

South Plainfield 1984

Series of letters between Judge + attorneys  
re: S. Plainfield Court ordered revision

pgs 10

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# Superior Court of New Jersey

CHAMBERS OF  
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE  
C.N. 2191  
TOMS RIVER, N.J. 08754

September 19, 1984

Angelo H. Dalto, Esq.  
Abrams, Dalto, Gran, Hendricks & Reina  
1550 Park Avenue  
P. O. Drawer D  
South Plainfield, N. J. 07080

Re: Elderlodge

Dear Mr. Dalto:

I wish to acknowledge and thank you for your letter of September 12, 1984.

I am pleased to receive Mr. Strong's report since it is my desire to consistently consider any possible refinement which would improve the methodology described in the Warren Township formula. I trust that I am free to share Mr. Strong's thoughts with others who are interested. In particular, I am making a copy of pages 26 through 35 of the report and am sending, by copy of this letter, to Carla L. Lerman who chaired the consensus committee. Some members of that group are in the process of having further deliberations concerning the compliance issues. She may wish to discuss Mr. Strong's comments as part of their ongoing work.

With regard to the Elderlodge case, it is my understanding that while you are continuing your efforts before the Board of Adjustment, the rezoning process in South Plainfield is intended to accommodate your project. If I am incorrect in that regard, kindly advise.

Very truly yours,

Eugene D. Serpentelli, JSC

EDS:RDH  
cc: Carla L. Lerman, P.P. ✓

*P.S. - also included is memo transcript*



# Superior Court of New Jersey

CHAMBERS OF  
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE  
C.N. 2191  
TOMS RIVER, N.J. 08754

September 25, 1984

Patrick Diegnan, Esquire  
P. O. Box 736  
2325 Plainfield Avenue  
South Plainfield, N. J.  
07080

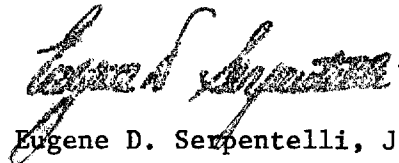
Re: Urban League v. Carteret et al  
(South Plainfield)

Dear Mr. Diegnan:

As a result of reports that I have received, there remains some question in my mind as to whether the Borough of South Plainfield is proceeding with the Court ordered revision.

Kindly advise me with a specific time schedule as to the expected date for completion of the revision and what steps must be taken before the revision has been accomplished.

Very truly yours,

  
Eugene D. Serpentelli, JSC

EDS:RDH  
cc: Bruce Gelber, Esq.  
cc: Carla L. Lerman, P. P.  
cc: Angelo H. Dalto, Esq.

RECEIVED

OCT 12 1984

ABRAMS, DALTO, GRAN, HENDRICKS & REINA

A PROFESSIONAL CORPORATION

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JUDGE SERPENTELLI'S CHAMBERS

BOUND BROOK OFFICE

ROBERT E. HENDRICKS

RESIDENT PARTNER

(201) 356-9400

PLEASE REFER TO  
FILE NO.

October 8th, 1984

Honorable Eugene D. Serpentelli  
Judge of the Superior Court  
Ocean County Court House  
C.N. 2191  
Toms River, New Jersey 08754

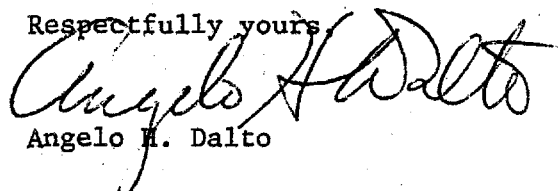
re: Elderlodge (South Plainfield)

Dear Judge Serpentelli:

The South Plainfield Board of Adjustment met on October 2nd. At that time the public hearing was concluded and the Board deliberated and rendered a decision. They moved to grant the application as originally submitted for 100 Senior Citizen units on the subject parcel. No references to Mount Laurel implications or mandatory set asides were established. The Board reserved decision with respect to the bulk variance for violation of height and parking, and indicated it would consider those requests at the time site plan application was submitted. The approval therefore was purely as to the use variance, partially in accordance with my request to bifurcate the hearing. On the basis of the foregoing, my client has directed me to submit an Order to dismiss the action as originally filed, and I am herewith enclosing a form of Consent Judgment, which I am circulating among all counsel for the purpose of affixing signatures in order to file the same upon the adoption of the Resolution memorializing the Board's approval.

