definitions.

2 I can also assure the Court that, as you  
3 said, Mr. Farino has continuously apprised the  
4 Council of our options and consequences of our  
5 action and we have been fully aware of them,  
6 but points have been clarified.

7 There is no way at this time that I can  
8 speak for the Council because we have not had  
9 an opportunity to meet. Most assuredly, you  
10 have requested us to reconsider. The Council  
11 will be polled in compliance with your request.

12 Thank you, Your Honor.

13 THE COURT: Fine. Thank you.

14 We will stand in recess then until  
15 Wednesday, September 26. If between now and  
16 then counsel for the plaintiffs wish to submit  
17 proposed recommendations to the Court concerning  
18 action which should be taken in the event that  
19 the Township does not revise its ordinances,  
20 they may do so, of course with copies to  
21 Mr. Farino, and Mr. Farino may respond.

22 I, in the interim, will take no action  
23 with respect to the matter pending the hearing  
24 on that date.

25 All right. I thank you for coming. I know

1 it is an inconvenience both in terms of the  
2 trip and your daily schedule, but I do appreciate  
3 your being present.

4 MR. FARINO: Thank you, Your Honor.

5 THE COURT: Thank you.

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13 C E R T I F I C A T E

14  
15 I, CAROLINE WOLGAST, a Certified Shorthand  
16 Reporter of the State of New Jersey, do hereby certify  
17 that the foregoing is a true and accurate transcript of  
18 my stenographic notes.

19 

20 CAROLINE WOLGAST, CSR  
21 LICENSE NO. XI00316

22  
23 DATED: September 18, 1984  
24  
25