

Plainsboro 1985

Revised Consent Order

Attach: ~~the~~ cover letter

pgs. 19

ML0003000

Carla Kerman

ML0003000

JOHN M. PAYNE, ESQ.
ERIC NEISSER, ESQ.
BARBARA J. WILLIAMS, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
[201] 648-5687
On behalf of the American
Civil Liberties Union

ATTORNEYS FOR PLAINTIFFS

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

CONSENT ORDER RE:
PLAINSBORO TOWNSHIP

This matter having been remanded for trial by the Supreme Court on the issues of fair share allocation of the regional need for low and moderate income housing and whether Plainsboro Township has complied with the mandate to satisfy its fair share allocation by providing a realistic opportunity for the development of such housing, and

The parties, by their attorneys, having signed a proposed Consent

Order on May 22, 1984, which Order has not been formally approved by the Court, and

The agreement embodied in the said May 22, 1984, proposed Consent Order having proven impractical to implement in some of its elements, and

The Court, on March 29, 1985, having appointed Carla Lerman as Master to assist the parties in revising the agreement between them, and

The parties, by their attorneys, having signed a further agreement embodied in the following proposed Consent Order, which the Court has reviewed:

NOW, THEREFORE, it is this ____ day of _____, 1985, ORDERED AND ADJUDGED:

1. Non-compliance and fair share.

a. As of May 22, 1984, the land use ordinances of the Township of Plainsboro failed to provided a realistic opportunity for the construction of the Township's fair share of the regional need for low and moderate income housing, in violation of the New Jersey Constitution.

b. Plainsboro Township's constitutional obligation to provide its fair share of low and moderate income housing need

through 1990 is 575 units.

2. Summary of remedial steps. Subject to the provisions of paragraph 7 below, the Township's fair share shall be met as follows:

a. 413 units of newly-constructed rental units adjacent to the existing Princeton Meadows development, of which 125 shall be available solely to low income senior citizen households, and 288 shall be available to moderate income non-senior citizen households. "Senior citizen households" shall be those in which at least one family member is age 65 or older.

b. 40 newly-constructed low income sales units within the Princeton Meadows development.

c. 60 low income and 60 moderate income rental units to be subsidized as provided in paragraph 6 below.

d. 2 units credited because of rehabilitation since 1980 of substandard housing within Plainsboro Township occupied by low and moderate income households.

The number of units provided for in paragraph 2(a) above may be modified in accordance with the provisions of paragraph

4(e) below without further consultation between the parties.

3. Affordable Housing Ordinance.

a. Forthwith, but no later than August 1, 1985, the Township of Plainsboro shall certify to the Court and the attorneys for the Civic League of Greater New Brunswick that a duly adopted affordable housing ordinance is in force in Plainsboro Township. The text of this ordinance is appended hereto as Appendix A.

b. Forthwith, but no later than September 1, 1985, the parties shall consult in an attempt to agree on language amending the Affordable Housing Ordinance to establish priorities in eligibility for the low and moderate income housing specified in this Order. Such priorities, if agreed to, shall pay due regard to the importance of meeting the indigenous need component of the fair share and also to the importance of assuring housing mobility throughout the housing region. The proposed amendment, if agreed to, shall be submitted to the Court for its approval without the necessity of a further hearing unless ordered by the Court. If agreement cannot be reached, the matter shall be brought to the attention of the Court for consideration of whether this Consent Order should be modified only with respect to priorities.

4. Princeton Meadows Rental Housing.

a. Forthwith, but no later than September 1, 1985, the Township shall rezone the tract of 35 acres (plus or minus one acre) located north of Plainsboro Road and west of the Public Service easement, identified as part of Lot 12, Block 10 on the Plainsboro Township Tax and Assessment Map, to permit construction of 413 units of low and moderate income housing on a rental basis, of which 125 units shall be available to low income senior citizen households and 288 units shall be available to moderate income non-senior citizen households.

b. Forthwith, the Township shall enter negotiations with the Linpro Company and with any other appropriate entity (including, but not limited to, public or private entities capable of sponsoring non-profit housing development) with respect to the financing, construction and management of 413 units of low and moderate income housing, as part of the Princeton Meadows development, on the tract to be rezoned. In connection therewith, the Township shall, if necessary, issue general obligation bonds, create a redevelopment authority, make a declaration of blight, agree to accept a reversion of title to the 413 units, arrange for sewer franchise access, and take such other reasonable and appropriate steps as shall facilitate production of the 413 housing units affordable to households of low and moderate income on a non-profit basis at the lowest

feasible cost.

