

South Plainfield 1985

(Oct. 30)

Copies of Motion of Harris Structural Steel Co., Inc. to Intervene

Enclosed: Order Granting Intervention

Brief on Behalf of Plaintiff - Intervenor in Support  
of Motion to Intervene

Affidavit of Stephen E. Barcan, Esq., in Support of Plaintiff -  
Intervenor's Motion to Intervene

Notice of Motion to Intervene

Cover letter

Pgs. ~~80~~ 80

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# WILENTZ, GOLDMAN & SPITZER

ML000348M

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
PLAZA 9 BUILDING  
900 ROUTE 9  
P.O. BOX 10  
WOODBIDGE, N.J. 07095

MILTON B. CONFORD  
COUNSEL

DAVID T. WILENTZ  
G. GEORGE GOLDMAN (1922-1959)  
HENRY M. SPITZER  
WARREN W. WILENTZ  
MATTHIAS D. DILEO  
ROBERT A. PETITO  
MORRIS BROWN<sup>o</sup>  
HAROLD G. SMITH  
FREDERIC K. BECKER<sup>o</sup>  
DOUGLAS T. HAGUE  
NICHOLAS L. SANTOWASSO  
ALFREDO J. HILL  
FRANCIS X. JOURNICK (1962-1982)  
RICHARD F. LERT  
JOHN A. HOFFMAN  
STANLEY L. BENN  
STEPHEN E. BARCAN  
ROBERT J. CIRAFESI  
FRANCIS V. BONELLO

VINCENT P. MALTESE  
KENNETH B. FALK<sup>o</sup>  
DAVID M. WILDSTEIN  
ALAN M. DARNELL  
GORDON J. GOLUB  
JEROME J. BRUDER  
FRANK M. CIUFFANI  
MARVIN J. BRAUTH  
STUART A. HOBERMAN<sup>o+</sup>  
NICHOLAS W. MCCLEAR  
STEPHEN A. SPITZER  
RICHARD R. BONAMO<sup>o</sup>  
HELEN DAVIS CHAITMAN<sup>o</sup>  
PETER C. PARAS  
ANNE S. BABINEAU<sup>o</sup>  
CHRISTINE D. PETRUZZELL  
ROGER B. KAPLAN<sup>o</sup>  
PHILIP A. PAHIGIAN<sup>o+†</sup>

(201) 636-8000

TELECOPIER  
(201) 636-0860

777 WESTPARK AVENUE  
P.O. BOX 365  
OAKHURST, N.J. 07755

(201) 493-2202

FREDERICK J. DENNEHY  
BRIAN J. MOLLOY  
ROY H. TANZMAN  
RANDALL J. RICHARDS  
BARRY T. ALBIN<sup>o</sup>  
BONNIE M. S. REISS  
SHELDON E. JAFFE<sup>+</sup>  
STUART T. COX, JR.  
PHILIP A. TORTORETI  
RICHARD P. DAINGERFIELD<sup>+</sup>  
STEVEN J. TRIPP  
RICHARD J. BINDELGLASS  
LINDA LASHBROOK  
CHRISTOPHER M. PLACITELLA  
JAMES E. TRABILSY  
MAUREEN S. BINETTI

JAMES M. BURNS  
LILIAN MESSINA NUGENT  
JOHN P. PAONE, JR.<sup>+</sup>  
MICHAEL J. BARRETT  
AIMEE L. MANOCCHIO  
PETER C. VISCEGLIA  
JEFFREY R. RICH<sup>o</sup>  
MITCHELL B. NISONOFF<sup>o+</sup>  
ERIC JOHN MARCY  
JEAN R. CAMPBELL<sup>o+</sup>  
THOMAS A. KALAIPOS  
ROBERT J. LEVIN  
ANGELO JOHN CIFALDI  
DOUGLAS WATSON LUBIC<sup>o</sup>  
LYDIA KWASNY  
STUART R. TENZER  
FRANCIS X. JOURNICK, JR.

<sup>o</sup>CERTIFIED CIVIL TRIAL ATTORNEY  
<sup>o</sup>CERTIFIED CRIMINAL TRIAL ATTORNEY

<sup>†</sup> ALSO ADMITTED IN V.I.  
<sup>+</sup> ALSO ADMITTED IN D.C.  
<sup>o</sup> ALSO ADMITTED IN PA.  
<sup>o</sup> ALSO ADMITTED IN N.Y.  
<sup>o+</sup> ONLY ADMITTED IN N.Y.

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Woodbridge

October 30, 1985

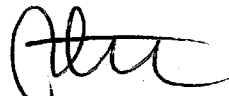
TO: ALL COUNSEL IN SOUTH PLAINFIELD MATTER  
CARLA LERMAN, COURT APPOINTED MASTER

Re: Urban League of Greater New Brunswick, et al.  
vs. Mayor and Council of Borough of Carteret,  
et al. (South Plainfield)

Dear Sirs and Ms. Lerman:

Enclosed please find for service upon you copies of the motion of Harris Structural Steel Co., Inc. to intervene in the pending litigation. The motion will be heard by Judge Serpentelli on November 12, 1985. I regret that you were not served earlier, but I was just advised of the people on the service list.

Yours very truly,



STEPHEN E. BARCAN

SEB:ls

Encs.

Certified Mail:R.R.R.

cc: Frank A. Santoro, Esquire  
Eric Neisser, Esquire

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.,	:	
	:	Civil Action
Plaintiffs,	:	
	:	ORDER GRANTING
v.	:	INTERVENTION
	:	
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	:	

THIS MATTER having been opened to the Court by Wilentz,  
Goldman & Spitzer, A Professional Corporation, attorneys for

plaintiff-intervenor Harris Structural Steel Company, Inc.  
(Stephen E. Barcan, Esquire, appearing), and the Court having  
considered the papers indicated below and having heard the oral  
argument of counsel, and good cause appearing for the entry of  
this Order;

IT IS on this            day of            , 1985

ORDERED that plaintiff-intervenor Harris Structural  
Steel Company, Inc. be and hereby is permitted to intervene in  
this matter for purposes of seeking the relief set forth in the  
Complaint filed herein.

.....  
EUGENE D. SERPENTELLI, A.J.S.C.

PAPERS CONSIDERED

\_\_\_\_\_ Notice of Motion  
\_\_\_\_\_ Movant's Affidavits  
\_\_\_\_\_ Movant's Brief  
\_\_\_\_\_ Answering Affidavits  
\_\_\_\_\_ Answering Briefs  
\_\_\_\_\_ Cross-Motion  
\_\_\_\_\_ Movant's Reply  
\_\_\_\_\_ Other \_\_\_\_\_

SUPERIOR COURT OF NEW JERSEY  
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v. :  
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HARRIS STRUCTURAL STEEL COMPANY, :  
INC., a New Jersey corporation, :  
:   
Plaintiff-Intervenor. :  
:   
-----X

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BRIEF ON BEHALF OF PLAINTIFF-INTERVENOR  
IN SUPPORT OF MOTION TO INTERVENE

=====

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

STEPHEN E. BARCAN, ESQ.  
Of Counsel

FRANCIS X. JOURNICK, JR., ESQ.  
On the Brief

### STATEMENT OF FACTS

The Court is all too familiar with the facts of this case up to the present stage in the proceedings. Recited here will be only those pertinent facts relating to the interests of Plaintiff-Intervenor Harris Structural Steel Company, Inc., (hereinafter "Harris").

