

Notice of Harris Structural Steel
Company to Intervene with
Attached ~~Order~~ Judgment as to
Saul Plainfield ordering
fair share housing unit quantities.

Pgs = 21

CA002662N

RECORDED
OCT 2 1980
JUDGE JOHN J. CHAMBERS

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
900 Route 9, P.O. Box 10
Woodbridge, New Jersey 07095
(201) 636-8000
Attorneys for Plaintiff-Intervenor

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

-----X
:
URBAN LEAGUE OF GREATER NEW :
BRUNSWICK, et al., :
:
Plaintiffs, :
:
v. :
:
THE MAYOR AND COUNCIL OF THE :
BOROUGH OF CARTERET, et al., :
:
Defendants. :
:
v. :
:
HARRIS STRUCTURAL STEEL COMPANY, :
INC., a New Jersey corporation, :
:
Plaintiff-Intervenor. :
:
-----X

Civil Action
NOTICE OF MOTION
TO INTERVENE

TO: ERIC NEISSER, ESQ.
Constitutional Law Clinic
Rutgers Law School
15 Washington Street
Newark, NJ 07102

FRANK A. SANTORO, ESQ.
1500 Park Avenue
Box 272
South Plainfield, NJ 07080

SIRS:

PLEASE TAKE NOTICE that on Friday, November 8, 1985 at 9:00 a.m., or as soon thereafter as counsel may be heard, the undersigned attorneys for plaintiff-intervenor Harris Structural Steel Company, Inc. will apply to the Honorable Eugene Serpentelli, Judge of the Superior Court of New Jersey, at the Middlesex County Courthouse in New Brunswick, New Jersey, for an order permitting plaintiff-intervenor Harris Structural Steel Company, Inc. to intervene in the above-captioned matter pursuant to R.4:33-1 et seq. and to file the Complaint attached hereto.

PLEASE TAKE FURTHER NOTICE that in support of this motion plaintiff-intervenor will rely on the attached Affidavit of Stephen E. Barcan, Esquire, on the Brief submitted herewith and on the arguments of counsel.

PLEASE TAKE FURTHER NOTICE that plaintiff-intervenor Harris Structural Steel Company, Inc. hereby requests oral argument pursuant to R.1:6-2(c).

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
Attorneys for Plaintiff-Intervenor
Harris Structural Steel Company, Inc.

By: 

STEPHEN E. BARCAN

DATED:

CERTIFICATION

I hereby certify that the original of the within Notice of Motion has been filed with the Clerk of the Superior Court, CN 971, Trenton, New Jersey 08625. A copy has been filed with Judge Eugene Serpentelli, Ocean County Courthouse, CN 2191, Toms River, New Jersey 08754. A copy has been hand delivered to each attorney listed above at the addresses indicated.

I further certify that this matter is entitled to preference in scheduling pursuant to R. 1:2-5(1).



STEPHEN E. BARCAN

DATED:

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
900 Route 9, P.O. Box 10
Woodbridge, New Jersey 07095
(201) 636-8000
Attorneys for Plaintiff-Intervenor

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

-----X
URBAN LEAGUE OF GREATER NEW :
BRUNSWICK, et al., :
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 : Civil Action
 :
 Plaintiffs, :
 :
 :
 v. :
 :
 : COMPLAINT IN LIEU
 : OF PREROGATIVE WRIT
 :
 :
 THE MAYOR AND COUNCIL OF THE :
 BOROUGH OF CARTERET, et al., :
 :
 :
 Defendants. :
 :
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 v. :
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 :
 HARRIS STRUCTURAL STEEL COMPANY, :
 INC., a New Jersey corporation, :
 :
 :
 Plaintiff-Intervenor. :
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 :
-----X

Plaintiff-Intervenor Harris Structural Steel Company,
Inc. (hereinafter "Harris"), located at 1640 New Market Street,

South Plainfield, Middlesex County, New Jersey, by way of complaint, says:

FIRST COUNT

1. Plaintiff-Intervenor Harris is the owner of 84.8 acres of land located on New Brunswick Avenue in the Borough of South Plainfield, Middlesex County, New Jersey, and appearing as Block 459 Lot 1, Block 460 Lot 1, Block 461 Lots 1-3, Block 462 Lot 2, Block 464 Lot 1, Block 466 Lot 1, Block 467 Lots 1, 3, 4, 5 and 21 on the Tax Map of the Borough of South Plainfield (hereinafter "Harris Premises").

