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1985

- Letter to Judge in lieu of Formal Brief

- Affidavit: Bignel (Township planner of Old Bridge)

Pgs. 9

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May 6, 1985

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Honorable Eugene Serpentelli
Courthouse
CN 2191
Toms River, N.J. 08754

Re: Urban League of Greater
New Brunswick, et al vs.
Township of Old Bridge, et al
Docket No. C-4122-73

O & Y Old Bridge Development Corp.
vs. Township of Old Bridge
Docket No. C-009837-4

Dear Judge Serpentelli:

This letter and Affidavit of Hank Bignel, the Township Planner of the Township of Old Bridge, are being submitted in lieu of a formal Brief in Opposition to the Motion of the Plaintiff, O & Y Old Bridge Development Corporation which seeks to restrain the Old Bridge Township Planning Board from reviewing further applications for development approvals until such time as the Municipal Utility Authority has entered into binding agreements to obtain sufficient supplies of potable water to service the proposed development of O & Y. In the alternative, O & Y seeks restraints against the Planning Board to prevent review of further applications for development approvals until such time as an approved plan is adopted by the Township of Old Bridge to meet its Mt. Laurel II obligations.

The standards which must be employed by this Court in determining whether to grant Plaintiff's Motion for preliminary injunctive relief are settled. They were recently summarized by the New Jersey Supreme Court in Crowe v. DeGioia, 90 N.J. 126 (1982) at 132-135. The Plaintiff must demonstrate: (1) that absent a preliminary injunction, it will suffer irreparable harm, (2) that his claim is based upon a settled legal right, (3) that the material facts are not in dispute, and (4) that he will suffer a greater hardship if injunctive relief is denied than the opponent will if it is granted.

Plaintiff should not be granted the preliminary relief it seeks because it cannot satisfy any of the four criteria necessary for entitlement to injunctive relief.

IRREPARABLE HARM - WATER SUPPLY

Plaintiff is proposing to build a planned development consisting of at least 10,000 units of residential development and more than 1,000,000 square feet of non-residential development. Woodhaven Village, the adjacent developer, and also the second builder intervening in this action, seeks to build an additional 8,000 units of housing. In total, the two developments, side by side, constitute one of the largest if not the largest development on the East coast of the United States. The location of the Plaintiff's development site is at the far end of Old Bridge Township in terms of distance from water and sewer facilities. Extensive off-tract extensions of water and sewer facilities will be necessary to hook the proposed development sites of the Plaintiff into the existing Old Bridge public utility system.

Plaintiff states in its moving papers that the Municipal Utility Authority is already unable to meet its current commitments with respect to water supply. (Plaintiff's Letter Brief, p.8 and Affidavit of James G. Coe, Exhibit 3)

In this factual setting, Plaintiff now argues that it will suffer irreparable harm if additional approvals are granted by the Planning Board of the Township of Old Bridge because allocations of water may be allocated to non Mt. Laurel II development. Since the Township of Old Bridge does not have an adequate water supply, a point which all parties appear to agree with, it does not seem plausible to argue that Plaintiff will suffer irreparable harm if allocations of non-existent water supplies are made.

Clearly, if water supply is inadequate, and it most surely is with regard to a proposed 20,000 unit development in Old Bridge Township, appropriate plans will be necessary in order to satisfy the necessary water requirements of the developments. In the alternative, it may be necessary to drastically rezone the lands in Old Bridge Township to reduce population densities because water may not be available to supply the developments. However, whatever the solution may involve, Plaintiff has not shown how it will suffer irreparable harm.

Further, it appears the New Jersey Legislature clearly anticipated situations such as the one before this Court involving development applications requiring approvals beyond the scope and authority of the Planning Board. In cases such as this, the Municipal Land Use Law at N.J.S.A. 40:55D-22(b) requires that the Planning Board must review development applications and, where appropriate, approve them subject to the availability of water or other conditions necessary for the development but beyond the jurisdiction of the Planning Board.

IRREPARABLE HARM - CURRENT DEVELOPMENT APPROVALS

Plaintiff argues that it will suffer irreparable harm because the Planning Board is approving non-residential development applications property filed and pursued before the Planning Board. Plaintiff refers to the Piscataway Township example where this Court enjoined the Township of Piscataway from issuing development approvals until it conformed with the requirements of Mt. Laurel II. The situation in Old Bridge Township is, in fact, just the opposite of that found in Piscataway Township. As the analysis based upon the Warren Township formula and attached hereto as Exhibit A indicates, Old Bridge Township has virtually no employment base. The entire municipality lies within the Growth Area of the State Development Guide Plan. The Township is quite sizable and because the entire Township lies within the Growth Zone its fair share number is relatively high. Piscataway Township, on the other hand, had a substantial employment base, but refused to permit additional residential development in conformity with Mt. Laurel II requirements. Further, there is nothing in Mt. Laurel II to indicate that municipalities located completely within the Growth Area of the State Development Guide Plan with extensive areas of vacant, developable land must exclude ratables but provide for large scale residential developments without an employment base.

