

affidavit submitted in connection w/
compliance hearing

PLS

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On Behalf of the ACLU of NJ

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER]
NEW BRUNSWICK, et al.,]
Plaintiffs,]
vs.]
THE MAYOR AND COUNCIL OF]
THE BOROUGH OF CARTERET,]
et al.,]
Defendants.]

Docket No. C 4122-73

AFFIDAVIT
(South Plainfield)

STATE OF NEW JERSEY)
) ss.:
COUNTY OF ESSEX)

ERIC NEISSER, being duly sworn, deposes and says:

1. I am co-counsel for the Urban League plaintiffs. I submit this affidavit in connection with the compliance hearing for South Plainfield and in opposition to the motion of Harris Structural Steel to intervene.

ORDINANCES

2. The Borough of South Plainfield adopted Ordinance Nos. 1009 and 1010 on August 7, 1985. The ordinances had been considered and discussed at a number of prior meetings of the

Mayor and Council, including most prominently the March 11, 1985 meeting, for which formal public notice had been made pursuant to law. Public notice of the ordinance was again given, pursuant to law, by publication of the full text of the two ordinances in the July 18, 1985 edition of The Reporter. A copy of pages 12-14 of that edition is attached hereto as Exhibit A. A public meeting was held on July 29, 1985, pursuant to that notice, at which time the Mayor opened the floor for public comments. Transcript of July 29, 1985 Meeting of South Plainfield Mayor and Council, at 5-6. A copy of the transcript was Exhibit A to the August 28, 1985 Affidavit of Eric Neisser, submitted to this Court in opposition to South Plainfield's motion to transfer this action to the Council on Affordable Housing. Only one person, Lenore Slothower, sought permission to address the zoning ordinance, id. at 6-8, whereupon the Mayor closed the public comment portion of the meeting and the Council discussed the ordinance. After discussion, the Council did not adopt the ordinances but rather voted 4-2 to table the zoning and affordable housing ordinances. Id. at 63-64, 81-82. The ordinances were not adopted until the subsequent meeting on August 7, 1985.

3. Neither the zoning ordinance nor the zoning map provide block and lot specification or metes and bounds descriptions of the land subject to the new zones.

HARRIS STEEL SITE

4. In their May 10, 1984 Stipulation, the Borough and the plaintiffs agreed that: "The 84.8 acre site on New Brunswick Avenue, known as the Harris Steel site and 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, is appropriate 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. Stipulation, Para. 12. The Stipulation is Exhibit F to the Neisser Affidavit of June 21, 1985. The Judgment of May 22, 1984 accordingly directed rezoning of those blocks and lots at that density. Para. 3(A). In her review of the South Plainfield Stipulation, Carla Lerman, the Court-appointed expert personally inspected the sites and found their designation "reasonable." A copy of Ms. Lerman's May 30, 1984 letter-report to the Court is attached hereto and made a part hereof as Exhibit B.

POMPONIO AVENUE SITE

5. The May 10, 1984 Stipulation between the Borough and the plaintiffs specified that "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, is appropriate 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." Stipulation, Para. 14. The Judgment of May 22, 1984 accordingly directed rezoning of those Block and Lot numbers at the indicated density, Para. 3(C), within 120 days of the Judgment's effective date, Paras. 3, 11, or October 4, 1984. Rezoning did not occur by that date. On December 11, 1984, this Court entered a further order directing final passage of the zoning ordinance revisions by January 31, 1985. Rezoning did not occur by that date. By further order dated July 3, 1985 the Court required rezoning by July 31, 1985. On August 7, 1985, the Pomponio Avenue site was rezoned in accordance with the Judgment but the rezoning was stayed pending determination of the transfer motion. The ordinance revision went into effect on October 2, 1985.