2. By Judgment entered May 22, 1984 in this captioned matter, the Honorable Eugent D. Serpentelli, A.J.S.C. found that the Zoning Ordinance of the Borough of South Plainfield did not comply with the constitutional obligation set forth in Mount Laurel II, to wit: the Zoning Ordinance did not provide a realistic opportunity for satisfying the Borough's fair share of the regional need for low and moderate income family housing. A copy of that Judgment is annexed hereto as Exhibit A.

3. In the same Judgment, Judge Serpentelli ordered the Borough of South Plainfield to amend its Zoning Ordinance to include a provision, inter alia, rezoning the Harris Premises "exclusively 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."

4. Harris was not a party to this litigation when the Judgment was entered.

5. The Borough of South Plainfield subsequently held public meetings for the purpose of adopting the ordinance amendments ordered by Judge Serpentelli.

6. Counsel for Plaintiff-Intervenor Harris appeared at said public meetings but the governing body was precluded from considering Harris' comments and proposal for development because of the Judgment which compelled rezoning of the Harris Premises exclusively for multi-family development.

7. The Borough of South Plainfield ultimately adopted an amendment to its Zoning Ordinance rezoning the Harris Premises in accordance with the aforementioned Judgment.

8. By reason of this amendment the Harris Premises was rezoned from industrial to residential use.

9. By reason of the said Judgment, the Borough of South Plainfield was precluded from holding any meaningful public hearings and from exercising discretion in amending its Zoning Ordinance so as to comply with Mount Laurel II, as contemplated by applicable law including -- but not limited to -- the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and Mount Laurel II.

10. Plaintiff-Intervenor Harris was never given notice of the Court's intention to order the Borough of South Plainfield to amend its Zoning Ordinance as aforesaid, nor was Plaintiff-

Intervenor ever given an opportunity to appear before the Court prior to entry of the Judgment which ordered a rejoining of its lands.

11. By reason of the rezoning of the Harris Premises as described above, Plaintiff-Intervenor Harris has been denied due process of law in violation of the Constitutions of the United States and the State of New Jersey.

WHEREFORE, Plaintiff-Intervenor Harris demands judgment:

(a) Permitting Plaintiff-Intervenor Harris to intervene in this action against the Defendant Borough of South Plainfield;

(b) Declaring the amended Zoning Ordinance of the Borough of South Plainfield invalid insofar as it zones the Harris Premises exclusively for multi-family development;

(c) Reducing the density of any multi-family housing to be assigned to Harris to reflect actual buildable area of the Harris Premises, and reducing the lower income housing requirement accordingly;

(d) Granting Plaintiff-Intervenor Harris a rezoning of its property so as to give it the option of either constructing office and light industrial facilities thereon, together with lower income housing units or, alternatively, of constructing office and light industrial facilities exclusively on the Harris Premises if the lower income housing requirement is satisfied off-site;

(e) Granting such other relief as may be just, together with costs of suit.

SECOND COUNT

1. Plaintiff-Intervenor Harris incorporates by reference all of the allegations of the First count and makes them a part hereof as if set forth at length.

2. The above-mentioned property is located immediately adjacent to the steel plant of Plaintiff-Intervenor Harris.

3. The property is not entirely suitable for residential development because of its location next to the steel plant and for the further reason that the property is partially zoned as wetlands and as a flood plain. Moreover, the soil conditions on portions of the property dictate against the placement of buildings thereon.

