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SoutL Plainfield 26-Oct. 84

~~Affidavit in Support of~~

Affidavit of Barbara J. Williams
in support of Motion for Consolidation
Temporary Restraining Order and
Interlocutory Injunction, Appointment
of a Master and Notice of Plaintiff

pgs = 8

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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

AFFIDAVIT IN SUPPORT OF MOTION
FOR CONSOLIDATION, TEMPORARY
RESTRAINING ORDER AND
INTERLOCUTORY INJUNCTION,
APPOINTMENT OF A MASTER AND
NOTICE TO PLAINTIFF

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

BARBARA J. WILLIAMS, of full age, being duly sworn
according to law, upon her oath deposes and says:

1. I am the attorney for plaintiffs in the above
referenced matter.

2, On or about June 8, 1982, Elderlodge, Inc., a
New Jersey corporation, filed a suit in Lieu of Prerogative
Writs^ against the South Plainfield Board of Adjustment in the

Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-56349-81, contesting the denial by the South Plainfield Board of Adjustment of Elderlodge's request for a use variance. (Exhibit A)

3. Plaintiffs¹ complaint in its Third Count is pleaded on a Mt. Laurel theory and seeks Mt. Laurel relief in the form of rezoning for low and moderate income housing.

4. The Honorable Eugene D. Serpentelli, J.S.C., ordered the matter referred to in Paragraphs 2 and 3 above to be remanded to the Board of Adjustment of the Borough of South Plainfield "in order to amplify and supplement the record pursuant to the principles and rules applicable under South Burlington Cty. NAACP v. Twp. of Mt. Laurel, 92 N.J. 158 (1983) (Mt. Laurel II). " The Court furthermore ordered that the Board of Adjustment conduct all hearings and render its decision in this matter within 90 days from the date said hearings shall be commenced.

(Exhibit B)

5. On May 22, 1984, the Court entered a Judgment As To South Plainfield which inter alia established the "fair share;" ordered the non-compliant ordinances to be revised; and specified the parcels to be rezoned by the Borough of South Plainfield. Included in the Judgment as a parcel to be rezoned was the Elderlodge site. This site was to be rezoned for a 100 unit multifamily development "with a mandatory set aside of 10% low income and 10% moderate income units " (Exhibit C, S 3H)

[emphasis added]

6. On July 9, 1984, William V. Lane, Esq., counsel for the South Plainfield Board of Adjustment, advised Eric Neisser, Esq. that the Elderlodge matter had been "carried at the request of the applicant." (Exhibit D)

7. On October 8, 1984, Angelo Dalto, Esq., attorney for the Elderlodge corporation, informed the Court that the South Plainfield Board of Adjustment had, on October 2, 1984, granted Elderlodge*s application to construct Senior Citizen housing as originally submitted. "No references to Mount Laurel implications or mandatory set asides were established." (Exhibit E) [emphasis added]

8. Said approval of the Elderlodge site without a mandatory set aside for low and moderate income housing is in direct contravention of the terms of the Judgment As To South Plainfield previously entered by the Court.

9. On October 15, 1984, Judge Serpentelli reiterated to counsel for Elderlodge that the purpose of the remand was to supplement the record before the Board of Adjustment concerning Mt. Laurel grounds for relief. The Court did not enter the Order dismissing the Elderlodge action as requested in light of the fact that the Borough of South Plainfield had not enacted a compliance ordinance meeting ^{its} Mt. Laurel obligation. The Court instructed no municipal official to take any action to authorize construction on the Elderlodge parcel pending resolution of this issue. (Exhibit F)

10. On October 19, 1984 I wrote to Mr. Dalto requesting prompt notice by letter or telephone of any proposed action relating to the Elderlodge site (including Board of Adjustment or other official meetings at which the project might be discussed). I advised him that the Urban League plaintiffs would move on short notice for an injunction against any action in South Plainfield that might prejudice their rights. (Exhibit G)

11. Counsel for plaintiffs has identified a pattern of non-compliance in South Plainfield's response to the judicial orders referenced above. Its conduct with regard to the Elderlodge site exemplifies bad faith on the municipality's part in carrying out the Mt. Laurel objectives agreed to in the May 22, 1984 Judgment:

(a) On August 22, 1984, Mr. Rosa submitted to plaintiffs a copy of a revised proposed draft of ordinances for the Borough of South Plainfield. (Exhibit G-1)

x (b) These draft ordinances were reviewed by Mr. Alan Mallach and Eric Neisser, Esq.

(c) On September 5, 1984, Mr. Neisser wrote to Mr. Rosa agreeing to the majority of the proposed ordinances, excepting concerns as to mandatory townhouse and garden apartment mix, the definition of townhouses and condominiums, and certain cost generating features by the proposed ordinances. (Exhibit G-2)

(d) No response was ever received from any representative of South Plainfield as to the three issues left outstanding.

(e) On September 25, 1984, Judge Serpentelli requested Mr. Diegnan inform the Court of the expected completion date of the Court-ordered revision of the zoning ordinances.

(Exhibit H)

(f) Pursuant to the terms of the Judgment As To South Plainfield, the Borough of South Plainfield was required to enact ordinances in compliance with terms of Order no later than 120 days from date of the Judgment. The 120 days expired on October 3, 1984.