I thank Your Honor for the considerations extended all the litigants in this matter, and I am pleased that the resulting termination appears to be in accordance with the present desires of all litigants.

Respectfully yours,



Angelo H. Dalto

AHD:jsb  
Enclosure

cc: Patrick J. Diegman, Jr., ESq.  
William V. Lane, Esq.  
Peter J. Calderone, Esq.

ANGELO H. DALTO, ESQ.  
Abrams, Dalto, Gran, Hendricks & Reina  
1550 Park Avenue  
South Plainfield, New Jersey  
(201 757-4488, 754-9200  
Attorneys for Plaintiff

ELDERLODGE, INCORPORATED,  
a New Jersey Corporation,

Plaintiff,

vs.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT,  
etc.; BOROUGH OF SOUTH PLAINFIELD BY  
ITS MAYOR AND COUNCIL; JOHN GRAF,  
BUILDING INSPECTOR OF THE BOROUGH OF  
SOUTH PLAINFIELD; and PLANNING BOARD  
OF THE BOROUGH OF SOUTH PLAINFIELD,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY

Docket No. L-56349-81

Civil Action

CONSENT JUDGMENT

This matter, having been opened to the Court on Motion of ABRAMS, DALTO, GRAN, HENDRICKS & REINA (Angelo H. Dalto, Esq. appearing), and all parties having consented to the entry of this CONSENT JUDGMENT,

It is hereby ORDERED and ADJUDGED as follows:

By Order of this Court, dated December 23rd, 1983, this matter was remanded to the South Plainfield Board of Adjustment for purposes of amplifying and supplementing the record. Pursuant to said Order, the defendant Board of Adjustment of South Plainfield did in fact conduct public hearings at which time testimony was presented and the public was afforded an opportunity to be heard in accordance with the applicable statutes. On

October 2nd, 1984, the defendant South Plainfield Board of Adjustment did move to grant the requested use variance in accordance with the application as originally filed by the applicant-plaintiff. The defendant Board of Adjustment of South Plainfield did further reserve decision with respect to the height variance request, and parking considerations, to a meeting scheduled for December 4th, 1984, at which time it is intended that site plan application and those variances incident thereto would be considered.

It is further ORDERED and ADJUDGED in view of the foregoing recited factual circumstances, as herein consented to by all parties, that this action be dismissed without costs.

Dated: October \_\_\_\_\_, 1984.

\_\_\_\_\_  
EUGENE D. SERPENTELLI J.S.C.

APPROVED and CONSENTED to:

Johnstone, Skok, Loughlin & Lane  
Attorneys for South Plainfield Board of Adjustment

\_\_\_\_\_  
WILLIAM V. LANE

\_\_\_\_\_  
PATRICK J. DIEGNAN JR.  
Attorney for Borough of South Plainfield and John Graf,  
Building Inspector of the Borough of South Plainfield

\_\_\_\_\_  
PETER J. CALDERONE  
Attorney for Planning Board of the Borough of South Plainfield



# Superior Court of New Jersey

CHAMBERS OF  
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE  
C. N. 2191  
TOMS RIVER, N. J. 08753

October 15, 1984

Angelo H. Dalto, Esq.  
Abrams, Dalto, Gran, Hendricks & Reina  
1550 Park Avenue  
P. O. Drawer D  
South Plainfield, N. J. 07080

Re: Elderlodge South Plainfield

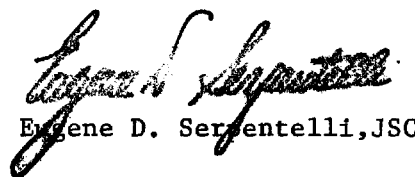
Dear Mr. Dalto:

This will confirm our telephone conversation of Friday, October 12, 1984.