4. Sound land use planning requires that a buffer be permitted and developed between the said steel plant and any multi-family development placed on the Harris Premises.

5. Said buffer could consist of offices and other light industrial facilities.

WHEREFORE, Plaintiff-Intervenor Harris demands judgment:

(a) Permitting Plaintiff-Intervenor Harris to intervene in this action against the Defendant Borough of South Plainfield;

(b) Declaring the amended Zoning Ordinance of the

Borough of South Plainfield invalid insofar as it zones the

Harris Premises exclusively for multi-family development;

(c) Reducing the density of any multi-family housing to be assigned to Harris to reflect actual buildable area of the Harris Premises, and reducing the lower income housing requirement accordingly;

(d) Granting Plaintiff-Intervenor Harris a rezoning of its property so as to give it the option of either constructing office and light industrial facilities thereon, together with lower income housing units or, alternatively, of constructing office and light industrial facilities exclusively on the Harris Premises if the lower income housing requirement is satisfied off-site;

(e) Granting such other relief as may be just, together with costs of suit.

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
Attorneys for Plaintiff-Intervenor
Harris Structural Steel Company, Inc.

By: _____


STEPHEN E. BARCAN

DATED:

CERTIFICATION

I hereby certify that this matter is not the subject of any other pending court or arbitration proceeding, that no such other court or arbitration proceeding is contemplated by the Plaintiff-Intervenor, and that there are no other parties who, to the knowledge of Plaintiff-Intervenor's counsel, should be joined in this action.

I further certify that this matter is entitled to preference in scheduling pursuant to R.1:2-5(1).


STEPHEN E. BARCAN

DATED:

ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
201/648-5687

BRUCE S. GELBER, ESQ.
JANET LA BELLA, ESQ.
National Committee Against
Discrimination in Housing
733 Fifteenth St., NW, Suite 1026
Washington, D.C. 20005
202/783-8150

ATTORNEYS FOR PLAINTIFFS

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

Plaintiffs,

vs.

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

Defendants.

FILED S-22-8Y

E. D. SERPENTELLI, J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX
COUNTY

Docket No. C 4122-73

Civil Action

JUDGMENT AS TO SOUTH PLAINFIELD

Plaintiffs having moved for summary judgment based upon the Stipulation between plaintiffs and the Borough of South Plainfield, and the Court having reviewed the Stipulation and referred it to the Court-appointed expert to report whether the terms of the Stipulation, including the fair share allocation, the designation of sites for multi-family development, and the procedures for insuring appropriate marketing and affordability controls are reasonable, and having heard counsel for both parties,

It is, therefore, this 22 day of May, 1984,

ORDERED and ADJUDGED:

1. The Borough of South Plainfield's fair share of the regional low and moderate income housing need through 1990 is 900 housing units, allocated as 280 units of present need and 620 units of prospective need.

2. The Borough of South Plainfield's existing zoning ordinance is not in compliance with the constitutional obligation set forth in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), and the Borough is not entitled to any credit towards its fair share for any housing built since 1980.

3. Forthwith, but not later than 120 days after the entry of this Judgment, the Borough of South Plainfield shall amend its zoning ordinance to incorporate the following provisions:

A. The Borough shall rezone the 84.8 acre Harris Steel site on New Brunswick Avenue, designated as Block 459 Lot 1, Block 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, exclusively 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.

B. The Borough shall rezone the 27 acre site on New Durham Road, known as the Coppola farm and designated as Block 528 Lot 43 exclusively for multi-family development at a density of 12 units

= in site

①

12

②

12

~~12X 12 = 104~~
12X 12 = 104

OR 142 112

4X 8 = 32

144

per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

③

very nice

C. The Borough shall rezone 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, exclusively 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, except that the rezoning may provide for a commercial development buffer no more than 200 feet deep on the westernmost portion of the site facing Clinton Avenue.

