

CA-Piscataway

7-May-84

~~Gerickont~~ v. Piscataway

- Plaintiff's letter brief to Judge in support of Consolidation
- Complaint in Lieu of Prerogative Writs
- Notice of Motion on Short Notice

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May 7, 1984

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Honorable Eugene D. Serpentelli  
 Superior Court of New Jersey  
 Law Division  
 Middlesex County/Ocean County  
 Courthouse  
 Toms River, NJ 08754

Re: Joseph Gerickont and George Gerickont  
 v. Piscataway Township

Dear Judge Serpentelli:

I am submitting this letter-brief on behalf of the plaintiffs, Joseph Gerickont and George Gerickont, in support of their motion to consolidate the within action with the Urban League of Greater New Brunswick v. Carteret, et al. action (Docket No. C-04122-73).

Facts

The plaintiffs have filed an action against Piscataway Township to invalidate that municipality's land use regulations on the grounds that they violate the principles announced in So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp. 92 N.J. 158 (1983) (hereinafter "Mount Laurel II"). Piscataway Township is also a defendant in the Urban League consolidated cases, where similar allegations have been asserted against it.

Argument

DUE TO COMMON FACTUAL ISSUES, THE CASES  
 SHOULD BE CONSOLIDATED, R. 4:38-1

Plaintiffs are fully aware that the Court is presently hearing evidence in the Urban League cases. Plaintiffs do not seek consolidation for the purpose of participating in the trial

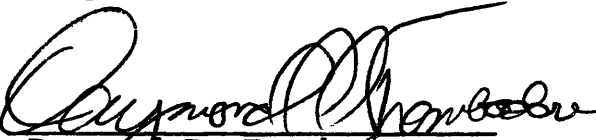
Hon. Eugene D. Serpentelli  
May 7, 1984  
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which is now pending on the issues of region, fair share, and allocation methodology. Rather, the plaintiffs seek consolidation with the pending litigation in order to be able to participate in the compliance stage of the litigation. If affirmative relief is granted directing Piscataway Township to rezone to meet its present and prospective fair share needs, it is likely that the Court will refer the matter to a master to work with Piscataway Township in the formulation of an appropriate remedy. In that process, it will be necessary for Defendant Township and the master to re-examine residential land-use regulations of the Township including such regulations as effect the Gerickont property. Permitting a limited consolidation for that purpose will avoid duplication of judicial work since the plaintiffs in this case are entitled to an adjudication of their claim. Plaintiffs are prepared to accept the determination of the Court in the pending litigation with respect to to the issues of region, present and prospective regional need, and allocation of that need. A limited consolidation at this point would eliminate the need for relitigation of those issues. The ultimate determination of a builder's remedy in the appropriateness of rezoning for the plaintiffs' lands will be based upon recommendations made to the Court by the master appointed for that purpose. A limited consolidation will permit the master to consider the proposals made by the plaintiffs for the development of their property and will, therefore, permit a comprehensive land-use plan which includes consideration of the plaintiffs' property.

For these reasons, the plaintiffs respectfully request that this action be consolidated with the Urban League cases.

Respectfully submitted,

RAYMOND R. & ANN W. TROMBADORE  
Attorneys for Plaintiffs

By:   
Raymond R. Trombadore  
A Member of The Firm

RRT/mmp

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Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY/OCEAN COUNTY  
DOCKET NO.

JOSEPH GERICKONT and :  
GEORGE GERICKONT, :

Plaintiffs, :

Civil Action

vs. :

COMPLAINT IN LIEU OF  
PREROGATIVE WRITS  
(PURSUANT TO MOUNT  
LAUREL II)

PISCATAWAY TOWNSHIP, a :  
Municipal Corporation of :  
the State of New Jersey, :  
located in Middlesex County, :  
New Jersey, :

Defendant. :

Plaintiffs, by way of Complaint against the defendant,

say:

FIRST COUNT

1. The Plaintiffs, Joseph Gerickont and George Gerickont, reside at 157 Morris Avenue, in the Township of Piscataway, County of Middlesex, and State of New Jersey. They are the owners of certain real property (the Gerickont property)

comprising approximately 41.9 acres of land located in Piscataway Township (hereinafter the "Township") in the County of Middlesex and State of New Jersey, which property is identified as Lot 2A, Block 744, on the official tax map of the Township. More specifically, the Gerickont property is located on Morris Avenue approximately 1,500 feet west of the intersection of Morris Avenue with Randolphville Road.

