CA-Piscataway

no date, at least 5/85

proposed certification - Piscataway
of Alan Mallach (draft)

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Draft

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,
Plaintiffs,

vs.

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARTERET,
et al.,
Defendants.

CERTIFICATION
(Piscataway)

Alan Mallach, of full age, certifies as follows:

1. I am a professional planner and have frequently testified at the Court's request in Mount Laurel matters. I am fully familiar with the facts and circumstances of this case. I submit this certification in support of the Urban League's Motion for the Imposition of Conditions on Transfer.

2. Piscataway has undergone explosive non-residential growth in the past 10 years, primarily because of the opening of Interstate Route 287 through the middle of the Township. Although the Township has actively fostered this commercial growth, it has not sought to provide the additional housing needed to support the new employment opportunities. Of the relatively small amount of residential growth that did occur over the last decade, none prior to the trial date in this matter was for affordable housing meeting Mount Laurel II standards.

3. The Township has insisted throughout this litigation has been that because of its commercial growth policy of the past decade, it no longer has suitable land for residential development, and therefore should have a correspondingly small fair share. Piscataway should not be permitted to avoid its Mount Laurel obligation by means of this self-serving analysis. As plaintiffs will demonstrate,

4. In March, April and May, 1984, this Court held extensive hearings in the Urban League case and in AMG Realty Co. v. Warren Townsnip, on the issue of regional fair share methodology. Thereafter, on July **, 1984, the Court issued an opinion in the AMG case setting forth at length such a methodology which allocated fair share primarily on the basis of vacant land and employment factors. Based on the AMG formula, Piscataway's fair share is **** units.

THE DEVELOPMENT RESTRAINTS

5. In May, 1984, the Urban League plaintiffs learned that, despite the claim that it had insufficient land to meet its fair share, Piscataway and its agent boards and officials were entertaining non-Mount Laurel development proposals respecting sites that were suitable for Mount Laurel housing. Because of the risk that actual development or acquisition of vested rights would preclude Mount Laurel development when a final order issued in the Urban League case, plaintiffs sought restraints on development pending the outcome of this action.

6. This Court's temporary restraining order of June 7, 1984, enjoined any final vesting as against the Urban League plaintiffs on three sites totalling 84 acres. After further hearing on June 26, 1984, the Order was converted into a preliminary injunction. In these two orders, the Court also required Piscataway to furnish the Urban League with Planning Board agendas and provided for hearings on further disputed sites on short notice. These Orders are presently in full force and effect and should be continued until the Council grants Piscataway substantive certification.

7. In an Order dated September 11, 1984, plaintiffs obtained a further restraint in accordance with the procedure established in the June 26 Order. The September 11th Order concerned a vacant site which had not previously been disclosed to the plaintiffs in discovery, and the restraints on this site were subsequently dissolved with the Urban League's consent by an Order dated November 5, 1984, after the Court-appointed expert reported that the site was not suitable for Mount Laurel development.

8. In late October, 1984, plaintiffs learned of further pending development applications, involving sites that had been specifically submitted to Ms. Lerman for review and recommendation, as described further in ¶** below. Taking into account the municipality's repeated demonstrations of bad faith, the Court entered general restaints as to any site found suitable by Ms. Lerman, pending further Order of the Court. This Order, dated December 11, 1984, is attached as Exhibit . It is still in full force and effect and again, it should be continued pending action by the Council.

The December 11, 1984, Order is carefully tailored to preserve the status quo without unnecessary intrusions into either private or municipal rights. Development applications may continue to be processed, so long as they are subject to the no-vesting provisions of the June 7th and June 26th Orders. Applications containing a 20% set aside for low and moderate income housing can be given final approval, subject to judicial review of any building permits thereafter issued. This review provision was included to insure that any developed sites would have adequate price and occupancy controls, and judicial supervision was necessary since Piscataway as yet has not created an Affordable Housing Agency. Any landowner aggrieved by the restraint can move to have it lifted on short notice.

9. As set forth in his letter of March , 1986, attached as Exhibit , Phillip Paley, Esq., attorney for the town, has conceded that these restraints are to remain in effect. It is crucial that these restraints remain in effect until the Council has the opportunity to act. Otherwise, given Piscataway's history, there will be little or no vacant land with which to satisfy its Mount Laurel obligation.

THE VACANT LAND DEFENSE

10. On July 27, 1984, shortly after the first Piscataway restraints were imposed, the Court issued a letter opinion applying the AMG methodology to the Cranbury and Monroe portions of the Urban League case. Because of the "insufficient land" defense, however, this Court did not rule on Piscataway's fair share at the same time,

but instead ordered the Court-appointed expert, Ms. Lerman, to review the sites that the plaintiffs asserted were suitable and to report to the Court. As to sites found suitable, she was also instructed to recommend appropriate densities. The parties were given leave to test Ms. Lerman's conclusions subsequently in a factual hearing. The Court indicated that it would establish a more realistic fair share obligation for Piscataway once it determined the amount of land actually available for development. As explained further in ¶** below, the Urban League objected as a matter of law to this approach, but it nevertheless fully and promptly cooperated with Ms. Lerman as she prepared her report for the Court.

11. In May , 1985, the Court conducted a personal inspection of all the sites in Piscataway, accompanied by counsel for the township and the Urban League. It thereafter issued a letter opinion on July 23, 1985, finding Piscataway to be in non-compliance, establishing a fair share of 2215 Mount Laurel units, and finding all of the sites recommended by Carla Lerman to be suitable for high density multi-family development.

12. While plaintiff cooperated fully and promptly with Ms. Lerman in evaluating vacant land, it has consistently maintained the the position that the amount of vacant land remaining goes to the issue of compliance rather than fair share. Plaintiff explained, for instance, that in addition to new construction at a 4:1 set aside ratio, other subsidy techniques could permit some land to be developed with higher percentages of Mount Laurel units, and that additional Mount Laurel housing could be achieved without new construction, such as by imposing price and occupancy controls on existing garden apartment housing in the township.

13. Because of this continuing position, the Urban League plaintiffs submit that Piscataway Township's proper fair share is substantially in excess of 2215 units. Indeed, in view of the probability that the Council will consider financial need in determining fair share, it may well find Piscataway's fair share exceeds 3700. Restraints accordingly should be imposed on all future development in Piscataway involving more than acres, rather than being limited to the sites set forth in the existing Orders, pending action by the Council.

14. Throughout this litigation, the Urban League plaintiffs have unilaterally and repeatedly compromised vacant land issues. I have been advised by counsel that these strategic decisions have no legal significance in light of the Supreme Court's decision in Hills Development. As a factual matter, I can unequivocally state that these compromises only represent plaintiff's desire to speed the trial process and achieve actual housing construction. They should not be construed as any concession on plaintiff's part as to the actual feasibility of the contested development.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

ALAN MALLACH