

UL v. Cartwright, Piscataway
(ML2)

28 - feb - 1986

- Signed modified order
- 2 cover letters to Helso

pgs. 10

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THE STATE UNIVERSITY OF NEW JERSEY
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S. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5637

February 28, 1986

Thomas Kelso, Esq.
Gluck and Kelso
132 Hamilton Street
New Brunswick, NJ 08901

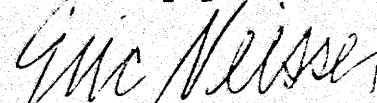
Dear Tom,

Enclosed please find the signed original of the modified Order. In addition to the three changes agreed to in light of the Township's second set of requested revisions of the agreement, I was forced to modify the date for submission of your application to the Planning Board, in Paragraph 6 on page 6, by one month because of the Township's delay in submitting its affidavit. I have initialled that handwritten change as well as a date fill-in on page 4; please also initial them before forwarding the Order to the Judge.

I have signed the Order now at your request, before receipt of the affidavit, to expedite matters. However, my signature is contingent upon approval of the form of the affidavit, which I understand Phil is going to send me. I will notify you immediately after receipt of the affidavit. Moreover, I would request that you forward the enclosed letter to the Judge with the Order and your notice of motion. Please be sure a copy of the papers also goes to Carla Lerman at 413 West Englewood Avenue, Teaneck, New Jersey 07666, when it goes to the Judge.

As before, I consent to your making the motion returnable on two days' notice. I agree that a telephone conference on the motion would be helpful in light of Phil's position that somehow the Court does not have jurisdiction to enter this order, to which his client has no objection.

Sincerely yours,



Eric Neisser
Urban League Co-Counsel

cc: Philip Paley, Esq.
Mr. Roy Epps

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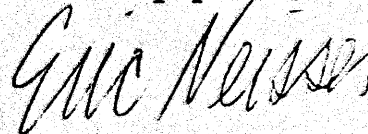
February 28, 1986

Thomas Kelso, Esq.
Gluck & Kelso
132 Hamilton Street
New Brunswick, NJ 08901

Dear Mr. Kelso,

I herewith return your proposed order regarding Site 3, signed on behalf of my client. Our consent extends only to the Order in its present form and is premised upon the oral representation to me of the attorney for Piscataway that the Township has "no objection" to the entry of this Order. Please forward this letter on to Judge Serpentelli with your notice of motion and the Order. I consent to having the motion heard by telephone conference on two days' notice, as I believe the Township attorney does also.

Sincerely yours,



Eric Neisser

encls

cc: Philip Paley, Esq.
Mr. Roy Epps,
Executive Director,
Civic League of Greater
New Brunswick

Gluck and Kelso
132 Hamilton Street
New Brunswick, N.J. 08901
Attorneys for Peter J. Saker, Jr.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY
(OCEAN COUNTY)

URBAN LEAGUE OF GREATER]
NEW BRUNSWICK, et al.,]
]
Plaintiffs,]
]
vs.]
]
THE MAYOR AND COUNCIL OF]
THE BOROUGH OF CARTERET, et al.,]
Defendants.]
-----]

Docket No. C-4122-73

Civil Action
(Mount Laurel)

ORDER RE: PISCATAWAY

This matter having been opened to the Court by Peter J. Saker, Jr., owner of Site 3, by his attorneys, and the Urban (now Civic) League of Greater New Brunswick, by its attorneys, having agreed to conditions for releasing the existing restraints and having consented to entry of this Order, which the Court has reviewed:

NOW, THEREFORE, IT IS THIS _____ DAY OF _____, 1986,
ORDERED AND ADJUDGED:

1. Conditional dissolution of restraint. The restraints on development approvals entered by this Court on December 11, 1984, are hereby dissolved with respect to Block 228, Lots 33 through 67 and Lot 134 in the Township of Piscataway, also designated as Site 3 in the Report of the Court-appointed expert, Carla Lerman, dated November 10, 1984. Dissolution of these restraints is subject to the conditions

stated in Paragraphs 2-6 below.

2. Application for development of Site 3. Peter J. Saker, Jr. may apply forthwith to the Planning Board of the Township of Piscataway for approval to develop Site 3 in accordance with the presently effective zoning. Such application will be considered by the Planning Board, and by any other appropriate Township boards, agencies, or officials, in accordance with the requirements of the Municipal Land Use Law and the existing land use ordinances and regulations of Piscataway, but nothing in this Order shall bind the Planning Board or any other Township boards, agencies or officials to approve such application except in accordance with otherwise applicable law.

3. Payment in lieu of affordable housing. If Site 3 is approved for development in accordance with the current zoning, Peter J. Saker, Jr. shall pay and deposit with the Court pursuant to Rule 4:57 for the use of the Civic (formerly Urban) League of Greater New Brunswick, the sum of \$250,000 for the purposes specified in Paragraph 4 below, in accordance with the following schedule:

a. Simultaneous with closing of the construction loan for development of Site 3 or issuance of the first building permit, whichever shall occur earlier, the sum of \$50,000.

b. Thereafter, the sum of \$25,000 every three months until the total sum of \$250,000 shall have been paid.