c. The agreement with the Linpro Company shall specify the following:

- * The general design of the development shall conform to the plans currently being used in either the "Aspen" or the "Raven's Crest" sections of Princeton Meadows;

- * The 125 units of senior citizen housing shall be physically distinct from the remaining 288 units in the development;

- * The site plan shall provide for appropriate recreational facilities, comparable to those provided elsewhere in Princeton Meadows, provided that the cost of such facilities need not exceed \$250,000;

- * The section of Princeton Meadows provided for in this paragraph shall bear a name and be identified by signs and have landscaping compatible with those used in other sections of Princeton Meadows.

d. The Township shall keep the Civic League of Greater New Brunswick apprised of the course of its negotiations with the Linpro Company and with any other agency, public or private, that may participate in the financing, construction, management and ownership of the 413 units specified herein, and the Civic League shall have the right to review and comment on any agreements proposed to be reached with the Linpro Company or other such

entities.

e. Because the Linpro units as presently designed must be constructed in blocks of either eight or sixteen units, the number of senior citizen units may be increased to 128, but any such change shall not alter the obligation to provide at least 413 units overall. If the adjustment permitted by this subparagraph is made, Plainsboro Township shall not be deemed to have failed to meet its fair share obligation solely because of this change.

f. The fallback mechanisms of paragraph 7 shall be invoked if any one of the following events occur:

- * The Township shall have failed to reach agreement as specified in subparagraphs (c) and (d) above prior to September 1, 1985; or

- * The Linpro Company has not acquired an option to purchase the specified site from the present owners prior to September 1, 1985; or

- * Construction on the 413 units has not begun prior to August 1, 1986.

5. Princeton Meadows Sales Housing. The Township having represented that all necessary revisions have been completed and adopted, in accordance with the prior agreement with the Civic

League, sufficient to permit construction of 40 units of housing affordable to low income households, on a purchase basis, on Lot 10, Block 7.01, in the Princeton Meadows development, the Township shall forthwith, but no later than August 1, 1985, certify to the Court and the attorneys for the Civic League of Greater New Brunswick that all such revisions are presently in force and that construction has begun. If this certification is not made by August 1, 1985, the fallback mechanisms of paragraph 7 shall be invoked.

6. Housing Trust Fund. Forthwith, but no later than September 1, 1985, the Township shall adopt an ordinance creating a Housing Trust Fund, in substantially the form set out and attached to this Consent Order as Appendix B.

a. As monies become available in the Housing Trust Fund, the income therefrom shall first be used to provide rental housing subsidies to 120 households qualified under the Affordable Housing Ordinance in existing housing in Plainsboro Township, so that such housing is affordable within the standards established by the Affordable Housing Ordinance.

b. Individual housing subsidies pursuant to paragraph 6(a) shall be provided no later than the dates shown below. Low income households shall have priority within each deadline group.

| <u>Date</u> | <u># of low- income households</u> | <u># of moderate income households</u> |
|-------------|--------------------------------------------|------------------------------------------------|
| 7/1/86 | 15 | 15 |
| 7/1/87 | 30 | 30 |
| 1/1/88 | 45 | 45 |
| 7/1/88 | 60 | 60 |

[numbers are cumulative]

As adequate funds become available, individual household subsidies shall be provided in advance of the deadline dates. Thereafter, as new households replace prior households in the subsidy program, the number of low and moderate income households subsidized shall be divided as nearly equally as practicable.

If the number of subsidies provided in this Table has not been met or if any Court of competent jurisdiction shall declare this Housing Development Fee ordinance invalid under state or federal law, the fallback mechanisms of paragraph 7 shall be invoked, provided, that where one of the deadlines specified in this subparagraph has been missed, the Master (if one be appointed) shall first report to the Court whether in his or her opinion the deficiency in the program can be made up in a reasonable period of time (such as by payments into the Fund that can be reasonably anticipated on the basis of pending development proposals), in which case the Master may in his or her discretion recommend an appropriate revision in the Table contained in this

subparagraph.