2. The defendant Township, a Municipal Corporation of the State of New Jersey, has exercised the authority delegated to it pursuant to enabling legislation (N.J.S.A. 40:55D-62; hereafter referred as "the Municipal Land Use Law"), and has adopted zoning and land use regulations regulating the nature, extent and costs of development of lands within the Township.

3. The Gerickont property is located within an R-20 Zone permitting single-family detached dwelling units on lots having a minimum half acre size.

4. The plaintiffs are prepared to construct low and moderate income housing on their property, but are precluded from doing so by the Township's land use regulations.

5. Plaintiffs have specifically requested the Township to revise its land use regulations to permit the construction of low and moderate income housing on their property, but the Township has refused to rezone plaintiffs' lands.

6. Given the defendant's refusal to revise its land use regulations to accomodate low and moderate income housing needs, as more specifically set forth herein, the plaintiffs believe

that pursuit of further administrative remedies would be futile.

7. The Township's land use regulations were challenged as early as 1974 as excluding adequate provision of affordable housing for lower income persons in Urban League of New Brunswick v. Mayor and Council of Carteret, 142 N.J. Super. 11 (Ch. Div. 1976) ("Urban League").

8. In 1976 the defendant's land use controls were invalidated in Urban League and the defendant was ordered to comply with Mount Laurel by providing a realistic housing opportunity for its fair share of its region's present and prospective low and moderate income housing needs.

9. In 1983, in Mount Laurel II, the New Jersey Supreme Court upheld this invalidation of the defendant's land use ordinances.

10. Despite these judicial findings and rulings, the defendant has not undertaken to amend its land use ordinance to attempt to fulfill its constitutional obligations.

11. The most recent amendment to the defendant's zoning ordinance does not satisfy the defendant's obligation to provide a fair share of low and moderate income housing.

12. Defendant has placed undue restrictions and controls on the development of plaintiffs' lands including cost generating regulations which make it impossible for the plaintiffs to provide low and moderate income housing on their property.

13. Defendant's present land-use regulations fail to provide a realistic opportunity for an appropriate variety

and choice of housing within its boundaries and further fail to provide realistic opportunities for the creation of the defendant's fair share of affordable housing for low and moderate income persons.

14. Defendant's zoning regulations also preclude the opportunity for construction of least cost housing within the boundaries of the Township.

15. Zoning ordinance and development regulations of the Township are presumptively and facially invalid, ultra vires, and contrary to the substantive due process and equal protection guarantees inherent in Article I, Section 1 of the New Jersey Constitution, and are contrary to N.J.S.A. 40:55D-62, due to the failure of the Township through its regulations, to provide for a balanced community, and to promote the general welfare.

WHEREFORE, plaintiffs demand judgment against the defendant:

(a) Declaring the entire zoning ordinance of Piscataway Township to be null and void and of no effect, generally and as to the plaintiffs' lands, specifically;

(b) Enjoining Piscataway Township to cease and desist in enforcing its entire zoning ordinance;

(c) Appointing a special master to negotiate, mediate, and assist in developing constitutional zoning and land use regulations in the Township generally and on plaintiffs' property, specifically, with particular emphasis upon meeting the housing needs of low and moderate income persons;

(d) Formulating a "builder's remedy", directing the Township to re-zone plaintiffs' property to permit 12 to 16 units per acre or such other average gross density, consistent with principles of sound planning, sufficient to provide a reasonable return to the plaintiffs and to assure feasibility of construction of a substantial amount of low and moderate income housing;

(e) In the alternative, if it is determined that the Mount Laurel obligation cannot otherwise be satisfied, then directing the court appointed master to assist in developing zoning and land use regulations which provide a realistic opportunity for the construction of least cost housing in the Township generally, and on plaintiffs' property, specifically;

(f) For such other relief as the Court shall deem just and proper under the circumstances;

(g) For attorney's fees and costs of suit.