The Borough of South Plainfield has, for some time past, been involved in litigation concerning its obligation to provide its fair share of the regional need of low and moderate income housing. As a result of this litigation, the Borough agreed to provide its fair share of such housing. On May 22, 1984, this Court entered judgment against South Plainfield and ordered it to rezone certain property within the Borough exclusively for housing purposes. Included among the property rezoned was 84.8 acres on New Brunswick Avenue owned by Harris. The Judgment further provided that the ordinance, as it concerned Harris' property, be zoned exclusively for multi-family residential development. No notice or opportunity to be heard was granted Harris at any time prior to the Judgment.

Thereafter, South Plainfield held meetings to discuss and revise its Zoning Ordinance in accordance with the Judgment. Harris appeared at these meetings but could not achieve favorable results; the Borough was restricted in revising its Ordinance to the terms set forth in the Judgment.

The Ordinance was ultimately revised and adopted to accomplish the terms of the Judgment. The Borough is now to come before this Court for a determination as to whether its ordinance meets the standards of Mount Laurel II. Harris has filed the within motion to intervene in an attempt to amend the Judgment and modify the Ordinance.

Harris has owned the property in question since the early 1900s. The property is located next to Harris' steel plant and is surrounded by industrial uses. The property had been within an Industrial Zone prior to the Borough's revision of its Zoning Ordinance. Because of its location, the property is not suitable for development entirely for residential purposes. The property cannot be fully developed for the further reason that a stream runs across it thus raising environmental concerns. The highest and best use of the property, under all of the circumstances, is light industrial use. All of this is documented in the affidavit of Steven E. Barcan, Esq. submitted in support of this motion and in the memorandum annexed thereto which was presented to the Borough in the course of the Borough's consideration of the Rezoning Ordinance.

It is Harris' contention that the failure to give it notice and an opportunity to be heard prior to the entry of Judgment herein denies Harris the due process of the law. Because of this defect, the South Plainfield Zoning Ordinance now presented



to this Court is invalid and void as it affects Harris' property. To protect its interests in the property in question Harris has filed the present motion. Alternatively, Harris seeks amendment of the Judgment herein and modification of the proposed Zoning Ordinance to accommodate non-residential uses, in accordance with the arguments presented in this Brief.

ARGUMENT

POINT I

HARRIS STRUCTURAL STEEL COMPANY, INC. IS  
ENTITLED TO INTERVENE IN THIS PROCEEDING

A. Harris Structural Steel Company, Inc.  
Is Entitled To Intervene As Of Right.

Intervention in a court proceeding is controlled by the provisions of R.4:33-1 et seq. R.4:33-1 covers intervention as of right and provides:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicants' interest is adequately represented by existing parties.

Motions to intervene are to be treated liberally. This approach applies to motions to intervene as of right. State v. Lanza, 39 N.J. 595, 600 (1963); Zanin v. Tacono, 198 N.J. Super. 490, 495 (Law Div. 1984).

The requirements of R.4:33-1 are satisfied here. By order of this Court dated May 22, 1984, the Borough of South Plainfield was required to revise its Zoning Ordinance so as to conform to constitutional standards as established in South Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (Mount Laurel II). The order required the Borough of South Plainfield to

rezone the 84.8 acre Harris Steel site on New Brunswick Avenue, 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, 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.

Now the revised Ordinance of the Borough is to be reviewed by this Court for the purpose of determining its conformity to Mount Laurel II and this Court's order.

However, the order requiring the Borough to rezone precluded it from exercising discretion in drafting the amendment to its Zoning Ordinance and prevented Harris from persuading the Borough to draft the amendment any way other than as provided in the order. Harris was not given any notice of the Court's intention to order the amendment and limit the discretion of the Borough and thus had no opportunity to appear before the Court. Harris has therefore been denied due process of law. Harris has an interest in the property subject to this action and its rights to that property will be impaired should it not be permitted to intervene.

No other party to this action has adequately represented or protected the rights of Harris Structural Steel Company, Inc. Plaintiffs appear on behalf of the public interest and those persons who would benefit by the availability of low and moderate income housing in the Borough of South Plainfield. Their concern

has been and is in insuring that such housing is made available in accordance with the Constitution and Mount Laurel II, but not where that housing is proposed to be built or the rights of owners of property zoned to allow the construction of such housing. Defendant Borough of South Plainfield has demonstrated its displeasure with the requirements of Mount Laurel II and has not and will certainly not make any effort to satisfy those requirements without being forced to do so. The Borough cannot be relied upon to protect the rights of Harris Structural Steel Company, Inc.; this would require South Plainfield to disavow the Judgment or to consent to the partial development for residential use which Harris proposes later in this Brief. The Borough is unlikely to do either of these things.

Therefore, it is submitted that Harris Structural Steel Company, Inc. be permitted to intervene in this action pursuant to R.4:33-1.

B. Harris Structural Steel Company, Inc. Should Be Permitted To Intervene Pursuant to R.4:33-2.

Should it be determined that Harris is not entitled to intervene in this action as of right, then, in the alternative, it argues that it be granted permission to intervene pursuant to R.4:33-2. R.4:33-2 provides in pertinent part:

Upon timely application anyone may be permitted to intervene in an action if his claim or defense and the main action have a question of law or fact in common. . . .

In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

As mentioned above, motions to intervene are to be treated liberally. Lanza, supra, 39 N.J. at 600; Zanin, supra, 198 N.J. Super. at 495. Factors to be considered in deciding a motion for permissive intervention include the timeliness of the motion; prejudice to all the parties, including the movant and the court, if the motion is granted; the stage of the proceedings at which the motion is made; and the importance of any public question involved in the action. Evesham Tp. Bd. of Adj. v. Evesham Tp., 86 N.J. 295, 299 (1981); Grober v. Kohn, 88 N.J. Super. 343, 361 (App. Div. 1965), mod. on oth. grds. 47 N.J. 135 (1966); Monsanto v. Alden Leeds, 130 N.J. Super. 245, 252 (Law Div. 1974); Clarke v. Brown, 101 N.J. Super. 404, 410-11 (Law Div. 1968).

The rights of the present parties have been substantially adjudicated. The Borough of South Plainfield has been found to be in violation of the Constitution as interpreted by Mount Laurel II. All that remains to be done is a review of the Borough's revised Zoning Ordinance to determine whether that Ordinance complies with Mount Laurel II. No prejudice to the rights of the current parties will result by allowing Harris to intervene at this point in the proceedings.

The only prejudice any party to this action may arguably suffer as a result of the granting of this motion to intervene is some delay in the final resolution of this action. It is submitted however, that any resultant delay is acceptable as a reasonable by-product of enforcing the Constitution and the rights of all persons affected by this action, which include the citizens of South Plainfield and Harris Structural Steel Company, Inc. Not allowing Harris to intervene would be to deny it due process of the law, a right which is at least as important and sacred as that established in Mount Laurel II. Mount Laurel II did not give the Court the power to violate any citizen's rights; it did not hold that the public hearing requirements and concomitant full public participation in the Municipal Land Use Act (N.J.S.A. 40:-55D-1 et seq.) could be ignored. Mount Laurel II only gave the Court the power to order a municipality found not providing its fair share of low and moderate income housing to revise its Zoning Ordinance in accordance with the Constitution and the standards set out in that opinion. In amending a municipal Zoning Ordinance, it is the municipality and not the court which exercises the discretion deciding what the ordinance should or should not contain. The court may order a municipality to achieve Mount Laurel II compliance, but not at the expense of the due process rights of any property owners involved. Even in a Mount Laurel context, the rezoning process must include public

hearings or otherwise involve the owners of properties to be rezoned. Therefore, any prospective delay is reasonable and necessary and cannot be used as a basis for denying Harris Permission to intervene.

It is therefore submitted that Harris Structural Steel Company, Inc. be permitted to intervene in this action pursuant to R.4:33-2.

