

Signed Stipulation between Urban League and Borough of South Plainfield deciding approaches to fair share formulas and allocations.

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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION-MIDDLESEX 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

STIPULATION

Plaintiffs and the Borough of South Plainfield, by their attorneys,
 hereby stipulate as follows:

1. The fair share methodologies set forth in the Fair Share Report
 of Carla L. Lerman, the Court-appointed expert in this action, dated
 April 2, 1984, and in the Expert Report on Mount Laurel II Issues prepared
 by Alan Mallach, plaintiffs' retained expert, dated December 1983, are
 both generally reasonable approaches to the fair share issues remanded
 to this Court by the Supreme Court.

2. The total present and prospective fair share allocation for South Plainfield through 1990 resulting from the Lerman methodology is 1725 units affordable by low and moderate income households and the fair share for South Plainfield resulting from the Mallach methodology is 1523 units. There is, however, insufficient vacant developable land suitable for development of low and moderate income housing to meet the full fair share resulting from either methodology. As of February 1984, there were only 641 vacant acres remaining in the Borough, of which a significant proportion were in floodplains, in an environmentally sensitive swampland, or in the midst of substantial existing industrial or commercial development. In addition, much of the remaining developable land is in small lots of less than 3 acres. In light of the remaining land, the fair share obligation of South Plainfield should be reduced to 900 units, to be allocated as 280 units of present need by 1990 and 620 units of prospective need by 1990.

3. The zoning ordinance of South Plainfield does not now have, and has not at any time since July 9, 1976, had, a zone for multi-family housing.

4. The only proposal for rezoning to permit more than two-family construction, which is set forth in the South Plainfield Planning Board's 1978 Review of the Master Plan, was rescinded by the Planning Board in its January 1980 Addendum No. 1 to the 1978 Review.

5. The zoning ordinance of South Plainfield does not provide, and has not at any time since July 9, 1976, provided, any mandatory set-aside, density bonus, waiver of zoning requirements, or affirmative municipal assistance for construction of housing affordable by persons of low or moderate income.

6. No multi-family housing other than two-family units has been constructed in South Plainfield since 1976.

7. The only proposal for multi-family housing in South Plainfield since 1976, a proposed six-story, 100-unit senior citizen housing project, was rejected by the Board of Adjustment on May 4, 1982. That decision of the Board of Adjustment was remanded to the Board of Adjustment for amplification and supplementation of the record in light of the decision in South Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), in an order of this Court filed December 23, 1983 in Elderlodge, Inc. v. South Plainfield Board of Adjustment, No. L-56349-81 (Law Div., Middlesex County).

8. The only proposal for attached single family development in South Plainfield, a proposal by Bayberry Construction to construct 70 townhouses on 6.9 acres, was denied a variance by the South Plainfield Board of Adjustment on January 3, 1984, in part because "the price range indicated is not within the 'low-income' as is required by recent Court decision."

9. It is likely that none of the single family and two-family homes approved or constructed in the Borough since 1976 is affordable by persons of low or moderate income, as defined by Paragraph 23 herein.

10. The Borough has not since 1976 provided for construction of any subsidized low or moderate income housing under any government subsidy program.

11. The Borough has obtained Middlesex County Community Development funds for rehabilitation of 33 housing units since 1976.

12. The 84.8 acre site on New Brunswick Avenue, known as the Harris Steel site and designated as Block 459 Lot 1, Block 460 Lot 1, Block 461

Lots 1-3, Block 462 Lot 2, Block 465 Lot 1, Block 466 Lot 1, Block 467 Lots 1, 3, 4, 5 and 21, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

13. The 27 acre site on New Durham Road, known as the Coppola farm and designated as Block 528 Lot 43, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

14. The municipally owned site of approximately 25 acres at the northern tip of Kennedy Road, known as the Pomponio Avenue site and designated as Block 448 Lots 2.01 and 4.01 and Block 427 Lot 1.01, is appropriate for multi-family development at a density of 15 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units. Said 15 units include a density bonus of 3 units per acre by the Borough of South Plainfield to encourage construction of Mount Laurel housing and as such shall be considered a municipal contribution to the Pomponio Avenue site. The site shall include a 200-foot deep commercial development buffer on the westernmost portion of the site facing Clinton Avenue.

