

Great Meadow's (Plaintiff) letter brief in opposition to
Motion to transfer to COAH

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September 20, 1985

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JUDGE SERPENTELLI'S CHAMBERS

Hon. Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

Re: Urban League, et al. v. Borough of Carteret, et al.
Great Meadows, et al. v. Township of Monroe

Dear Judge Serpentelli:

Please accept this Letter Brief submitted on behalf of plaintiffs Great Meadows, et al., in opposition to defendant Monroe Township's Motion to Transfer to Council on Affordable Housing.

There is little that can be added to Mr. Mytelka's pellucid characterization of the Monroe Township motion. Although our research reveals no express authority for the "hew-haw" test we would agree that common sense requires the denial of the subject motion. The relief requested by Monroe reminds one of the old story about the child who murders both his parents and then pleads for mercy on the basis of being a poor orphan. This motion is the epitome of "chutzpah".

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The constitutional validity of the Fair Housing Act (P.L. 1985, c 222), although questionable, is not addressed herein. We agree with Mr. Mytelka that the facts clearly require a denial of the Motion regardless of the constitutional issues.

Monroe's Letter Brief, unnumbered page 10 thereof, states that "there has been no change of position by the plaintiffs based on any reliance that they might have placed on the Court's rulings to date which they will have to forego if the Court were to allow the transfer." This statement is ludicrous. Plaintiffs Great Meadows, et al., have expended a great deal of time, money and energy over the past 16 months of litigation. Plaintiffs have unquestionably relied upon Your Honor's rulings to date. This plaintiff has actively participated in the ordinance revision process and, now that the process is approaching completion, Monroe Township is requesting all parties to start anew before the Housing Council.

Monroe Township argues that "If the Court grants the transfer, the plaintiffs will still have an opportunity to plead their cases to the council when the Township petitions the Council for a substantive certification of its housing element and ordinances by filing with the council their objections if any, to the Township's petition for

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certification". (Monroe Township Letter Brief, unnumbered page 10). What could be more manifestly unjust than to require the parties to present identical arguments, many months from now, as those which have been already been presented to this Court. The inefficiency, duplication and dilatory effect of a transfer should not be tolerated.

In addition, Monroe Township claims that "Given the contentious political environment surrounding these cases.... the court would significantly slow down the Township's efforts to provide for its fair share of low and moderate income housing if it were to retain jurisdiction of these cases (Monroe Township Letter Brief, unnumbered page 10)". The Township constitutional obligation is not going to change whether it is before this Court or the Housing Council. Seriously, is Monroe Township going to be rezoned more quickly by this Court, which is completely familiar with the facts or by a Housing Council which is not yet operational?

Furthermore, Monroe Township claims that "For the Court not to trans- (sic) these cases to the Council would also deprive the Township of available grants and loans to be used for low and moderate housing programs, under Sections 20 and 21 in the Act and other new legislative protection afforded by the Act" (Monroe Township Letter

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Brief, unnumbered page 12). We disagree. The grants and loans pursuant to Sections 20 and 21 of the Act are not limited to those Township's which are before the Housing Council. Section 20(a) provides in pertinent part, that:

"a. The commissioner shall award grants or loans from this fund to municipalities whose housing elements have received substantive certification from the council, to municipalities subject to builder's remedy as defined in section 31 of this act or to receiving municipalities in cases where the council has approved a regional contribution agreement and a project plan developed by the receiving municipality.... (emphasis added)

Section 21(b) provides that:

"b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have received substantive certification from the council, or which have been subject to a builder's remedy or which are in furtherance of a regional contribution agreement approved by the council. During the first 12 months from the effective date of this act and for any additional period which the council may approve, the agency may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement provided the affordable housing program will meet all or in part a municipal low and moderate income housing obligation." (emphasis added)

In light of the above quoted sections of the Act, it is not likely that the Township would be deprived of available loans and grants if the transfer motion is not granted.

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In conclusion, plaintiff Great Meadows requests
this Court to deny the Motion to Transfer.

Respectfully,

HUTT, BERKOW & JANKOWSKI

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