6. Between the date of the Stipulation and the effective rezoning of the Pomponio Avenue site, the Township contracted to sell seven municipally owned tracts within the specified land in the Pomponio Avenue site, conveyed title to three of those tracts, and then approved construction of single-family developments inconsistent with the Judgment on those three tracts and granted building permits for such development, prior to final approval having been granted.

a) Three lots on which title closed, inconsistent development was approved, and building permits were issued. On May 14, 1984, a mere four days after the Stipulation in this case was signed, the Borough directed advertising for sale of two parcels in Block 448 Lot 4.01, which were advertised publicly on May 24 and June 1, 1984. On June 11, 1984, the Borough Council accepted the bids of D.DiGian and Sons Construction Co. for those two parcels, totalling \$25,000. On November 13, 1984, the Council accepted the additional bid of \$6,250. from DiGian and Sons for an additional parcel in Block 448, Lot 4.01. Each resolution accepting bids recited "said property...is not needed for public purpose or use." On April 16, 1985, the South Plainfield Planning Board held a special and a regular meeting back-to-back. At the special meeting, the Board reviewed and made recommendations concerning nine proposed amendments to the zoning ordinance revisions required by this Court's Judgment. At the regular meeting, immediately following, the Planning Board unanimously granted preliminary approval to Application #84-20 of Tonsar Corp. (a subsidiary or successor to DiGian & Sons Construction Co.) to build new two-family homes on these lots in Block 448, Lot 4.01. On May 13, 1985, Frank Santoro, attorney for the Borough, conveyed a deed to the three lots noted above, now redesignated as Lots 4.03, 4.04, and 4.05, to DiGian & Son

Construction Co., Inc. On May 16, 1985, the Borough issued building permits for these three lots. However, final subdivision approval was not granted by the Planning Board until May 21, 1985 and the subdivision maps were not signed by the Chairman and Secretary of the Planning Board until August 20, 1985. Copies of the public notices of two lots, the two resolutions of acceptance of June 11, 1984, the resolution of acceptance of November 13, 1984, the minutes of the April 16, 1985 special meeting of the Planning Board and the first four pages of the April 16 regular meeting, the first page of the May 1, 1985 Planning Board meeting minutes and the attached resolution concerning Application #84-20, the May 13, 1985 Deed of Sale, the three building permits issued on May 16, 1985, the first two pages of the May 21, 1985 Planning Board meeting minutes and attached resolution concerning Application #84-20, and the first page of the August 20, 1985 Planning Board meeting minutes are attached hereto and made a part hereof as Exhibit C.

b) Massaro site. On June 11, 1984, the Mayor and Council adopted a resolution calling for public bids on part of Lot 1.01 in Block 427 and part of Lot 4.01 in Block 448, totalling approximately 23.33 acres. After publication on July 26, and August 2, 1984, the Borough on August 13, 1984, accepted the bid of Lawrence J. Massaro in the amount of \$1,270,318.50. On May 15,

1985, Mr. Massaro contracted with a residential developer, on information and belief K. Hovnanian and Sons, Inc., for re-sale of this property, subject to rezoning in accordance with the Judgment. On August 12, 1985, the Borough Council adopted a resolution making time of the essence on its sale of this land, although it was then subject to this Court's restraint on sale of Borough land, and on August 23, 1985, pursuant to that resolution, Mr. Massaro deposited the full amount of the purchase price with the Borough. Title has not passed first because of some questions as to title and thereafter because of this Court's restraints on Borough sale of lands, first issued on June 24, 1985. The facts are detailed in the Certification of Lawrence J. Massaro In Opposition to Motion to Transfer Cause to Affordable Housing Council, sworn August 27, 1985, filed with the Urban League plaintiffs' opposition to that motion, and a copy of the public notice of the sale inviting bids is attached as an exhibit to the Massaro Certification. The facts are further detailed in the Certification of Philip G. George sworn October 25, 1985 and the Complaint for intervention, submitted in support of Massaro et al's Application for Leave to Intervene and to Lift Restraints, returnable before this Court on November 12. Copies of the June 11, 1984 Resolution directing public bidding for the site, the August 13, 1984 Resolution of acceptance and the August

12, 1985 Resolution making time of the essence for this sale are attached as exhibits to the George Certification and Massaro Complaint.