POINT II

THE JUDGMENT ORDERING SOUTH PLAINFIELD  
TO AMEND ITS ZONING ORDINANCE DENIES  
HARRIS DUE PROCESS OF LAW

In ordering the Borough of South Plainfield to amend its Zoning Ordinance so as to rezone the Harris property and other tracts exclusively for multi-family residential development, this Court eliminated any discretion in the Borough's later consideration of the specific contents of the amendments. Although Harris appeared at the public meetings held by the Borough for the purposes of redrafting the ordinance, Harris could not hope to accomplish anything because the Borough was limited by the Court as to what the amendments could contain, i.e. the Harris property had to be zoned exclusively for multi-family residential development. The meetings held by the Borough and Harris' appearances at those meetings were rendered mere formal technicalities.

The only place Harris could have been afforded due process was before this Court prior to entry of the Judgment ordering the Borough to amend its Zoning Ordinance. Harris could have participated and protected its rights in this case. But Harris was never notified of the Court's intention to render its Judgment, nor was Harris granted an opportunity to be heard in this matter. While Harris understands that the Judgment was entered on plaintiff Urban League's motion to enforce the Borough's



stipulation which specified the residential rezoning of lands of Harris and others, for the reasons set forth hereafter the Borough had no right merely to "agree" to rezone such lands without notice to the property owners and a chance to be heard.

N.J.S.A. 40:55D-62a. (part of the Municipal Land Use Act) grants the power to adopt or amend a zoning ordinance to municipal governing bodies. The power is legislative in nature, Messer v. Burlington Tp., 172 N.J. Super. 479, 485 (Law Div. 1980), and the act of adopting or amending a zoning ordinance is quasi-judicial and discretionary, Centennial Land & Dev. Co. v. Tp. of Medford, 165 N.J. Super. 220 (Law Div. 1979). Through the Judgment in this case the Court has asumed a legislative power delegated to the municipalities by the Legislature to be exercised only after a public hearing with full opportunity to be heard. Harris has thus been denied due process of law; Harris had no opportunity to be effectively heard by the Borough of South Plainfield. As stated above, this is not a result intended by Mount Laurel II. See 92 N.J. at 281-90.

By preventing Harris from being effectively heard, the Court has circumvented the procedures established by the Municipal Land Use Act (N.J.S.A. 40:55D-9a.,b.) for the adoption or amendment of zoning ordinances. A municipality must follow those procedures and hold a public hearing if the amendment to the zoning ordinance is to be valid and enforceable. Ench v. Mayor

and Council of Pequannock Twp., 47 N.J. 535, 539 (1966); Suski, Jr. v. Mayor & Com'rs of Beach Haven, 132 N.J. Super. 158, 164 (App. Div. 1975); N.T. Hegeman Co. v. Mayor & Council of Borough of River Edge, 6 N.J. Super. 495, (Law Div. 1950).

The power to zone is an exercise of police power which the state has granted to all municipalities. This power must be exercised in a reasonable manner and not arbitrarily, discriminatorily or capriciously; and it must be exercised so as to secure the public health, safety, morals and welfare of the public.

A municipality in exercising the power delegated to it must act within such delegated power and cannot go beyond it. Where the statute sets forth the procedure to be followed, no governing body, or subdivision thereof, has the power to adopt any other method of procedure. Grogan v. DeSapio, 11 N.J. 308 (1953); Giannone v. Carlin, 20 N.J. 511 (1955). [Midtown Properties Inc. v. Madison Twp., 68 N.J. Super. 197, 207 (Law Division 1961), aff'd 78 N.J. Super. 471 (App. Div. 1963.)]

Generally, the procedural steps required by statute are regarded as mandatory, and failure to abide by such requirements will invalidate a zoning ordinance. Attempts to exercise the local zoning requirements contained in the enabling statute have been considered to be ultra vires or a denial of due process. See Canton v. Bruno, 282 N.E. 2d 87 (Mass. Sup. Jud. Ct. 1976); also, Kelly v. Philadelphia, 382 Pa. 459, 155 A.2d 238 (Sup. Ct. 1955). [Pop Realty Corp. v. Springfield Tp. Bd. of Adj., 176 N.J. Super. 441, 454 (Law Div. 1980)].

The Judgment avoided entirely the procedures of N.J.S.A. 40:55D-9a. and b. Although Harris ultimately appeared before the Borough

with respect to the amendment of the Borough's Zoning Ordinance, the Borough Council had surrendered its discretion and the hearing did not satisfy the procedures set forth in the Municipal Land Use Act.

The New Jersey Courts have considered analogous cases. In Midtown Properties, Inc. v. Madison Twp., supra, 68 N.J. Super. 197 (Law Div. 1961), aff'd 78 N.J. Super. 471 (App Div. 1963), the developer Midtown sued the Township of Madison for its refusal to approve a subdivision. 68 N.J. Super. at 202-03. The parties negotiated a settlement by which the necessary approval was guaranteed based on certain conditions. Id., at 203, 205. The settlement was incorporated into a consent judgment entered by the Court which ended Midtown's suit. Id., at 203. Madison thereafter moved to have the Judgment set aside. Id., at 201, 206. The Court held that the procedure followed by Madison was improper and not in accordance with the statutory method for exercising the zoning power. Id., at 207.

Another consent judgment directing a municipality to exercise its zoning power was entered on similar facts in Suski, Jr. v. Mayor & Com'rs of Beach Haven, N.J. Super. 158 (App. Div. 1975). That judgment was set aside, the court saying that "An ordinance cannot be amended, repealed or suspended by any act of a governing body of less dignity than that which created the ordinance in the first place. V.F. Zahodiakin, etc. v. Summit

Zoning Bd. of Adj., 8 N.J. 386 (1952); 6 McQuillin, Municipal Corporations (3 ed. 1969), §21.04 at 199." Id., at 164.

For the above reasons, Harris Structural Steel Company, Inc. submits that the amended Zoning Ordinance of the Borough of South Plainfield is invalid and must be set aside by this Court.

### POINT III

#### SOUTH PLAINFIELD'S ZONING ORDINANCE AND THE JUDGMENT OF THIS COURT SHOULD BE AMENDED TO PERMIT THE CONSTRUCTION OF OFFICE BUILDINGS ON THE HARRIS PROPERTY AS A BUFFER BETWEEN THE HARRIS PLANT AND THE PROSPECTIVE LOWER INCOME RESIDENTIAL DEVELOPMENT

Alternatively, Harris could be given an opportunity to be heard at this time. Harris has no objection to low and moderate income housing on its property should it decide to build there. But Harris objects to being restricted exclusively to the construction of a multi-family residential development. It is Harris' contention that the property is not entirely suited to residential development of any type and that the South Plainfield Zoning Ordinance amendments should permit the construction of office buildings as a buffer between the Harris steel plant and any prospective residential development. Specifically, the office building -- and not market rate housing -- can and would subsidize the Mount Laurel units. This would be consistent with Harris' development plans and the recommendations of Harris' planning consultants and would be more consistent with the industrial character of the area.

The property in question has been owned by Harris since the early 1900's. It is immediately adjacent to the Harris steel plant and receives the undesirable benefits of being located next to such a use. The Harris property was, prior to the Zoning Ordinance amendment, within an Industrial Zone and is surrounded

by industrial uses. In addition, a stream cuts across the property. The entire area of the property is not buildable because of wetlands and flood plain restrictions and because of restrictions due to poor soil conditions. In fact, environmental controls prohibit building on all of the property. Sound land use planning directs that residential development not be permitted on the entire area of the Harris property.