#### SECOND COUNT

1. Plaintiffs repeat the allegations of the First Count, and incorporate them herein.

2. Under the State Development Guide Plan (SDGP) the Township is located in the Growth Area.

3. The defendant Township, being located in a Growth Area, has failed to satisfy its constitutional obligation to provide its fair share of the region's present and prospective need for low and moderate income housing. More specifically, the defendant has failed to determine and approve a number



representing its fair share of the region's present and prospective housing need and has also failed to adopt planning strategies to meet that need.

4. Plaintiffs propose to construct a substantial number of low and moderate income houses on their property. Plaintiffs' property is suited for such housing and is located adjacent to a 55 acre parcel of land which has already been rezoned by the defendant Township for multi-family housing at a density of 10 units per acre with a 20 percent mandatory set aside for low and moderate income housing. Plaintiffs' property houses a working dairy farm, and the adjacent property which has been rezoned by the defendant Township is also operated as a dairy farm. Both parcels are fully served by adequate utilities, water, and sewer services and adequate public roads. Plaintiffs property has more than 1,700 feet of frontage on Morris Avenue, is traversed by a sewer main, and is serviced by public water. There are no environmental constraints to the development of the plaintiffs' property.

5. The zoning and other development regulations of the defendant Township are violative of its Mount Laurel obligations and are contrary to the substantive due process and equal protection guarantees inherent in Article I, Section 1 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment against the defendant:

(a) Declaring the entire zoning ordinance of Piscataway Township to be null and void and of no effect, generally and as to the plaintiffs' lands, specifically;

(b) Enjoining Piscataway Township to cease and desist in enforcing its entire zoning ordinance;

(c) Appointing a special master to negotiate, mediate, and assist the municipal officials in developing constitutional zoning and land use regulations, in the Township generally and on plaintiffs' property, specifically, with particular emphasis upon meeting the housing needs of low and moderate income persons;

(d) Formulating a "builder's remedy" directing the Township to re-zone plaintiffs' property to permit 12 to 16 units per acre or such other average gross density consistent with principles of sound planning, sufficient to provide a reasonable return to the plaintiffs and to assure feasibility of construction of a substantial amount of low and moderate income housing;

(e) In the alternative, if it is determined that the Mount Laurel obligation cannot otherwise be satisfied, then directing the court appointed master to assist in developing zoning and land use regulations which provide a realistic opportunity for the construction of least cost housing in the Township generally, and on plaintiffs' property, specifically;

(f) For such other relief as the Court shall deem just and proper under the circumstances;

(g) For attorneys' fees and costs of suit.

THIRD COUNT

1. Plaintiffs repeat the allegations of the First and Second Counts as though more fully set forth herein.

2. The Constitution of the State of New Jersey requires every municipality to provide by its land use regulations, a realistic opportunity for decent housing for its indigenous poor.

3. The defendant, through its zoning ordinance and land use regulations, has failed to provide a realistic opportunity for decent housing for its indigenous poor. Such local housing needs are represented by:

a. 401 units without adequate plumbing or heat and units which are overcrowded;

b. numerous lower income households paying an inappropriate amount of their income for shelter costs; and

c. a need for lower income housing generated by local employment.

4. The defendant Township, in addition to its obligation to provide for its own indigenous needs, it is required to provide its fair share of reallocated excess present need and prospective need. The defendant's fair share of reallocated excess present need is 672 units of low and moderate income housing, and defendant's fair share of prospective need is 3,066 units.