c) Three sites in Block 427 for which bids were accepted, but title not passed and final approval conditioned on Urban League claims. In addition, the Borough has contracted to sell three other sites within the Pomponio Avenue site designated in the Stipulation and Judgment. Resolutions accepting bids totalling \$83,825. for these three parcels within Block 427, Lot 1.01 were adopted by the Borough Council on March 26, 1984 (before the Stipulation was signed) and June 11, 1984. Each recited that "said property ... [was] not needed for public purpose or use." Title has not yet closed on these Borough owned lots. On June 17, 1985, plaintiffs, upon reviewing the agenda for the June 18 Planning Board meeting, called and then wrote Mr. Calderone, attorney for the Planning Board, objecting to proposed final subdivision approval of Application #84-7, concerning Block 427, Lots 1.01, 1.02, 1.03, and 1.04. The higher numbered lots were subdivided out of Lot. 1.01 which is specified in this Court's Judgment. On June 18, 1985 the Planning Board granted final subdivision approval to Gal-Ker on Application #84-7, subject to the claims of the Urban League under this Court's Judgment. A copy of the March 26, 1984 resolution and the two June 11, 1984

resolutions relating to these lots, the first and fourth pages of the minutes of the June 18, 1985 Planning Board meeting, and the first two pages of the minutes of the July 16, 1985 Planning Board meeting and the attached resolution concerning #84-7 are attached hereto and made a part hereof as Exhibit D.

d) Details of the Borough's land sales during 1984 and 1985, its self-imposed moratorium on further sales adopted on March 4, 1985, and the certification of Frank Santoro, the Borough Attorney, that the seven sales detailed above are the only sales affecting land within the Judgment and that title has not yet passed as to the three lots described in Paragraph 6(c) above are set forth in the letter of June 26, 1985 from Mr. Santoro to me, the attached two-page inventory of 1984 and 1985 land sales, and in his letter to me of September 17, 1985. The Santoro letter of June 26 with the sales inventory, the Santoro letter of September 17, 1985, and my letter of September 5, to which his second letter responded, are attached hereto and made a part hereof as Exhibit E. The letters and the inventory refer to six rather than seven sales. See, e.g., September 17 letter, page 1. This is because Mr. Santoro is treating the sale of two parcels within Block 448, Lot 4.01 to DiGian for \$12,500 each, for which bids were accepted by the Borough in two separate resolutions adopted on June 11, 1984, as detailed in Paragraph 6(a) above, as a

single sale valued at \$25,000. Mr. Santoro further asserts that deeds of conveyance were given for only one of the six land sales. September 17 letter, page 1. However, the Deed supplied with his letter and attached hereto as part of Exhibit C clearly shows transfer of title to three different parcels, for which three separate resolutions of acceptance had been adopted. Mr. Santoro also asserts that only 20,000 square feet of land was transferred by the May 13, 1985 Deed, Letter of September 17 at page 2, although the Deed itself states that the three parcels transferred consisted of 5,000, 10,000, and 10,000 square feet respectively. Moreover, Mr. Santoro certifies that "no...closings have occurred since the April 22, 1985 date set forth on the previously supplied 'Property Sales' list," September 17 letter, at page 3, although the deed provided with the letter was executed by Mr. Santoro personally on May 13, 1985.

7. The Stipulation and Judgment stated that the Pomponio Avenue sites consisted of approximately 25 acres because that was the information on the tax maps made available to the plaintiffs by the defendants. On June 19, 1985, Peter Calderone, attorney for the South Plainfield Planning Board, informed Barbara Williams, my co-counsel, that Block 448 Lots 2.01 and 4.01, which are only two of the three specified parcels in this site, comprised 32 not 25 acres. Williams Affidavit of June 21, 1985,

Para. 11. The Borough attorney now asserts that the specified three lots total only 26.08 acres. Santoro letter of September 17, Exhibit E hereto, at pages 3-4. I requested verification of this estimate personally on October 2 and through my letters to Mr. Santoro of October 5 and 23. Despite an oral representation on November 1 that the documentation would be forthcoming, I have not received same as of this writing. A copy of my letters of October 5 and 23 are attached hereto as Exhibit F.