Mount Laurel II did not dismiss principles of sound land use planning when ensuring a realistic opportunity for the development of low and moderate income housing. Chief Justice Wilentz made the point

that sound land use planning and Mount Laurel should remain compatible both at the state and municipal level, and that, in particular, where fully developed municipalities are involved, great care may be required to assure that the benefit of Mount Laurel is not offset by damage to legitimate zoning and planning objectives. . . . A satisfactory resolution of the occasionally conflicting interests may at times require creativity and co-operation. [Mount Laurel II, 92 N.J. at 240n.15.]

Indeed, the Municipal Land Use Act permits zoning for the purposes of protecting the public health and welfare, promoting "a desirable visual environment through creative development techniques," and encouraging development incorporating "the best features of design and relat[ing] the type, design and layout of residential, commercial, industrial and recreational development to the particular site." N.J.S.A. 40:55D-2a., i. and k. See also

N.J.S.A. 40:55D-62a. ("The zoning ordinance shall be drawn . . . to encourage the most appropriate use of land."); State v. Miller, 83 N.J. 402, 409 (1980) ("a zoning ordinance may accommodate aesthetic concerns" (footnote omitted)); Commons v. Westwood Zoning Board of Adjustment, 81 N.J. 597, 610 (1980) ("aesthetic considerations are appropriate desiderata of zoning"); Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 622 (1977) (Schreiber, J., concurring in part and dissenting in part) ("Environmental, ecological, geological, geographical, demographic, regional or other factors may justify exclusion of certain types of housing, be it two-acre or multi-family. See N.J.S.A. 40:55D-2c., i., j., k."). No one, not the rich, the poor nor those in between, would want to live directly next-door to a steel plant. It is suggested that the Court and the Borough of South Plainfield use the creativity afforded them in Mount Laurel II to prevent a residential development from being placed where no one cares to live.

This problem can be avoided in this particular case. Harris has been intending to construct office buildings on a portion of the property in question for some time but has no plans for entirely residential use. If the Court permits, these office buildings would act as a buffer between the steel plant and the residential development. Moreover, the office buildings could be planned so as to be appropriate for location next to a

residential development with respect to such aspects as height, set back, etc. Safeguards to insure that this housing would be built, such as a phase-in requirement, see Mount Laurel II, 92 N.J. at 270, could be employed. Thus, both plaintiff and the Borough of South Plainfield would be fully protected.

However, the mandatory set-asides included in the existing Judgment should also be changed if the Zoning Ordinance and the Judgment are to be modified. As it stands now, the Ordinance permits twelve units per acre on 84.8 acres making a total of almost 1,018 units. A twenty percent mandatory setaside of low and moderate income units results in almost 204 units reserved for those income groups. Harris asserts that the density and resultant setaside figures should be figured only on the property that remains available for residential development after elimination of the office and stream corridor areas. This is the proper calculation for Mount Laurel II purposes because the density should be figured only on the factor of the site which can be developed. Harris suggests two alternatives for lower income housing: units could be built on this site or they could be built off-site through such techniques as a contribution for rehabilitation of sub-standard housing, a contribution to the local Housing Authority or "piggybacking" on another project. In either case, Harris would subsidize its lower income housing effort with industrial/office buildings to be built on its site.



By modifying the judgment and ordinance as proposed, Harris will be afforded its right of due process in the rezoning of its property. Harris will then have participated as the Legislature intended in the rezoning process. It is therefore submitted that the Judgment herein and Zoning Ordinance of the Borough of South Plainfield be amended and modified as aforesaid.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the Court (1) grant the motion of Plaintiff-Intervenor Harris Structural Steel Company, Inc. to intervene in this action, (2) declare the revised Zoning Ordinance of the Borough of South Plainfield invalid insofar as it limits the use of the Harris property exclusively to multi-family residential development, and (3) in the alternative, amend the Judgment herein and the Zoning Ordinance in accordance with the arguments set forth in Point III, above.

Respectfully submitted,

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

By:   
STEPHEN E. BARCAN, ESQ.

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  
Harris Structural Steel Company, Inc.

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

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URBAN LEAGUE OF GREATER NEW : Civil Action  
BRUNSWICK, et al., :  
:   
Plaintiffs, :  
:   
vs. :   
: AFFIDAVIT OF  
THE MAYOR AND COUNCIL OF THE : STEPHEN E. BARCAN, ESQ.,  
BOROUGH OF CARTERET, et al., : IN SUPPORT OF PLAINTIFF-  
: INTERVENOR'S MOTION TO  
Defendants, : INTERVENE  
:   
vs. :   
:   
HARRIS STRUCTURAL STEEL :  
COMPANY, INC., a New Jersey :  
corporation, :  
:   
Plaintiff-Intervenor :  
:   
-----X

STATE OF NEW JERSEY:

:SS.

COUNTY OF MIDDLESEX:

STEPHEN E. BARCAN, ESQ., of full age and duly sworn upon his oath, says:

1. I am an attorney-at-law of the State of New Jersey and a shareholder in the law firm of Wilentz, Goldman & Spitzer, A Professional Corporation, attorneys for the plaintiff-intervenor Harris Structural Steel Company, Inc. (hereinafter "Harris"), and I am responsible for handling the present matter.

2. As such, I am familiar with the facts of this case as they relate to the Harris' position.

3. Harris owns real property consisting of 84.8 acres located in the Borough of South Plainfield, Middlesex County, New Jersey, appearing as Block 459, Lot 1, Block 460, Lot 1, Block 463, Lots 1-3, Block 462, Lot 2, Block 465, 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 ("Harris Premises").

4. On May 22, 1984, Judge Eugene D. Serpentelli, J.S.C., entered judgment in the above-captioned case ordering the Borough of South Plainfield to revise its Zoning Ordinance so as to conform to the decision in South Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (Mount Laurel II). The Judgment included a provision requiring the Borough to rezone Harris Premises "exclusively for multi-family development." The

Judgment is attached hereto as Exhibit "A". The Judgment is attached hereto as Exhibit "A".

5. The Borough of South Plainfield held public meetings to discuss and decide the appropriate revisions to its Zoning Ordinance. While this firm participated in one such meeting it was obvious that the Council had no discretion to discuss Harris' suggestions as it was obliged to implement the Judgment.

6. Harris' suggestions to the Borough contemplated that Harris be permitted to build light industrial facilities, e.g., office buildings, on its property to subsidize the lower income housing. Harris had hired a professional planner for assistance in its dealings with the Borough and the Consultant rendered a report dated March 11, 1985 indicating that Harris' property was not completely suited for residential development and that the highest and best use of the property was as a light industrial use. This report was submitted to the South Plainfield Borough Council at the March 11 meeting and is attached hereto as Exhibit "B". A newspaper article describing the meeting is annexed as Exhibit "C".

7. As stated above, my office appeared for Harris before the Borough Council of South Plainfield on March 11, 1985 in an attempt to influence the Council in what any amendment to the Zoning Ordinance should include. Council for Harris tried to

persuade the Council to permit Harris to build light industrial/office facilities on its property. See Exhibit "C".

8. On April 10, 1985, Harris' professional consultant again submitted a report to the Borough of South Plainfield suggesting possible provisions to be included in an amendment to the Zoning Ordinance. See report annexed as Exhibit "D".

9. Harris' consultant met with the South Plainfield planner on May 14, 1985 and options for meeting the Borough's Mount Laurel obligations while permitting light industrial/office facilities on the Harris property were discussed. See file memo annexed as Exhibit "E".

10. I and other attorneys in this firm conversed and corresponded with the Borough attorney in an attempt to secure an amendment to the Zoning Ordinance permitting Harris to construct light industrial/office facilities on its property. See letter to Frank Santino, Esq., annexed as Exhibit "F".

11. While Harris participated in the process of amending the South Plainfield Zoning Ordinance, the Borough was ultimately obliged to adopt the rezoning provisions contained in Judge Serpentelli's order. Thus, Harris has been precluded from being effectively heard by the Borough.