5. The zoning and other development regulations of the defendant Township are violative of its Mount Laurel obligations, and contrary to the substantive due process and equal protection guarantees inherent in Article I, Section 1 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment against defendant:

(a) Declaring the entire zoning ordinance of Piscataway Township to be null and void and of no effect, generally and as to the plaintiffs' lands, specifically;

(b) Enjoining Piscataway Township to cease and desist in enforcing its entire zoning ordinance;

(c) Appointing a special master to negotiate, mediate, and assist in developing constitutional zoning and land use regulations, in the Township generally and on plaintiffs' property, specifically, with particular emphasis upon meeting the housing needs of low and moderate income persons;

(d) Formulating a "builder's remedy" directing the Township to re-zone plaintiffs' property to permit 12 to 16 units per acre or such other average gross density, consistent with principles of sound planning, sufficient to provide a reasonable return to the plaintiffs and to assure feasibility of construction of a substantial amount of low and moderate income housing;

(e) In the alternative, if it is determined that the Mount Laurel obligation cannot otherwise be satisfied, then directing the court appointed master to assist in developing

zoning and land use regulations which provide a realistic opportunity for the construction of least cost housing in the Township generally, and on plaintiffs' property specifically;

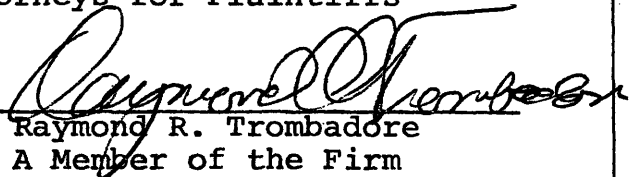
(f) For such other relief as the Court shall deem just and proper under the circumstances;

(g) For attorneys' fees and costs of suit.

DATED: May 7, 1984

RAYMOND R. & ANN W. TROMBADORE  
A Professional Corporation  
Attorneys for Plaintiffs

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY/OCEAN COUNTY  
(Mount Laurel II)  
DOCKET NO.

JOSEPH GERICKONT and :  
GEORGE GERICKONT, :

Plaintiffs, :

vs. :

Civil Action

PISCATAWAY TOWNSHIP, a :  
Municipal Corporation of :  
the State of New Jersey, :  
located in Middlesex County, :  
New Jersey, :

NOTICE OF MOTION  
ON SHORT NOTICE

Defendant. :

TO:

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SIRS:

PLEASE TAKE NOTICE that the undersigned, Attorney for the Plaintiffs, will apply to the Superior Court, Law Division, the Honorable Eugene D. Serpentelli at the Ocean County Court House in Toms River, New Jersey, on such date as may be set by the Court for an Order consolidating the within action with the Urban League of Greater New Brunswick v. Carteret, et al. action

(Docket No. C-4122-73) and other actions against Piscataway Township consolidated therewith, and for an Order requiring all discovery provided by Piscataway Township in the Urban League consolidated cases to be made available to the Plaintiffs JOSEPH GERICKONT and GEORGE GERICKONT.

DATED: May 7, 1984

RAYMOND R. & ANN W. TROMBADORE  
A Professional Corporation  
Attorneys for Plaintiffs

By: 

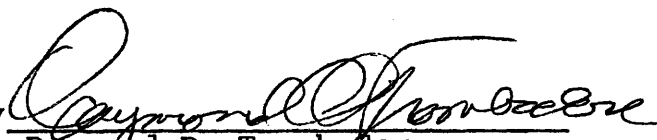
Raymond R. Trombadore  
A Member of the Firm



PROOF OF SERVICE

We hereby certify that copies of the complaint in the within matter, notice of motion to consolidate and letter brief in support thereof have been served upon all parties listed on the face of this motion by mailing same by regular mail on May 8, 1984.

RAYMOND R. & ANN W. TROMBADORE  
A Professional Corporation  
Attorneys for Plaintiffs

By   
Raymond R. Trombadore  
A Member of the Firm