MORRIS AVENUE SITE

8. The Stipulation specified that: "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, is appropriate 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, if the Borough would contribute the land and provide necessary financial support, including seed money and tax abatement." Accordingly Paragraph 3(F) of the Judgment directed rezoning of that site and Paragraph 4 directed that: "In order to facilitate development of the Morris Avenue site, after rezoning as set forth in Para. 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." Moreover, Paragraph 6 requires: "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."

9. Throughout the negotiations of the Stipulation and throughout the period of non-compliance, the Borough attorneys, first Patrick Diegnan and then Frank Santoro, have repeatedly assured me on numerous occasions that the Borough is fully committed to the senior citizens project, which is politically very popular.

10. In his letter of September 17, Mr. Santoro states that the Borough owns all of the lands within the Morris Avenue site, except for the lot owned by Mr. Buccellato, that at some point Mr. Buccellato was told that the Borough was no longer interested in acquiring his site but that the matter has now been renewed in

light of my September 5 inquiry. Exhibit E, September 17 Santoro letter, at page 4. Mr. Santoro has not yet responded to my October 5 and 23 letters inquiring as to the ownership of one lot incorrectly omitted in his listing of the lots within the Morris Avenue site and requesting the Borough's correspondence with Mr. Buccellato regarding purchase.

11. Mr. Santoro further confirms that establishment of a nonprofit corporation is the only step taken to date towards development of the senior citizen center. Exhibit E, September 17 Santoro letter, page 4. On October 9, 1985 I sent Mr. Santoro and all other municipal attorneys in this action a copy of the New Jersey Housing Mortgage and Finance Agency's September 26 draft guidelines for funding grants under the Fair Housing Act, and specifically noted the January 1986 application deadline for the only intended funding cycle. Attached hereto and made part hereof as Exhibit G is my letter of October 9 and attachments. To date, the Borough has not yet adopted the resolution required by Paragraph 6 of the Judgment, of which I reminded Mr. Santoro in my September 5 letter, at page 1. Moreover, in a telephone conversation on November 1, Mr. Santoro informed me that the Borough had not yet filed an application for funding with the Agency.

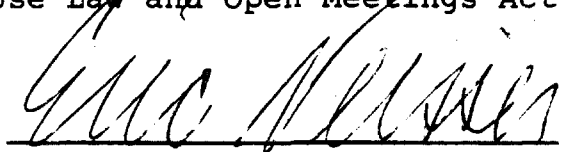
ELDERLODGE SITE

12. I have been informed by William Lane, attorney for the South Plainfield Board of Adjustment, that the Elderlodge developer, through Angelo Dalto, its attorney, has informed the Board that it considers it economically infeasible to build the project, even at the 6-story level already approved by the Board, with the 20 percent set-aside required by the Judgment and zoning ordinance. On October 21, 1985, I spoke with Mr. Dalto who stated that the developer considers the project not feasible with the 20 percent set-aside. I inquired about the basis for this conclusion. He said that he would be filing a motion for leave to file an amended complaint and to modify the Judgment with regard to the Elderlodge site. I suggested that any motion be made returnable on November 12. I have to date been served with no papers and have received no documentation as to the asserted difficulties with the development.

REPOSE


13. Paragraph 11 of the Judgment of May 22, 1984 stated that the time for taking actions set forth therein would begin to run five days after the Court-appointed expert's report to the Court. Ms. Lerman reported to the Court on May 30, 1984. Five days later is June 4, 1984. The Judgment gave the Borough 120 days, rather

than the 90 days requested by the plaintiffs, to do all the rezoning, resolutions and necessary steps for compliance. The 120 days ran out on October 4, 1984. Paragraph 12 of the Judgment provides that the time periods may be extended "by mutual written consent of parties or upon written application to the Court." Neither I nor my co-counsel ever consented, in writing or orally, to an extension of the Judgment's time deadlines, nor did the Borough ever submit a written application to the Court for such an extension. The Planning Board and Borough Council had sufficient regularly scheduled meetings between June 4 and October 4, 1984 to permit them to adopt the ordinances in compliance with the Municipal Land Use Law and Open Meetings Act.



ERIC NEISSER

SWORN TO and SUBSCRIBED
before me this 7th day
of November, 1985.



Jack C. Feinstein
Attorney at Law, State of New Jersey