12. The property in question has been owned by Harris since the early 1900's. Harris had advised me that its intention has been to construct office buildings on a portion of the property to be used in conjunction with Harris' steel plant adjacent

to the property. Prior to the rezoning, the property was located in an Industrial Zone and is presently surrounded by industrial uses.

13. A stream transverses the property raising environmental concerns in any proposed construction plan. I am advised by Harris' professional planning consultant - John Rohenkamp and Associates. Wetlands, flood plains, vegetation and soil conditions, including the environment controls applicable to such areas, make full development of all the property impossible. We are also advised that the amount of unbuildable lands is about one-half the site; the precise amount of acreage so affected would have to await field investigation of soil and vegetation types and them survey.

14. Harris has instructed this firm to attempt to obtain a rezoning of the subject property permitting the construction of light industrial facilities thereon. At the same time, Harris accepts the fact that a lower income housing obligation has been imposed, and Harris makes the following suggestions which would satisfy the Borough's lower income housing obligation and Harris' claims:

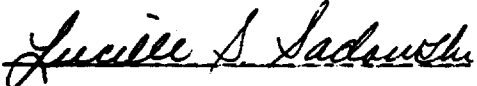
(a) Allow the construction of light industrial/office facilities on the Harris site together with lower income housing, making appropriate reductions in numbers reflecting density based on the area of buildable property available for such housing; or

(b) Allowing the construction of lower income housing off-site through Harris' contribution for rehabilitation of sub-standard housing, contributions to the local Housing Authority, and/or contributions to another lower income housing project.

15. For all of the above reasons, I respectfully request that this Court permit Harris to intervene in this matter, and declare the revised Zoning Ordinance of the Borough of South Plainfield invalid insofar as it limits the use of the subject property exclusively to multi-family residential development or, in the alternative, amend the Judgment and the Zoning Ordinance to permit the construction of light industrial facilities on the subject property together with lower income housing there or elsewhere but at a reduced density. The non-residential user would subsidize the lower income housing.

  
STEPHEN E. BARCAN

Sworn and subscribed to  
before me this 24<sup>th</sup>  
day of OCTOBER, 1985.



LUCILLE S. SADOWSKI  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 6, 1986





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

FILED S-22-8Y  
E. D. SERPENTELLI, J.S.C.

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.

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 control 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

①

12

②

12

= 12 in lots

~~12X 12 = 144~~  
12X 12 = 144  
8X 14 = 112  
4X 8 = 32  
144

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

3

city site

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  
x 1/2 G.A.

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.

DU/AC. Town =  
D.U. Apt. - MAX - 1/3

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.

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Handwritten notes in right margin, partially obscured.

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

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Handwritten notes in right margin, partially obscured.

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.

*definitive trailer*

*2/10/82  
GMAF*

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*

*2/10/82  
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 units 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

*Speculation*

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, 1981 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.

*in  
order  
? let 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.

*?  
S. Citizens*

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 affordabl

*same  
rule out?  
to the Owner?  
D.P.C.  
D//*

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.*

*our need  
is to use  
in 2.0*

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 provisions 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.



**MEMORANDUM**

**TO:** South Plainfield Council Members  
**FROM:** Scott Radway  
**DATE:** March 11, 1985  
**SUBJECT:** South Plainfield, NJ: Mount Laurel II Housing Provisions

On behalf of the Harris Structural Steel Co., Inc., we wish to bring to your attention several conditions about its site in South Plainfield. We believe these conditions warrant its removal from consideration as a potential site for a 100% residential project to provide for low and moderate income housing.

Based on the materials we have reviewed it appears that the 84.4 acre Harris Steel site comprises over 1/2 the total acres being rezoned to provide low and moderate housing opportunities.

It is expected to contain about 1/2 of the total number of low and moderate units as well as 1/2 the total market rate units necessary to produce the desired low and moderate income housing.

I point out the significant role to be played by this site because it appears that ~~the settlement~~ assumes that <sup>1</sup>this amount of housing could be built upon the Harris site, and <sup>2</sup>that Harris Structural Steel is agreeable with such a 100% residential rezoning.

Neither assumption is correct.

- A) Of the 84 acres being considered only 30 are buildable. At a gross density of 12 dwelling per acre this will provide 360 total dwellings and 72 low and moderate units, not the 204 low and moderate income units assumed by the settlement agreement.

John Rahenkamp FASLA, AICP, President  
Scott Radway AICP, Vice President  
Rob Goodwin, Vice-President

**John Rahenkamp & Associates, Inc.**  
Planners/Land Planners/Landscape Architects

Philadelphia  
Stetson House  
1717 Spring Garden Street  
Philadelphia, Pennsylvania 19130  
215/568-7545

Tampa  
1304 DeSoto Avenue,  
Tampa, Florida 33606  
813/253-2101

Denver  
Rahenkamp/Oldham, Inc.  
129 West 4th Avenue  
Denver, Colorado 80223  
303/744-7003

- B) The site is very well suited for light industry and office and poorly located for residential.

70% of the property abutting the buildable area of the site is currently developed or zoned for light industry.

- C) Harris Structural Steel Company, Inc. has planned for a number of years to eventually use this land for light industry and office uses and feels this is the best use of the property based upon location.
- D) The current zoning proposal, which calls for a 100% residential use, ignores the opportunity for non-residential as well as residential uses to subsidize the low and moderate units.

Assuming that the court will approve a compliance ordinance which requires low and moderate housing on the Harris Steel site, Harris Steel proposes that the opportunity to provide this housing be realistically structured. In that regard we propose that the zoning proposed for the Harris Steel site be changed to permit the following:

Permitted Uses: All existing light industrial/office uses and the residential uses in the proposed ordinance.

Satisfaction of Housing Obligation: That the property can be developed for the permitted non-residential uses if it satisfies its low and moderate obligation either on this site or on another site in South Plainfield.

Calculation of Obligation: The total number of low and moderate units to be provided shall be determined by applying a gross density of 12 units per acre and all other applicable site design regulations to all "buildable" areas and then by taking 20% of this gross amount of dwellings as the low and moderate obligation.

Provision of Housing: Harris Steel itself or in a contract agreement with others shall cause the low and moderate units to be constructed on a phased basis, timed with the non-residential use development of its site.

The units for which Harris Steel assumes an obligation can be provided in a 100% low and moderate income housing development.

We believe that the provision of low and moderate income housing via a non-residential use subsidy is reasonable and realistic and is in the best interest of the present and future residents of South Plainfield as it pertains to the use of the Harris Structural Steel property.



# THE NEWS

Vol. 16, No. 49

561-9494

THURSDAY, March 14, 1985

South Plainfield, New Jersey

30 cents

## Last Minute Revisions Stalls Mount Laurel II Hearing

A public hearing on the adoption of an amended Zoning Ordinance Monday night rapidly turned into a question and answer period between members of the borough's governing body and Borough Attorney Frank Santoro. When the hearing opened for public input, it was primarily attorneys who dominated with questions and comments regarding interests of their clients. Comment from private citizens came from only a small handful of the almost packed courtroom. The amendment was ultimately tabled for further study on some new points. A continuation of the public hearing was scheduled for Monday, March 25th.

### Litter Battle Moves To Empty Lots & Cars

Keeping shopping center parking areas clear of litter has been an issue of concern of recent weeks for Borough Council President, Ferdinand Thiel. Thiel's report on an instance where he became involved in a complaint against a new Chinese Restaurant last week stirred further comment at this week's public meeting of the Mayor and Council.