c. The program of 120 subsidized units provided for in paragraph 6(a) above shall continue for at least thirty years from the date of the first subsidy payment, and the corpus of the Fund shall be maintained for a like period in an amount sufficient to maintain the program from the income of the Fund, provided, that contributions to the Housing Trust Fund shall be permitted, but not required as a part of this Consent Order, from any source other than the Development Fee Ordinance and provided further, that the Township may maintain the 120-unit subsidy program beyond thirty years if it chooses to do so.

d. If the income from the Housing Trust Fund is sufficient to permit subsidy payments in excess of the amounts necessary to finance the 120 units specified in paragraph 6(a) above, such excess income may be used for any of the purposes specified in Section 6 of the Development Fee Ordinance attached hereto as Appendix B. In addition, the corpus of the Fund may be used to subsidize capital expenses associated with any of the purposes specified in section 6 of the Development Fee Ordinance, so long as reduction of the capital value of the Fund does not impair the income necessary to maintain the 120 subsidized units specified in subparagraphs (a) and (b) above.

e. The benefit of any further use of the Fund as

specified in subparagraph (d) above shall be divided so that, as nearly as practicable, two low-income households shall be assisted for each moderate-income household assisted.

f. If, at any time prior to the expiration of the period of repose provided for in paragraph 10 below, the Township shall provide continuing affordable housing subsidies out of the Trust Fund in excess of the 120 units specified in paragraph 6(a) above, credit for such subsidies against the current or any future fair share obligation shall be governed by paragraph 8(b) below.

g. If a federal or state program of housing vouchers shall become available while the Housing Trust Fund is in existence, the Township shall pursue in good faith an application to participate in such program, to be administered through its Affordable Housing Agency if permitted under applicable federal or state regulations. This voucher program shall be administered within Plainsboro Township so as to achieve maximum leveraging of the funds otherwise available through the Housing Trust Fund.

7. Fallback mechanisms. In the event that the undertakings covered by paragraphs (3), (4), (5), and (6) above are not completed by the dates specified, this paragraph provides the required alternate mechanism for remedying the unmet portion of the Township's fair share obligation.

a. This paragraph shall be invoked by motion to the Court. Upon a finding that an undertaking covered by paragraphs (3), (4), (5), or (6) above has not been completed by the date specified, the Court shall immediately order alternate remedies as a means of achieving the unmet portion of the Township's fair share obligation. The Court shall in its discretion first refer the case to a Master for his or her recommendation, but in no event shall the issues of fair share number or of initial non-compliance be reopened in these proceedings.

b. Under appropriate circumstances, the Master shall first attempt to recommend a solution which preserves the remedial approaches set forth in this Order, but the Master shall not be required to do so. In particular, the Master is not bound to recommend senior citizen housing, or publicly assisted financing of new construction, or use of the Housing Trust Fund, if those approaches are unfeasible. The Master is specifically authorized to recommend appropriate rezoning of any additional land in Plainsboro Township with a 20% set-aside for low and moderate income housing, in his or her discretion.

c. Should any of the mechanisms provided in this paragraph be invoked, the distribution of low and moderate income units within an alternate housing development shall be such that,

as nearly as practicable, an overall proportion of fifty percent low income and fifty percent moderate income within Plainsboro's fair share is maintained.

8. Additional affordable housing.

a. Forthwith, but no later than August 1, 1985, the Township shall certify to the attorneys for the Civic League of Greater New Brunswick that there is in force in Plainsboro Township an ordinance requiring that in any residential development subsequently approved by the Township that permits a gross density of 4 or more units per acre, whether pursuant to a zoning amendment, conditional use, variance, or otherwise, 10% of all housing units in such development must be affordable to households of low income and 10% must be affordable to households of moderate income, as defined in the Affordable Housing Ordinance attached hereto as Appendix A.

b. In addition to the compliance program established by paragraphs (3) through (7) above, the Township may provide additional units of affordable housing by any means consistent with the provisions of this Consent Order. "Additional units" within the meaning of this paragraph shall include (without limitation) continuing subsidies financed by the Housing Trust Fund in excess of the 120 units of subsidy provided for in

paragraph 6(a) above, or new construction with a low and moderate income set aside as provided in paragraph 8(a) above. It is the intention of the parties that any such additional units of housing, if found to be consistent with the provisions of this Order, should be favorably considered as a credit against the post-1990 fair share obligation of Plainsboro Township, within the limits of law, by any Court or administrative agency charged with making such determination.