15. The 18+ acre site near Universal Avenue, known as the Universal Avenue site and designated as Block 255, Lots 14, 33 and 34, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

16. The municipally owned site of approximately 8 acres and the adjoining privately owned parcels totalling approximately 4½ acres on either side of Frederick Avenue to the north of Sylvania Place, known as the

Frederick Avenue site and designated as Block 308 Lot 34, Block 310 Lots 1.01, 4.01, 5-7, 9, 11, 13-15, 17 and 18, and Block 311 Lots 16-36, are appropriate for multi-family development at a density of 12 units per acre with a mandatory set aside of 10 percent low income and 10 percent moderate income units.

17. The municipally owned site of 6.15 acres on Morris Avenue, known as the Morris Avenue site and designated as Block 111, Lots 1-4, Block 112, Lots 1, 2.01, Block 113, Lots 1.01, 2, 4, 5.01 and Block 115, Lots 1, 2, 2.01 and 3, is appropriate for development as a senior citizens housing project with a total of 100-150 units of which at least 50 percent will be affordable by low income households with the balance affordable by moderate income households, if the Borough would contribute the land and provide necessary financial support, including seed money and tax abatement.

18. The 7½ acre site south of Tompkins Avenue designated as Block 12, Lots 9, 16 and 17, and currently owned by the Archdiocese of Metuchen and planned to be used for church purposes, is appropriate for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units. In any event, if the Archdiocese of Metuchen should decide to utilize said property for use as a cemetery, then it shall apply for said use within a two-year period of the date of the entry of an Order of Compliance for the Borough of South Plainfield in this matter.

19. The 1.46 acre site on Hamilton Boulevard, known as the Elderlodge site and designated as Block 259, Lots 5, 6.01, 6.02, 7, and 12, is appropriate for development of a 100-unit multi-family development, with a mandatory set-aside of 10 percent low income and 10 percent moderate income units,

subject to reasonable conditions to be imposed by the Board of Adjustment.

20. The Borough permits use of modular or manufactured housing meeting state building code requirements and zoning requirements for residential development.

21. The likelihood that additional sites will become available in the future for development, as a result of demolition, accidental destruction or otherwise, dictates that an ongoing method be available to insure that sites that are suitable for multi-family development be developed with an appropriate percentage of lower income housing. The adoption of a conditional use provision to enable owners of such sites in excess of 3 acres in size, where appropriate, to develop multi-family housing with a mandatory set-aside of 10 percent low income and 10 percent moderate income housing, subject to appropriate conditions which can be set forth in detail in the Borough zoning ordinance, is an appropriate means to achieve this objective.

22. The Borough will apply for all federal, state, and county funds that become available between the present and 1990 for rehabilitation of existing deficient housing units and for all funding that becomes available for subsidization of the construction or rent of new housing units.

23. Low income households are those earning less than 50 percent of the median household income in the 11-county region designated in the Lerman Report of April 2, 1984. Moderate income households are those earning between 50 and 80 percent of the median household income in that 11-county region.

24. To be affordable by low income households, units for sale may require the expenditure of no more than 28 percent of the household income for principal, interest, taxes, insurance, and condominium fees, and units for rent may require the expenditure of no more than 30 percent of

the household income for rent and utilities.

25. All units affordable by low and moderate income households must be affirmatively marketed by the developer throughout the 11-county region and all marketing practices must comply with federal and state laws against discrimination.

26. All units for sale affordable by low and moderate income households must contain deed restrictions limiting resale for a 30-year period to households of similar qualifications and these restrictions must be enforced by an appropriate agency independent of the developer.

27. All multi-family developments provided for herein shall contain a bedroom mix reflecting the distribution of housing needs in the 11-county region by household size.

28. If, for any reason, the Court fails or refuses to enter Judgment directing appropriate rezoning and assuring an Order of Compliance to the Borough with accompanying six-year repose upon appropriate ordinance amendments, within 30 days of the signing of this Stipulation, either party is free to withdraw from this Stipulation and to proceed to trial on the issues herein, at which trial this Stipulation will not be admissible in evidence.

Plaintiffs Urban League, et al.

By

Eric Neisser
Eric Neisser

Date

5/10/84

Defendant Borough of South Plainfield

By

Patrick Diegnan
Patrick Diegnan

Date

MAY 10, 1984