In light of the fact that the Elderlodge matter was remanded to the Board of Adjustment for the specific purpose of permitting supplementation of the record concerning Mount Laurel grounds for relief before the Board of Adjustment, I am most hesitant to enter an order of dismissal which would approve the granting of the application when the approval does not contain a Mount Laurel component.

If the Borough of South Plainfield wishes to provide a compliance ordinance which adequately met its Mount Laurel obligation, I might withdraw my objection to the Elderlodge approval. However, at this posture, the municipality has not done so. I must specifically instruct that no municipal official take any action to authorize construction on the Elderlodge parcel pending resolution of this issue.

Very truly yours,

  
Eugene D. Serpentelli, JSC

EDS:RDH  
CC: Barbara Williams, Esq.  
Patrick J. Diegnan, Jr., Esq.  
William V. Lane, Esq.  
Peter J. Calderone, Esq. ✓  
Carla L. Lerman, P. P. ✓

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**  
Campus at Newark

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

October 19, 1984

Angelo H. Dalto, Esq.  
Abrams, Dalto, Gran, Hendricks & Reina  
1550 Park Avenue  
P.O. Drawer D  
South Plainfield, N.J. 07080

William V. Lane, Esq.  
324 E. Broad Street  
Box 490  
Westfield, N. J. 07091

Dear Mr. Dalto and Mr. Lane,

I am in receipt of Mr. Dalto's letter to Judge Serpentelli of October 8 and the Judge's response of October 15. Plaintiffs in Urban League v. Carteret consider any attempt to construct housing on the Elderlodge site without a 20 percent Mount Laurel set-aside to be in violation of the May 22 Judgment As To South Plainfield, a copy of which is enclosed for your convenience. Both of you knew, from Judge Serpentelli's remand in Elderlodge as well as from conversations and correspondence with Mr. Neisser for the plaintiffs and Mr. Diegnan for the Borough throughout the spring, that the Elderlodge site was one of the few sites in South Plainfield that would be subject to a Mount Laurel rezoning and that the Court had so ordered in May. Any action by the Board of Adjustment or other municipal officials to approve the Elderlodge project without an express, mandatory set-aside would be in violation of the Judgment. Indeed, had the Borough Council complied with the Judgment in a timely manner, the Elderlodge site would have already been rezoned with such a requirement by the time of the Board of Adjustment meeting on October 2. Clearly plaintiffs in Urban League cannot be deprived of the benefits of their Judgment by wilful delay on the part of Borough officials.



Thus, we request that you inform us promptly, in writing or if appropriate by telephone notice, of any proposed action relative to the Elderlodge site, including Board of Adjustment or other official meetings at which the project might be discussed or more informal meetings with the Zoning Officer, Town Engineer or other officials concerning any aspect of the project. If necessary, plaintiffs would move on short notice for an injunction against any action that would prejudice their rights.

Sincerely yours,

*Barbara Williams*

Barbara Williams

*lin 5/11*

cc: Judge Serpentelli  
Patrick Diegnan, Esq.  
Peter Calderone, Esq.  
Carla L. Lerman, P.P.

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October 19, 1984

Hon. Eugene D. Serpentelli  
Ocean County Court House  
C.N. 2191  
Toms River, N.J. 08753

Dear Judge Serpentelli,

I write to set forth plaintiffs' response to your Honor's letters of October 11 to Mr. Diegnan and October 15 to Mr. Dalto.

For the reasons set forth in my October 12 letter to Mr. Diegnan, which was mailed before receipt of your Honor's October 11 letter, plaintiffs consider it wholly unreasonable and contrary to the mandate of Mount Laurel II to delay amendment of a noncompliant zoning ordinance until after revision of the Master Plan. It is particularly inappropriate in a municipality, such as South Plainfield, which all parties agree has very little vacant land remaining that is appropriate for residential development, and where the town has not even raised this concern until after the entire, extended revision period has expired. In any case, the current Master Plan's guidelines were expressly considered during the earlier stages of this litigation leading to the May 22 Judgment As To South Plainfield.