9. Plainsboro Township shall report in writing to the Court and to the Civic League of Greater New Brunswick or its designee when each of the actions specified in this Consent Order has been taken. In addition, the Township shall report annually in writing to the Civic League or its designee, on August 1, 1985 and thereafter on July 1 of each year, the number of low and moderate income units being subsidized or otherwise provided as specified in this Order, with such supporting information as shall permit monitoring of the Township's continuing compliance.

10. Provided that all actions required as of September 1, 1985, shall have been taken and certified as provided in paragraph 9 above, Plainsboro Township is hereby found to be in compliance with the requirements of the Constitution of the State of New Jersey as construed in Mount Laurel II. This finding shall be valid and binding for a period of six years retroactive

to March 1, 1985, subject to any of the fallback mechanisms set forth in paragraph 7 above.

Eugene D. Serpentelli, J.S.C.

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

Stonaker and Stonaker

Attorneys for the
Township of Plainsboro

Constitutional Litigation
Clinic, Rutgers Law
School

Attorneys for the Civic
League of Greater New
Brunswick

BY: _____
JOSEPH STONAKER

BY: _____
JOHN M. PAYNE
ERIC NEISSER
BARBARA J. WILLIAMS

DATE: _____

DATE: _____

SCHEDULE OF ACTION DATES

| <u>Date</u> | <u>Action to be taken</u> |
|-------------------|----------------------------------------------------------------------------------------------------------------------|
| August 1, 1985 | Certify adoption of Affordable Housing Ordinance |
| | Certify approval for 40 units of sales housing in Princeton Meadows |
| | Deadline to begin construction on 40 units of sales housing |
| | Certify adoption of set aside ordinance covering any additional higher-density developments |
| | First annual report to Court and Civic League |
| September 1, 1985 | Rezone 35 acres for 413 units of housing |
| | Reach agreement with Linpro and others re: financing, construction and management of 413 units of housing |
| | Linpro to acquire option to purchase 35 acres |
| | Housing Trust Fund ordinance in force |
| | Deadline for consultation regarding amending the Affordable Housing Ordinance to permit priorities |
| | Repose granted retroactive to March 1, 1985 if all conditions to date have been met |
| July 1, 1986 | Deadline for implementing first subsidies out of the Housing Trust Fund [see additional deadlines in paragraph 6(b)] |
| August 1, 1986 | Deadline to begin construction on 413 units |



Carla Herman

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

July 15, 1985

Joseph L. Stonaker, Esq.
Stonaker and Stonaker
41 Leigh Avenue
Princeton, New Jersey 08542

Re: Urban League of Greater New Brunswick
v. Borough of Carteret (Plainsboro)

Dear Joe:

I am enclosing a revised Consent Order which I believe incorporates all of the changes specified by Judge Serpentelli when the matter was heard in open court on July 10.

The specific changes are these:

* All of the May 1 and July 1 reporting dates have been changed to August 1, since the Order will now have a July date.

* Except for the obligation to begin construction on the 40 sales units, all of the August 1 dates have been changed to September 1, 1985. (This seemed simpler than dividing them between August 15 and September 1, since repose cannot be granted until September 1 in any event.)

* Paragraph 2(a) is modified to clarify that the moderate income households are not also senior citizen households, conforming to the language already in paragraph 4(a).

* Paragraph 3(b) is new, requiring us to "consult" with regard to eligibility priorities.

* Paragraph 6(g) is new, dealing with Carla's housing voucher suggestion.

* Paragraph 8(a) is modified to refer to the definition of affordability in Appendix A, rather than "herein."

* Paragraph 9 is modified to clarify that the reporting applies to all units specified in the settlement, not just the units subsidized from the Housing Trust Fund.

Joseph Stonaker, Esq.
July 15, 1985
Page 2

* Paragraph 10 is revised to directly grant repose, rather than requiring further application to the Court.

* The Schedule of Action Dates is revised to reflect the above changes.

In order to expedite things, I have signed two copies of the revised order, one for you and one for the Court. If my revisions are agreeable to you, please forward a signed copy to the Court and return one to me. Naturally, if you have problems with my suggested language, I remain available to discuss the draft with you.

It looks like we're almost finished, and I still think its a deal to be proud of.

Sincerely,

John M. Payne
Co-counsel for the
Urban League Plaintiffs

JMP/id