The two major developments referred to by the Plaintiff were both approved preliminarily by the Planning Board in 1979 and 1981, long before the present controversy. Additionally, four of the recently approved applications for industrial development all involved applications made in conjunction with Community Block Grants. In order to qualify, the applicant must provide employment for individuals in the low and moderate income ranges. These approvals are designed to dovetail with the principles espoused in Mt. Laurel II.

Plaintiff's real worry seems to involve its competitive position in the market place for industrial and commercial developments. This type of argument does not represent the type of hardship for which a preliminary injunction should issue forbidding the Planning Board to entertain all applications for development. This Court must also balance the rights of the present property owners in the Township of Old Bridge to develop their properties and to permit the Township to create, for the first time, a sound tax base. In this regard see Citizens Coach Co. v. Camden House RR Company, 29 N.J. eq. 299, 305 (EA 1878). "...a question...raised is...one of great delicacy and importance, for which, on the one hand, the response is to be secured in the enjoyment of the privileges conferred by its charter; on the other hand it is equally imperative upon the Courts to jealously guard against every unauthorized deminuation of the rights of the public. Such a claim cannot be assumed or decided in favor of a claimant on a Motion for a preliminary injunction..."

See most recently, Zanin, et al v. Iacono, N.J. Super .
(L.D.1984).

IRREPARABLE HARM - COMPLIANCE EFFORT

Plaintiff charges that the Planning Board's time and energy is being spent in the development approval process for industrial and commercial ratables. Therefore, plaintiff asserts that the Planning Board does not have time to shape a Mt. Laurel II compliance package. This is simply untrue. The Planning Board, through its Chairperson, Planner and Attorney, has attended all Mt. Laurel II meetings with the Court appointed Master. Additionally, the Planning Board has developed a set of procedural guidelines and ordinance requirements for the review and approval of Mt. Laurel II projects. All parties have agreed upon the proposed regulations and guidelines. The Planning Board, through its Attorney, has also participated in negotiations with the two builders and the Urban League for resolution of the substantive issues. In this regard, the two builders, the Township and the Planning Board have agreed upon a proposed solution. The Urban League has raised certain objections which are not relevant to this Motion. However, the point worth emphasizing is the efforts towards compliance have been successful. By reference hereto, the Planning Board adopts the Affidavit of the Township Attorney which sets forth in detail the efforts on the part of the municipality to develop an acceptable compliance package.

SETTLED LEGAL RIGHT

Plaintiff assumes that it is entitled to a builders remedy. In order for O & Y to qualify for a builders remedy it must satisfy the prerequisites set forth in Mt. Laurel II. They include:

- a. Acting in good faith to obtain relief without litigation (when, and in a manner, appropriate);
- b. Proposing a substantial number of lower income units;
- c. Vindicating the constitutional obligations;
- d. Presenting a development which is not clearly inconsistent with sound planning principles and which will not result in substantial environmental degradation. See Mt. Laurel II, 92 N.J. 158, 218, 279-280, 308, 315-316, 331 (1983).

Plaintiff has failed to fulfill point c in that it has not vindicated the constitutional obligations established by Mt. Laurel II because Plaintiff simply has intervened far too late in a process which was initiated by the Urban League years prior to the filing of the Complaint by Plaintiff in February of 1984. By July of 1984, the Township and Planning Board had consented to an Order and Judgment sought by the Urban League settling the fair share number for which Old Bridge Township was responsible as well as the admission of non-compliance. The Plaintiff did not play a roll in this proceeding and did not seek partial consolidation until August of 1984. Additionally, in the Order

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of Partial Consolidation, Plaintiffs were permitted to participate in Ordinance revisions and also in determinations concerning the appropriateness of awarding a builders remedy. However, in no instance has it ever been recorded that Olympia and York is entitled to a builders remedy. Therefore, until the builders remedy issue is decided by this Court, the within Motion of the Plaintiff is premature.

Plaintiff relies upon the language of the Mt. Laurel II opinion at 92 N.J. 285 for the requested restraints. However, the proposed remedy is for non-compliance, is extraordinary and the Supreme Court indicates that it should be utilized only where no revised Ordinance is submitted within the time period allotted. Additionally, the Trial Court is directed to use the assistance and advice of the Master. At the present time, there is agreement among the builders, Township and Planning Board with respect to a substantive solution. In this context, it would seem premature and unfair to impose a rather unique and very punitive action against the Township and Planning Board.