Thiel reported Monday night that he had received copies of letters that the Board of Health had sent to various shopping centers and individual stores in the past week. The letters were of a warning nature on possible violations of the

The borough of South Plainfield is under a court order to amend its Zoning Ordinance to allow for what the New Jersey Supreme Court stated as South Plainfield's "fair share" of low and moderate income housing. The allocation of a "fair share" number was the result of more than twelve years of litigation brought by the Urban League of Greater New Brunswick against developing communities such as South Plainfield. The action has become known as the Mount Laurel Case and more recently Mount Laurel II.

A judgement by Superior Court Judge Eugene D. Serpentelli on May 22, 1984 stated that South Plainfield's "fair share" of low and moderate income housing through the year 1990 was 990 units - 280 units of immediate need and

620 units of prospective need. Eight sites in the borough had been selected and agreed to as suitable for the provision of meeting the borough's allocation. A stipulation was entered into between the Urban League and the borough on May 10, 1984.

The judgement provided an incentive for builders by allowing a greater density multi-family of homes to be built on the listed properties than was previously permitted under borough zoning laws. The incentive was built in to provide builders with an opportunity to subsidize the lower cost units, necessary for low and moderate income families, by the construction of more expensive units. The plan would allow the builder to build five high cost units for every one low or moderate income apartment. If

the formula was followed to the letter, 4,950 multi-family units would have had to be constructed in South Plainfield by 1990. Of that total number, 495 would have been set aside for low income families and 495 would have been set aside for moderate income families. That number would have been altered a bit by housing designed for senior citizens on two specific properties.

The sites designated in the judgement from Serpentelli would have allowed for the possible construction of a total of 2,417 apartments 603 of which would have been set aside for low and moderate income families. Of the 603, 170 would have been earmarked for seniors (20 through private financing and 150 through public funding.) To help satisfy the total number requested by the courts, the judgement also included any parcel of land three acres or larger could be developed at a high density than otherwise permitted with the twenty percent set aside allowed for low and moderate income housing.

Disagreements between governing body members, along party lines, continued through the later part of last year and ended with Judge Serpentelli instructing the governing body to proceed with the zoning changes or he threatened the court would strike down all borough zoning laws and appoint a master planner to the borough. In effect this could have resulted in such land uses as a gas station in the middle of a residential neighborhood or a factory in a shopping center area.

Judge Serpentelli did allow the

please turn to page 1411

## Happy St. Patrick's Day

By Eileen O'Porowski

This is the time to be Irish,  
Whether you're Irish or not.  
So gather anything green today,  
Just anything green that you've got.  
Borrow your 'Mithers' old green hat,  
To wear jauntily over your eye...  
Or take out a ten dollar bill instead,  
To wear as a green bow tie.  
And put an 'O' in front of your name,  
To match the O'Rourkes and O'Toole.  
Yes, put an 'O' in front of your name,  
For 'O' Goldberg is nobody's fool.  
And speak any Gaelic, you think you might know,  
Even if it's just a few words.



continued from the front page law revisions "under Mt. Laurel construction borough to adopt the zoning protest". This meant that no would take place in South

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10:00 - 8:00  
**SATURDAY**  
10:00 - 5:00

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Plainfield until all avenues of legal appeal of his judgement had been exhausted. The borough subsequently entered into an appeal of the Mt. Laurel II judgement with numerous other communities to the zoning laws of the borough on Monday night.

"At the opening of the public hearing, Borough Attorney Frank Santoro notified the mayor and council that he had received a phone call from the Rutgers Law Institute informing him of a request for nine revisions to the proposed zoning ordinance amendments. Santoro said his call was to notify him that a letter had been mailed to the borough with the requested revisions. Santoro told the caller he had not yet received the letter and the caller dictated the requests to Santoro.

Mayor Michael English told the council that he didn't think they should be put in the position of having to analyze the new data and then vote on it in the same evening. English suggested the hearing and vote go on

and if the amended zoning ordinance were to be adopted "these changes be studied and added later on." Santoro suggested holding "the whole thing to the next available meeting date." He had also written the governing body a letter in which he stated various reasons why he felt the hearing should be continued. Santoro had written his letter prior to the notification of the last minute changes and felt the late request was further justification for a postponement.

Councilwoman Addie Levine asked Santoro if he felt there would be any repercussions from the court if the borough were to postpone the hearings. Santoro said he didn't feel a "mere two weeks adjournment" because of the late changes would present any problems. Councilman Don Acrin said "if we don't include these nine changes we could be back in court." Councilman Michael Woskey asked Santoro if the borough's planner, Rosa Associates, had been notified of the changes. "No," said Santoro. Levine then asked Santoro "in your opinion should

the Planning Board schedule an emergency meeting to study these revisions", Santoro agreed they should.

Acrin agreed with English's earlier assessment saying "why not adopt what we have in front of us?" Are we being directed by Rutgers too? English was critical of the Rutgers Law Institute saying that anyone who would call at 4:45 p.m. on the day the council is meeting isn't doing their job.

Councilman Bernard Conlon expressed his displeasure with the Urban League's position throughout the case. "The Urban League has been calling all the shots," Levine asked Santoro if he felt the changes would be to the borough's benefit. Santoro said he wouldn't "shoot from the hip" with an immediate opinion before he had the opportunity to study the changes. Council President Ferdinand Thiel was also unhappy with the Urban League's calling of shots. "I resent it," he said. Thiel made a motion that the hearing be tabled for two weeks while "we look at the changes."

The first speaker from the audience was local attorney Robert J. Cirafesi who was representing Harris Structural Steel Company. Harris Steel owns 84.4 acres of land on New Brunswick Avenue in South Plainfield. Cirafesi told the mayor and council that his clients land comprises "over one half of the total land proposed for low and moderate income housing." Cirafesi said the steel company wanted to go on record as opposing the re-zoning of their property. "It doesn't make sense from a planning point of view," he said. Cirafesi also said his client

please turn to page three

**Don't tax  
your  
Retirement**

*continued from page 1*

was unhappy over the fact that Mt. Laurel discussions and decisions affecting properties were held before notifying affected property owners. "My client has for years planned to develop that property for light industry which would make the most sense as it is presently surrounded by light industry," Cirafesi said.

Cirafesi then called on Scott Radway a professional planner hired by Harris to determine the highest and best possible use of the land. Radway pointed to a stream running through the property and to the area surrounding the stream which he called "unregulated wetlands."

This area represented more than half of the entire property. The roughly forty-five acres he said was undevelopable. The remaining developable property, with improvements, would be no more than twenty-eight acres. At twelve units an acre, only 336 apartments could be built on the property. The set-aside for low and moderate income housing would only yield about sixty-seven units at that rate. Radway further testified that the highest and best use of the land would be for light industrial usage.

"If we have an obligation, if the site has an obligation, then we ask that you make it a mixed use site. We may have to accept the fact that there will be a decision saying there has to be low and moderate income housing on our property," Cirafesi said. He suggested that perhaps only the land needed for such housing could be used leaving the company with the rest of the land for light industrial development instead of the more expensive housing allowed as a builder's remedy

undevelopable. "These areas were not haphazardly chosen. We knew the area could not be built on. We did not want to comply. These parcels of land were chosen with the best interests of the community in mind," said English.

Cirafesi responded to English by saying "my client is being hurt. We're not involved in a game. If you don't have the land...tell the court." Cirafesi said his client would not engage in a legal battle over the constitutionality of the Mt. Laurel decision but would cooperate in any suits opposing the zoning changes.

Another local attorney, Angelo Dalto, addressed the governing body on behalf of his client, Elderlodge. Elderlodge, Inc. applied for a use variance three years ago to construct a 100 unit senior citizen condominium complex on that part of Hamilton Boulevard in the old center of town. The property now houses a two family house, an air conditioning and heating company and a used appliance store. The Lakeview overpass is to the rear of the site.