④

12
DU/AC
D.U. Apt. - MAX - 1/3

D. The Borough shall rezone the Universal Avenue site, designated as Block 255 Lots 14, 33 and 34, exclusively 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.

⑤

E. The Borough shall rezone the municipally owned site of approximately 8 acres and the adjoining privately owned parcels totalling approximately 4 1/2 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, exclusively 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.

⑥

F. The Borough shall rezone 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, exclusively 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. See ¶ 4 infra.

Handwritten notes in left margin, possibly "Morris Ave" and "100-150".

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⑦

G. The Borough shall rezone the 7 1/2 acre site south of Tompkins Avenue designated as Block 12 Lots 9, 16 and 17, and currently owned by the Archdiocese of Metuchen 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. To the extent that the existing land use ordinance may permit use of the site for cemetery purposes, such ordinance provision may continue in effect for a period of two years from the date of the entry of the Order of Compliance for South Plainfield in this action but shall thereafter expire automatically.

⑧

H. The Borough shall rezone 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, which is the property at issue in Elderlodge, Inc. v. South Plainfield Board of Adjustment, No. L-56349 (Law Div., Middlesex County), exclusively for 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

Handwritten notes in left margin, possibly "Morris Ave" and "100-150".

conditions to be imposed by the Board of Adjustment.

I. The Borough shall expressly provide in its zoning ordinance that modular or manufactured housing meeting state building code requirements and other appropriate zoning ordinance requirements shall be permitted in residential zones throughout the Borough.

defaults to trails

*10.8.8
G.M.F.*

J. The Borough shall permit, as a conditional use on any site of 3 acres or more in any residential zone, where appropriate multi-family development at a higher density than otherwise permitted by the applicable zoning with a mandatory set-aside of 10 percent low income and 10 percent moderate income housing, subject to such additional appropriate conditions as the Borough may wish to incorporate in the zoning ordinance. Through 1990 the Borough shall not permit on a site 3 acres or larger any use substantially similar to that permitted under this section unless it is subject to the same mandatory set-aside.

2% existing

Find a place

K. The Borough shall adopt appropriate provisions to require that the low and moderate income housing units to be constructed pursuant to any mandatory set-aside provision shall be phased in proportionately during the construction of the entire project so that certificates of occupancy for more than 25 percent of the market unit shall not be granted until 25 percent of the low and moderate income units are completed, certificates of occupancy for more than 50 percent of the market units shall not be granted until 50 percent of the low and moderate income units are completed, and certificates of

Specifiers

occupancy for more than 85 percent of the market units shall not be granted until 85 percent of the low and moderate income units are completed.

L. The Borough shall adopt appropriate provisions to require that all multi-family developments provided for herein shall contain a bedroom mix reflecting the distribution of housing needs by household size in the 11-county region set forth in the Report of the Court-appointed expert in this action dated April 2, 1977 and to limit the granting of construction permits, pursuant to the formula set forth in subparagraph 3(K) above, to insure that each segment of a project contains an appropriate bedroom mix, unless the size of the project makes this infeasible.

Handwritten: "in case" with an arrow pointing to the word "require" in paragraph L. Below it is a question mark and "set it".

4. In order to facilitate development of the Morris Avenue site after rezoning as set forth in § 3(F) supra, the Borough of South Plainfield shall contribute the land at that site and shall provide the necessary financial support for the project, including necessary seed money and tax abatements.

Handwritten: "S. Citizens" with a question mark.