4. Use of funds to provide affordable housing.

a. The funds payable to the Court for use by the Civic League pursuant to this Order shall be held by the Clerk of the Superior Court in a separate interest-bearing account designated as the "Piscataway Affordable Housing Fund." Payments from this account shall be made solely for purposes stated in this paragraph and as specifically authorized by the Board of Directors of the Civic League and approved by the Court, provided that all such expenditures shall further the provision of rehabilitating affordable existing housing in Piscataway Township. In the discretion of the Board, payments may be made either from the capital value of the Fund or the interest income thereon.

b. An appropriate amount from the Fund, but in any case no more than \$10,000 per year, shall be paid to the Civic League for the purpose of monitoring Piscataway Township's compliance with any obligation imposed upon it to provide affordable housing.

c. The remainder of the Fund shall be used to subsidize affordable housing in Piscataway. The Fund may be used to subsidize the capital cost of providing new housing or of rehabilitating existing substandard housing. The Fund may also be used to provide operating subsidies to providers of housing for low and moderate income households, or to provide subsidies directly to such households. Other expenditures from the Fund consistent with the

general purposes specified in this paragraph may be approved.

d. All housing subsidized by the Fund shall be occupied only by low and moderate income households and shall be subject to appropriate controls on resale or rerelease. Until further order of this Court establishing a final compliance plan for Piscataway Township, the standards of eligibility and control shall be those used in the Society Hill at Piscataway development, approved by this Court in the Consent Order entered on July 13, 1985.

5. Enforcement.

a. The payment obligation of Paragraph 3 shall be secured by a promissory note in the amount of \$250,000., providing for payment in accordance with the schedule set forth in Paragraph 3 of this Order, co-signed personally by Peter J. Saker, Jr. and by any business entity(ies) created to develop Site 3.

b. Peter J. Saker, Jr., and any entity(ies) created to develop Site 3, and any partners, successors or assignees of either, shall be enjoined, on motion brought on two (2) days' notice, from all current or future development activity on Site 3 and from applying for any further building permits, certificates of occupancy, or other official approvals for development of Site 3, under any of the following circumstances:

(i) If a promissory note in accordance with Paragraph 5(a) above is not executed by Mr. Saker and the referenced business

entity(ies) and delivered to the attorneys for the Civic League within 10 days of preliminary site plan approval by the Piscataway Planning Board for development of Site 3, such restraint to continue until the promissory note is executed and delivered;

(ii) If the consent to jurisdiction and enforcement required by Paragraph 5(d) below is not filed with this Court within ten (10) days after creation of the business entity(ies) or after acquisition of any rights relating to Site 3 or its development by any partner, successor or assignee of Mr. Saker or the entity(ies), such restraint to continue until the appropriate consent to jurisdiction and enforcement is filed with this Court and served on all parties;

(iii) If any payment required by Paragraph 3 is not made in full and on time, such restraint to continue until the amount in arrears, together with interest at the interest rate on the construction loan for development of Site 3 plus 2% per month for the period of the arrearage, shall have been paid to the Clerk of the Superior Court.

c. This Order shall further be enforceable by a Motion to Enforce Litigants' Rights brought pursuant to Rule 1:10-5.

d. Peter J. Saker, Jr., hereby consents to the jurisdiction of this Court for purposes of entry and enforcement of this Order and agrees that service of motion papers upon his attorneys pursuant to the Rules of Court shall constitute adequate service to permit entry

of an order under Rule 1:10-5 and Paragraph 5(b) and (c) above. Any business entity(ies) created to develop Site 3 and any partner, successor or assignee of Mr. Saker or such entity(ies) with regard to Site 3 or its development shall file with this Court and serve on all parties a consent to jurisdiction of this Court and enforcement by this Court pursuant to Paragraph 5 of this Order within 10 days of the creation of the entity or of the acquisition by any partner, successor or designee of Mr. Saker or the entity(ies) of any rights relating to Site 3 or its development.

6. Continuance of restraint if development approval not granted.

GN If for any reason Peter J. Saker, Jr., or the development entity(ies) or their partners, successors or assignees fail to submit an application to the Piscataway Planning Board for development of Site 3 in accordance with current zoning by ^{March} February 28, 1986, or if the Township denies such application, the terms of this Order shall become inoperative, and any other application for development on Site 3 by Mr. Saker or any other person or entity shall be again subject to all of the restraints contained in this Court's Order of December 11, 1984.

7. Credits against fair share. If the Township of Piscataway grants approval to Peter J. Saker, Jr., for development of Site 3 in accordance with current zoning, and if Peter J. Saker, Jr., makes all payments in lieu of affordable housing specified in Paragraph 3 above,

the Urban League will not oppose an application by the Township of Piscataway for credit for up to 75 units of lower income housing against its total fair share obligation.

Eugene D. Serpentelli, A.J.S.C.

We hereby consent to the form, substance and entry of this Order.

Gluck and Kelso
Attorneys for Peter J. Saker, Jr.

BY: _____
THOMAS KELSO, ESQ.

Constitutional Litigation Clinic
Rutgers Law School
Attorneys for the Urban (Civic) League of Greater New Brunswick

BY: Eric Neisser 2/28/86
ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.