The original application was rejected by the Board of Adjustment on a 5-2 vote. The owners of Elderlodge appealed the decision and the decision was sent back to the board.

Meanwhile, Elderlodge had become involved in the Mt. Laurel II decision and the site was included in the designated properties of Judge Serpentelli's judgement. Serpentelli remanded the case to the Board of Adjustment to be considered in the light of Mt. Laurel II. The board subsequently approved the use variance without any Mt. Laurel set asides. This meant the property could be built

were imposed, the project's intent would be destroyed," said Dalto. He said the project would then be economically unfeasible. The revised zoning ordinance under discussion Monday night would impose such set-

asides said Dalto. He pointed out that senior citizens would not be well served in this case and that it was not in the best interest of Mt. Laurel II. "Moderately priced, privately financed senior citizen housing would not be

available and the value of the site would be destroyed," said Dalto. Dalto told English that the inclusion of this site was contrary to what English had earlier said about choosing sites that were not buildable.

"This site would not accomplish what Mt. Laurel was designed to do," said Dalto. He asked that the building lots planned for Elderlodge be removed from the ordinance.

*please turn to page 11*

## Last Minute

Continued from page three

Former mayor and attorney John George told the council that he had "procedural differences" with the ordinance. He referred to the zoning map published in *The Reporter* on February 28th and said that the actual properties being re-zoned could not be identified in seven of the eleven sites. "Was this a proper advertisement?" George asked.

The borough residents finally got their day in court. Mr. Tom Goda, representing himself, felt that "it is wrong that people tell us what to do with our properties. It's communistic," Goda said of the Mt. Laurel decision. He felt for the council to approve the ordinance without studying the changes was "like signing a blank check."

Traffic consideration was raised by Walter Kalmin while James Rebuth addressed pending legislation stating that municipalities could under certain circumstances pay other communities to assume some of their housing responsibilities. "If you have to sign this, sign it," said Rebuth "but don't back down from the court fight." English agreed with Rebuth's concern about present legislation at the state level but felt the ultimate answer might still lie with the state legislature in future deliberations.

John Zawora, a Board of Adjustment member, asked what would happen if the ordinance was rejected at the local level. English responded "everything" referring to what has in the past been described as a chaotic zoning situation as threatened by Serpentelli.

Another concerned resident asked if "there was anything we can do." Santoro said he would like anyone "who like this gentlemen feels he will be adversely affected by this decision, should contact me at my office."

Please turn to page eight

## Litte

continued from the front page  
gram." Gallagher also made

## Last Minute

### Revisions

continued from page seven

The motion to table that was earlier made by Thiel resurfaced and the council unanimously agreed to continue the hearing on Monday, March 25th.

### ★ PUBLIC NOTICE ★

#### LEGAL NOTICE

The New Jersey Economic Development Authority will hold its regular monthly meeting on April 3, 1985 at 10:00 a.m. at its offices at Capital Place One, Suite 800, 200 South Warren Street, Trenton, New Jersey, to discuss and take action on various applications for Industrial Development Bond (IDB) financing.

Financing for this (these) project (s) is not an obligation of the State of New Jersey. Funding for projects is secured privately through conventional lending sources.

This notice is being published in accordance with the public notice requirements of the Federal Tax Equity and Fiscal Responsibility Act of 1982. Anyone having an interest in this (these) matter (s) may attend the meeting to give their comments.

Published by Order of the New Jersey Economic Development Authority.

The project (s) include, but are not limited to the following:

NJEDA APPLICATION #84-6209

Name and Address of Applicant:  
JJR HOLDING CO. #2

60 E. Launing Street  
South Hackensack, N.J. 07606

Owner, Operator or Manager (if other than applicant):

Maintenance, Inc.

Description of Project: Acquisition of 27,500 square feet of land and a 4,500 square foot existing building and renovations thereto and the acquisition of machinery and equipment to be used as an office, warehouse, distribution and repair facility.

Project Address:  
3570 Kennedy Road

South Plainfield, N.J.

Maximum Aggregate Face Amount of Issue: \$270,000

1 Time: 3-14-85

Fee: \$21.70



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# Memorandum



To: Planning Board, Township of South Plainfield, N.J.  
From: Scott Radway, John Rahenkamp & Associates  
Date: April 10, 1985  
Subject: Harris Structural Steel, Inc., Property in South Plainfield.

---

## ZONING CATEGORY OF HARRIS STEEL PROPERTY:

Harris Structural Steel, Inc., owns approximately 85 acres in South Plainfield, N. J. This land was acquired in the 1918 to 1920 period. The steel facilities now on the western portion of this site were developed primarily between 1920 and 1945. They have been and continue to be an operating finishing facility engaged primarily in the production of steel for roadway/bridge structures.

Harris Structural Steel, Inc., has for many years planned for office and light industrial uses on the portions of its land which are presently undeveloped. These uses are consistent the Township's longstanding Master Plan and Zoning Ordinances.

In the present case, the Township and the Urban League have agreed, without consultation or direct notice to Harris Steel, to rezone 85 acres of Harris Land. The rezoning mandates that this property hold only a 100% residential project which would in turn mandate the inclusion of housing for low and moderate income families pursuant to the N. J. Supreme Court Decision referred to as Mount Laurel II.

It is the preference of Harris Structural Steel, Inc., that their 85 acres of land in South Plainfield be left in the existing light industrial zoning category. This represents the highest and best market use of the property.

## **PROVISION OF LOW AND MODERATE INCOME HOUSING ON THE HARRIS STEEL SITE:**

The consent agreement and pending zoning ordinances establish a gross maximum density for the Harris Steel site. Design regulations, flood plains, wetlands and other site specific conditions make the realization of the maximum density unlikely. This is true for almost all properties and zoning districts and therefore not an unusual circumstance.

Preliminary site evaluation of the 85 acres owned by Harris shows that approximately 41.5 acres are buildable; that is, they are outside flood plains and wetlands. Based upon the application of a gross density of 12 units per acre applied to 41.5 acres (the area actually available for development) the total number of permitted units would be 498 with a low and moderate component of 99.6 dwellings.

I am enclosing a site plan based upon the proposed zoning regulations which shows the provision of 476 dwellings. It is a combination of 2 story townhouses and 2 story garden apartments. By using 3 story apartments, the maximum density of 498 could be reached. Our preliminary market information suggests however that 2 story units are more likely to be marketable.

In order to establish the greatest flexibility to the Township and Harris Steel we believe that changes should be made. Ultimately, they would also need to be placed in an Amended Judgement.

Assuming that the court will approve a compliance ordinance which requires low and moderate housing from the Harris Steel site, Harris Steel proposes that the opportunity to provide this housing be realistically structured. In that regard, we propose that the zoning proposed for the Harris Steel site be changed to permit the following:

**Permitted Uses:** All existing light industrial/office uses and the residential uses in the proposed ordinance.

**Satisfaction of Housing Obligation:** That the property can be developed for the permitted non-residential uses if it satisfies its low and moderate housing obligation either on this site or on another site in South Plainfield.

**Calculation of the Obligation:** The total number of low and moderate unit to be provided shall be determined by applying a gross density of 12 units per acre and all other applicable site design and development regulations to all "buildable" areas, thereby establishing a site design which results in a realistic housing project and then by taking 20% of this amount of dwellings as the low and moderate obligation.

**Provision of Housing:** Harris Steel itself or in a contract agreement with others shall cause the low and moderate units to be constructed on a phased basis, timed with the residential or non-residential use development of its site. The units for which Harris Steel assumes an obligation can be provided in a 100% low and moderate income housing development. Should the Township and Harris Steel so agree, the dollar value of the subsidy necessary to provide such housing could be provided to the Township Housing Authority for application to specific projects.