5. Forthwith, but not later than 120 days after the entry of this Judgment, the Borough of South Plainfield shall adopt an Affordable Housing Ordinance which shall provide that units designated as low or moderate income units shall be sold or rented only to families who qualify as low or moderate income families. The ordinance shall further provide that such units shall be re-rented or re-sold only to qualifying families and that such units are affordable to low or moderate income families. To be affordable

Handwritten: "will be done" and "P.P.O." circled in a large loop. Below the loop are the initials "D.P." with two vertical lines.

the monthly expenses of a sales unit for principal, interest, taxes, insurance, and condominium fees shall not exceed 28% of family income while the monthly rental charge, including utilities, shall not exceed 30% of family income. Low income shall be defined as less than 50% of median regional income with adjustments for family size, and moderate income shall be defined as between 50% and 80% of median regional income, with adjustments for family size. For the purposes of this section, the region for determining median income shall be the 11-county region set forth in the Court-appointed expert's Report dated April 2, 1984, in this case. The average price of moderate income units in any development provided for herein shall not exceed the level affordable by households earning 90 percent of the ceiling income for moderate income households, and the average price of low income units in any development provided for herein shall not exceed the level affordable by households earning 90 percent of the ceiling income for low income households. Restrictions on resale will expire 30 years from the date of the initial sale of the premises. The ordinance shall provide a mechanism to assure that only qualifying families own or rent such units and to administer otherwise these provisions. For this purpose, the Borough may establish a municipal agency or may contract with a suitable non-profit organization or other public agency for the purpose of administering the requirements set forth herein.

6. Forthwith, but no later than 120 days after the entry of this Judgment, the Borough of South Plainfield shall adopt a

resolution committing the Borough to 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 such funding that becomes available between the present and 1990 for subsidization of the construction or rent of new housing units, and to encourage and assist private developers to so apply.

7. Forthwith, but not later than 120 days after entry of this Judgment, the Borough of South Plainfield shall amend its zoning ordinances so that all developers of low and moderate income units are required to affirmatively market those units to persons of low and moderate income, irrespective of race, color, sex, or national origin. *Such affirmative marketing shall include advertisement in newspapers with general circulation in the urban core areas located in the 11-county present need region identified in the Court-appointed expert's Report dated April 2, 1984. The Borough shall also require the developer to advertise the low and moderate income units with local fair housing centers, housing advocacy organization Urban Leagues, and governmental social service and welfare departments located within the 11-county region. The Borough shall also require that all marketing practices comply with applicable federal and state laws against discrimination.*

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8. The Borough of South Plainfield shall report in writing to the Court and to plaintiff Urban League or its designee, within 120 days of the entry of this Consent Order or when all ordinance amendments and resolutions have been duly enacted by the Borough

Council, whichever first occurs, certifying that all ordinance amendments and resolutions have been enacted or providing an explanation as to why they have not been enacted. Upon certification that all required amendments and resolutions have been enacted, the Court will enter an Order of Compliance which will be valid and binding for six years from the date of receipt of said certification. If all ordinance amendments and resolutions required herein have not been enacted, the Court shall set this case for trial.

9. The Borough of South Plainfield shall report quarterly in writing to plaintiff Urban League or its designee, commencing with September 30, 1984, providing the following information:

(a) itemization of all proposed developments covered by this Judgment for which applications have been filed with the Borough's Planning Board, and for which preliminary or final approval has been given by the Planning Board; including the location of the proposed site, number of low and moderate income units, name of developer, and dates that Planning Board actions were taken or are anticipated to be taken;

(b) a copy of the affirmative marketing plans provided for each development together with copies of advertisements and a list of newspapers and community or governmental organizations or agencies which received the advertisements; and

(c) applications for government funds for low and moderate income housing and the result thereof.

10. Failure on the part of the Borough to comply with this

Judgment subsequent to entry of the Order of Compliance, by rezoning in contravention hereof or by failing to enforce the other provision hereof, may constitute contempt of Court enforceable, upon motion of the plaintiffs or of the Court sua sponte, by appropriate remedies as provided by law.

11. The Court-appointed expert shall report to the Court no later than June 1, 1984. This Judgment shall become final and the time for taking the actions set forth in this Judgment shall begin to run five days after the Court-appointed expert shall report to the Court.

12. The time periods set forth in this Judgment may be extended by mutual written consent of parties or upon written application to the Court.


EUGENE D. SERPENTELLI, J.S.C.