(g) By letter dated October 4, 1984, Patrick Diegnan, Esq responded by advising the Court that revisions to South Plainfield's zoning plan would not be approved until a complete revision of the Master Plan was completed by the Borough's Planner, Robert Rosa Associates. (Exhibit I)

A" CM On October 11, 1984, Judge Serpentelli wrote to Mr. Diegnan reiterating the Court's September 25th request for a specific time schedule as to the expected completion date of the zoning ordinance revisions. The Court reminded Mr. Diegnan that the October 3, 1984 deadline for that ordinance revision had passed. (Exhibit J)

(i) On October 12, 1984, I wrote to Mr. Diegnan indicating the dissatisfaction of the Urban League with

South Plainfield's intention to hold up Court-ordered revision of its zoning ordinances until enactment of an updated Master Plan and my intention to request appropriate relief absent an indication from the Borough of intention to comply with Court-ordered enactment of compliant ordinances within 7 days of October 12, 1984. (Exhibit K) I heard nothing from any representative of South Plainfield within the specified time

... Aj) On October 19, 1984, I wrote to the Court expressing the position of the Urban League that it was unreasonable and contrary to the mandate of Mt. Laurel II to delay amendment of the zoning ordinances pending revision of the Master Plan and suggesting it would be appropriate to allow the Borough one last opportunity to enact a compliant ordinance with a deadline of one properly noticed public meeting. (Exhibit L)

(k) On October 22, 1984, a letter to Judge Serpentelli from Patrick Diegnan, Esq. informed the Court that the next scheduled Public Meeting of the Mayor and Council of the Borough of South Plainfield is November 12, 1984. No indication was provided by this communication as to whether ordinance revision would or would not be considered by the Council of the Borough of South Plainfield at that meeting. (Exhibit M)

12. As of the date of this Affidavit, the Borough of South Plainfield has not enacted compliant ordinances nor has it given any indication it will comply with the terms of the Judgment by enacting such ordinances at the November 12, 1984 meeting specified by Mr. Diegnan in his letter of October 22, 1984.

13. The approval granted to the Elderlodge site without a mandatory set aside in violation of the Judgment of May 22, 1984 indicates that the set asides applicable to the other parcels subject to rezoning as a result of the Judgment are also in jeopardy and plaintiffs will be irreparably harmed if the actions of the Borough, its officers and agents which may impair the terms and conditions of the Judgment are not restrained.

14. Any action as to other vacant parcels in the municipality by such governmental entities will also irreparably impair the position of the plaintiffs by reducing the amount of land available for satisfaction of the fair share at a time when the Borough of South Plainfield has not enacted compliant ordinances and has, in at least one instance, violated the terms of the existing Judgment.

15. In the absence of a restraint enjoining such actions as requested by plaintiffs in its motion, plaintiffs will continue to be left in the posture to objecting to actions taken by any entity or individual on behalf of South Plainfield

after-the-fact. The existing status of the Elderlodge matter aptly illustrates the irreparable prejudice that has and will continue to occur to plaintiffs as a result.

16. The consequences to the Borough of South Plainfield of enactment of the requested restraints are minimal in comparison to the harm resulting to plaintiffs, especially when viewed in light of action and inaction of the Borough and its representatives set forth in this Affidavit which have transpired to date.

17. Plaintiffs have succeeded in this matter on the merits. It is no longer a question of the "probability of success" of the party seeking the restraint. The Judgment As To South Plainfield was entered after plaintiffs¹ Motion for Summary Judgment. Plaintiffs seek this restraint to ensure that the Judgment is not consistently and continually eroded by the Borough of South Plainfield or anyone acting on its behalf.

18. The Borough of South Plainfield is out of time for revising its ordinances. The 120 days mandated for revision of the ordinances has long passed. While draft ordinances have been submitted to plaintiffs and commented upon by the Urban League, the defendant has provided both the Court and the plaintiffs with correspondence that conveys virtually nothing as to its intent or its efforts to comply with the existing Judgment. As a result, plaintiffs request that a

Master be immediately appointed by the Court and that the Master's responsibility be to review the proposed South Plainfield draft ordinance and the comments of plaintiff thereon contained in Mr. Neisser's September 5, 1984 letter and, within 15 days, report to the Court as to his or her recommendations for revision of the ordinances of South Plainfield.

19. Consolidation of the Elderlodge and Urban League suits is necessary for the Urban League to be able to properly protect and assert its position within the context of the Elderlodge litigation. Common questions of law and fact exist in both suits. The Elderlodge parcel is the subject of the Court's Judgment of May 22, 1984 in the Urban League case and both suits seek relief on the basis of Mt. Laurel. Resolution of the existing inconsistency of the Borough's action and the Judgment can more efficiently take place in a consolidated action.

20. In order to enable plaintiffs to monitor the proposed actions of all individuals and entities acting on behalf of the Borough of South Plainfield, plaintiffs must have notice of the contemplated actions in advance. Accordingly, plaintiffs further move for an Order requiring that plaintiff be provided with copies of any and all agendas, meeting notices, proposals, etc. that could in any way affect or impact upon the ability of South Plainfield to satisfy its fair share of low and moderate income housing which the Judgment mandates provide.

SWORN TO and SUBSCRIBED
before me this 26th day
of October, 1984.

3 ARB & J. WILLIAMS
v TV

Thomas M. Hoffman
Attorney at Law, State of New Jersey