To implement these concepts we do not believe that there are changes needed to the proposed zoning ordinances. What is necessary are the adoption of the above enumerated principles in the Judgement as it applies to the Harris Steel site. Thus the property would have a 100% residential zoning category which would automatically revert to light industrial upon an approved plan to provide the low and moderate units at another location. The benefit of this condition is that the Harris Steel site and all other sites would abide by all the same zoning and development provisions as long as they are 100% residential projects. If Harris Steel does choose to provide the low and moderate units off site or to provide equivalent subsidy funds to the Township Housing Authority so that it can directly provide for housing (e.g. Senior Citizen Project) then Harris can utilize industrial zoning and no additional changes would be necessary.

#### **CONCLUSION:**

We believe that options for the provision of low and moderate income housing via a non-residential subsidy are reasonable as applied to this property and in the best interest of all concerned. We trust you will give serious consideration to this request, and recommend the adoption of this concept by the Township Council.







# Memorandum

Scott  
To: Bob Gray *BG*  
From: May 14, 1985  
Date: Projected Amendment to Mount Laurel Designation For Harris Steel  
Subject: Tract in South Plainfield  
CC: Steve Barcan - Wilentz, Goldman & Spitzer  
Bill Keyes - Harris Steel

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## JOB MEETING REPORT

Participants: Bob Rosa - Planner for South Plainfield  
Bob Gray - JRA  
Location: Woodbridge, New Jersey (Bob Rosa Office)  
Date: May 8, 1985

Reviewed Scotts memo and associated site plan showing theoretic residential yield using mix of townhouses and two story garden apartments.

Bob Rosa felt the Borough council would reject any suggestion that low/moderate housing be built anywhere but the sites designated by the court. Any off-site solution for the Harris Tract would therefore need to be connected to one of the other sites. The Borough would look more favorably at a contribution to the elderly project. The Borough would have no objection to reducing the allocation on our site to reflect buildable area and would favor industrial use of the site.

We agreed there were three basic Mount Laurel options we would propose to enable industrial development of the site. Based on the allocation attributable to the buildable area, Harris Steel would:

- (1) Contribute an appropriate subsidy dollar amount to the elderly housing project,
- (2) Contribute to and/or participate in the development of the already designated Mount Laurel Housing site.
- (3) Build a 100% low/moderate development on the Harris Tract (a less desirable solution from our viewpoint).

Rosa suggested that the request be written and submitted by Steve Barkan - Rosa stated he will support the reduced allocation and the above suggestion, when asked to comment.



# WILENTZ, GOLDMAN & SPITZER

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
PLAZA 9 BUILDING  
900 ROUTE 9  
P.O. BOX 10  
WOODBRIDGE, N.J. 07095

MILTON B. CONFORD  
COUNSEL

DAVID T. WILENTZ  
G. GEORGE GOLDMAN (1922-1988)  
HENRY H. SPITZER  
WARREN W. WILENTZ  
MATTHIAS D. DALEO  
ROBERT A. PETITO  
MORRIS BROWN\*  
HAROLD S. SMITH  
FREDERIC H. BECKER\*  
DOUGLAS T. HAGUE  
NICHOLAS L. SANTORASSO  
ALFRED J. HILL  
FRANCIS J. JOURNICK (1922-1982)  
RICHARD F. LEVI  
JOHN A. NOFFMAN  
STANLEY L. BENH  
STEPHEN E. BARCAN  
ROBERT J. CRAPESI  
FRANCIS V. BONELLO

VINCENT P. MALTESE  
HELENETH B. FALK\*  
DAVID M. WILDSTEIN  
ALAN M. BARNELL  
GORDON J. GOLUB  
JEROME J. BRUDER  
FRANK M. CUFFANI  
MARVIN J. BRAUTH  
STUART A. HOBERMAN\*\*  
NICHOLAS W. MCCLEAR  
STEPHEN A. SPITZER  
EDWARD R. BONARD\*  
HELEN DAVIS CHATHAM\*  
PETER C. PARAS  
ANNE S. BARNHEAL\*  
CHRISTINE D. PETRUZZELL  
ROGER S. KAPLAN\*  
PHILIP A. PANGIAN\*\*\*

(201) 636-8000

TELECOPIER  
(201) 636-0860

777 WESTPARK  
P.O. BOX 365  
OAKHURST, N.J. 07755

(201) 493-2202

FREDERICK J. DENNEWY  
BRIAN J. MOLLOY  
ROY H. TANZMAN  
RANDALL J. RICHARDS  
BARRY T. ALBIN\*  
BONNIE H. S. BEISS  
SHELDON E. JAFFE\*  
STUART T. COLE, JR.  
RICHARD M. METH  
RICHARD P. DANGERFIELD\*  
KAREN ANN RUSULAK  
STEVEN J. TRIPP  
RICHARD J. BINDELGLASS  
LUNDA LASHBROOK

CHRISTOPHER M. PLACITELLA  
JAMES E. TRABILSY  
MALVERN S. BINETTI  
JAMES M. BURNS  
LILIAM MESSINA RUGENT  
JOHN P. PAONE, JR.\*  
MICHAEL J. BARRETT  
AIMEE L. MANOCCHIO  
PETER C. VISCEGLIA  
JEFFREY R. RICH\*  
ROBERT J. LEVIN  
ANGELO JOHN CICALI  
DOUGLAS WATSON LUBIC\*

\*ALSO ADMITTED IN V.I.  
\*ALSO ADMITTED IN D.C.  
\*ALSO ADMITTED IN PA.  
\*ALSO ADMITTED IN N.Y.

REPLY TO: Woodbridge

\*CERTIFIED CIVIL TRIAL ATTORNEY  
\*\*CERTIFIED CRIMINAL TRIAL ATTORNEY

August 13, 1985

Frank A. Santoro, Esquire  
1500 Park Avenue  
Box 272  
South Plainfield, New Jersey 07080

Re: Urban League v. Carteret (South Plainfield)

Dear Frank:

I am aware that South Plainfield has adopted a rezoning ordinance under protest and you are scheduled to appear before Judge Serpentelli on August 23, 1985 on the motion to transfer the case to the Affordable Housing Council. I am enclosing another copy of our March 11 memo which was discussed when we appeared before the Council at or about that time. Please note our position that only 30 acres are buildable because of various site constraints, including the presence of the industrial plant. This would mean that at a gross density of 12 units per acre 360 total dwelling units will be provided and 72 low and moderate units. We would proposed to subsidize these with industrial development as you are aware. Perhaps this information could be used by you at the August 23 hearing.

Should your request for transfer be denied by the Court, we intend to intervene in the proceedings and to present these views ourselves. However, we are enlisting your cooperation in advancing to the Court the position

**WILENTZ, GOLDMAN & SPITZER**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

**Frank A. Santoro, Esquire**

**Page 2**

**August 13, 1985**

that the low and moderate income units can and should be subsidized by nonresidential uses and that the Judgement should be amended accordingly.

Yours very truly,

**STEPHEN E. BARCAN**

**SEB:ls**

**cc: Mr. William Barraco**

**Mr. William Keyes**

**Mr. Robert Gray**

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., :  
 :  
 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  
COMPLAINT IN LIEU  
OF PREROGATIVE WRIT

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 control 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:

①

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.

12

②

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

12

= 12 on lots

~~12X 12 5 100~~  
~~8X 14 5 112~~  
~~4X 8 5 224~~

12X 12 5 100  
8X 14 5 112  
4X 8 5 224  
144

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

3

July  
2012

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  
x 1/2 G.A.

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.

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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.

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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

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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.

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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.

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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

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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, 1984 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.

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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.

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S. Citizens*

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

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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 provisions 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.

  
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EUGENE D. SERPENTELLI, J.S.C.