Although we, therefore, believe implementation of the May 22 Judgment should proceed forthwith, plaintiffs emphasize that the areas of difference remaining between the parties are small, as indicated in my letter of October 12 and Mr. Neisser's attached letter of September 5. Given this, we believe it appropriate for your Honor to afford the Borough one last, very brief opportunity to enact a compliant ordinance before proceeding, through a Master, to a court-mandated ordinance. To this end, we suggest that your Honor establish a deadline (we believe two weeks is the maximum time needed), which will permit the Borough Council to hold one properly noticed public meeting at which it could take expedited formal action with regard to a revised zoning ordinance. If it enacts an ordinance revision, and plaintiffs have any objection, we could then move for the Court to refer the revision and our objections to a master for a prompt review and report to the Court. If the Council refuses to adopt a revised

zoning ordinance, for the reasons stated in Mr. Diegnan's October 4 letter or otherwise, we would move for the Court to refer Mr. Rosa's draft ordinances and Mr. Neisser's objections to the Master for prompt review and report to the Court. Because Ms. Lerman already reviewed the Judgment as to South Plainfield and conferred with Mr. Mallach and Mr. Rosa, we believe that she would be the appropriate Master and could reasonably be asked to report back within 10 days or two weeks. Under either circumstance, we would ask the Court's permission to make our motion for reference to a Master, if necessary, on very short notice.

Finally, because it is clear that the Judgment requires rezoning of the tract that is the subject of the Elderlodge litigation for residential development with a 20 percent Mount Laurel set-aside, see Para. 3(H), we have notified the affected parties of our position and requested notice of any action, including agendas of meetings at which the project might be discussed. We will, if necessary, bring a motion on short notice to prevent any action that would prejudice the Urban League plaintiffs' vested interest in the rezoning of that tract. See enclosed copy of letter to Mr. Dalto and Mr. Lane.

We hope that your Honor will move promptly on this matter to prevent any additional prejudice to plaintiffs' rights by reason of South Plainfield's conscious and unnecessary delay.

Respectfully,

*Barbara Williams*

Barbara Williams

*ben GN*

cc: Patrick J. Diegnan, Esq.  
Angelo H. Dalto, Esq.  
William V. Lane, Esq.  
Peter J. Calderone, Esq.  
Carla L. Lerman, P. P.



# Superior Court of New Jersey

CHAMBERS OF  
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE  
C. N. 2191  
TOMS RIVER, N. J. 08753

October 25, 1984

Barbara Williams, Esq.  
Rutgers - The State University  
Constitutional Litigation Clinic  
15 Washington Street  
Newark, N. J. 07102-3192

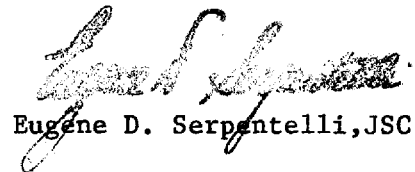
Dear Ms. Williams:

I have your letter of October 19, 1984.

I have today received a letter from Patrick J. Diegnan, Jr., Esq. dated October 22, 1984 which I find to be totally unacceptable. Considering the fact that the Borough of South Plainfield is well beyond its compliance date, it seems highly inappropriate that it would take to November 12, 1984 to even hold a meeting to provide me with the information I requested.

I would therefore suggest that you make whatever motion you feel is appropriate.

Very truly yours,



Eugene D. Serpentelli, JSC

EDS:RDH

cc: Patrick J. Diegnan, Jr., Esq.  
Angelo H. Dalto, Esq.  
William V. Lane, Esq.  
Peter J. Calderone, Esq.  
Carla L. Lerman, P. P. ✓