

O & Y v. Old Bridge

Jan. 17, 1984

Letter from Norman to Judge concerning
proposed order of O & Y.

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January 17, 1984

Honorable J. Norris Harding, J.S.C.
Court House
New Brunswick, N.J. 08902

RE: O & Y Old Bridge Develop.
Corp. v. Twp. of Old Bridge
Docket No. L-32516-80 P.W.

Dear Judge Harding:

This letter is intended to amplify upon my correspondence of December 29, 1983 to Judge Eugene D. Serpentelli concerning the proposed Order of O & Y Old Bridge Development Corporation to reinstate the matter, pursuant to the provisions of an Order signed by Your Honor on March 2, 1983. At that time, the Governing Body and Planning Board of Old Bridge Township represented to the Court that a revised Zoning Ordinance was in the process of revision for adoption by the Governing Body. The Plaintiffs (O & Y Old Bridge Development) did not raise objections with regard to the zoning revisions and, in fact, indicated that the zoning approach taken by the Township of Old Bridge was acceptable although not necessarily palatable, but in the spirit of amicably resolving the dispute Plaintiffs would go along with the revisions. Henry Hill, Esq., on behalf of the Plaintiffs, did have a reservation concerning the adoption of the proposed zoning revisions. It was agreed by all parties that in order to resolve Mr. Hill's objections, the matter could be placed on the inactive list with the stipulation that the matter could be restored to the active list without the need of a formal motion in the event that the Governing Body did not adopt the newly revised ordinance.

The Governing Body and Planning Board were acting in good faith and believed that the ordinance revisions would be adopted. The stipulation was agreed to and, in fact, the ordinance revisions were adopted on April 5, 1983 approximately one month after the Order was executed.

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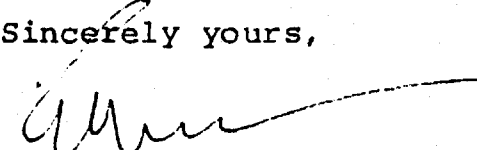
The ordinance revisions totally revised the Land Use Ordinance challenged by Plaintiffs for the various reasons set forth in their Complaint. Thereafter, Plaintiffs submitted a development application on May 29, 1983 for in excess of 10,000 residential dwelling units and 700,000 square feet of non-residential development. Public hearings to consider the application were held on October 18, October 25, November 10, November 29 and December 6, 1983. Plaintiffs consented to an extension of time through December 13, 1983, but they refused to extend the matter for additional hearings in January of 1984. The Planning Board passed a resolution denying the application without prejudice. At this juncture, Plaintiffs had the alternatives of resubmitting an application to the Planning Board; appealing the Planning Board's action to the Governing Body pursuant to Section 17 of the Municipal Land Use Law and appropriate zoning ordinance implementing provisions; or even possibly filing a suit in Lieu of Prerogative Writ either challenging the actions of the Planning Board or the validity of the new zoning revisions.

However, Plaintiffs have opted to reinstate the original Complaint filed in this matter. This approach is most tenuous in light of the adoption of a completely revised zoning ordinance which repealed the various zoning provisions challenged by the Plaintiffs in their original suit. In New Jersey, a Court is compelled to apply the law in existence at the time of its decision in resolving disputes. Hohl v. Readington Tp. 37 N.J. 271, 279, 181 A2d 150, 155 (1962); Socony-Vacuum Oil Co. v. Mt. Holly Tp. 135 N.J.L. 112, 117, 51 A2d 19, 23 (Sup.Crt., 1974). Applied to the instant matter, the rule requires that the Court apply the provisions of April 5, 1983 zoning ordinance, not the regulations which existed on March 2, 1983.

More recently, the Supreme Court reaffirmed this "time of decision rule" principal in Kruvant v. Mayor and Council, etc., 82 N.J. 485, 414 A2d 9 (1980).

With all of the above as background, if O & Y Old Bridge Development seeks to do battle, the object of attack should be the current effective General Development Ordinance of the Township of Old Bridge and not an ordinance repealed long ago.

Sincerely yours,


Thomas Norman, Esq.

TN:mk

CC: Jerome Convery, Esq.
Henry Hill, Esq.
Richard F. Plechner, Esq.
Louis E. Granata, Esq.

William E. Flynn, Esq.
Dean A. Gaver, Esq.