CONCLUSION

For the reasons stated herein the Planning Board respectfully submits that the Motion of the Plaintiff should be denied.

Respectfully submitted,



Thomas Norman, Esq.

TN:mk
CC: All Counsel
Ms. Carla Lerman

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Attorney for Defendant - Planning Board of Old Bridge Township

O & Y OLD BRIDGE
DEVELOPMENT CORPORATION
A Delaware Corporation

Plaintiff,

vs.

THE TOWNSHIP OF OLD BRIDGE in the
COUNTY OF MIDDLESEX, a municipal
corporation of the State of New
Jersey, THE TOWNSHIP COUNCIL of
the TOWNSHIP OF OLD BRIDGE, the
PLANNING BOARD of the TOWNSHIP
OF OLD BRIDGE and the MUNICIPAL
UTILITIES AUTHORITY of the
TOWNSHIP OF OLD BRIDGE

Defendants.

:SUPERIOR COURT OF NEW JERSEY
:LAW DIVISION
:MIDDLESEX COUNTY/OCEAN COUNTY

:DOCKET NO. L-009837-84

CIVIL ACTION

AFFIDAVIT

STATE OF NEW JERSEY:

COUNTY OF MIDDLESEX:

I, Hank Bignell, of full age, having been duly sworn according
to law, upon his oath, disposes and says:

1. I am a licensed Professional Planner in the State of
New Jersey and am employed by the Township of Old Bridge as its
Professional Planner.

2. I have reviewed the contents of an Affidavit submitted by Peggy A. Schnugg with regard to development approvals granted by the Old Bridge Township Planning Board from March 1984 to date.

3. The purpose of this Affidavit is to correct approval dates or to indicate the nature of the application:

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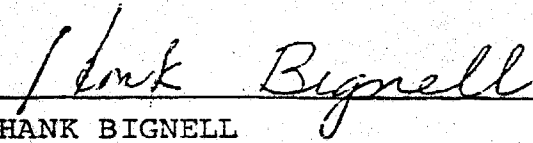
5-84P	This approval was granted in accordance with a Community Development Block Grant ("CDBG") utilizing funds of the Department of Housing and Urban Development for the purpose of providing opportunities for employment of individuals of low and moderate income.
9-84P	Electrical sub-station approved based upon finding that an emergency existed in Old Bridge Township requiring additional electric sub-stations. No water is required for this use.
69-81P	This application received preliminary site plan approval December 17, 1981.
68-81P	This application received preliminary approval December 14, 1982.
19-84P	This application was made in accordance with the CDBG for employment for low and moderate income individuals.
64-84P	This application was approved in accordance with the CDBG program.
35-83P	This application was initially filed in 1982 but was denied and, upon appeal, was reconsidered by the Planning Board and was finally approved in 1984.
68-84P	This application was made in accordance with the CDBG program.
34-84P	This application involved a minor amendment to a prior approval and did not involve additional water.
42-84P	This application was considered and approved during the latter part of 1984.

- 90-84P This application was approved in 1984 and involves a minor expansion of an existing facility. It does not require additional water.
- 14-85P This application was approved in 1984 and involves an office building.
- 62-84P This application has not received approval for site plan for development.
- 38-84P Application was approved during 1984 and involves a small office building.
- 30-81P This application was originally approved on June 23, 1981 preliminarily and with respect to the first section for final approval. The application is composed of two sections. The approval referred to in the Affidavit involves a minor amendment to reflect a setback change necessitate by an architectural change in the building.
- 20-84P This application has been submitted before the Planning Board since 1981 and has been changed continuously by the applicant until its submission in November of 1984.
- 78-84P This application was approved in 1984 subject to the Department of Environmental Protection approval which I understand is being denied.
- 105-84P This application was approved in January of 1985.
- 42-84P This is the final approval of the preliminary approval identified earlier in this list.
- 61-79P This application received preliminary approval September 10, 1979 and the approval referred to in the affidavit represents final approval of the third section only.
- 108-84P This application represents final approval of the electric sub-station.
- 109-84 This application was approved during 1984.
- 41-84P This application was denied by the Planning Board at its last regularly scheduled meeting.
- 60-76P This application has been continued by the Planning Board.

12-85P

This application has been continued by the Planning Board.

I certify that this information is true to the best of my knowledge and belief. I understand that I am subject to punishment if any statement made herein is willfully false.

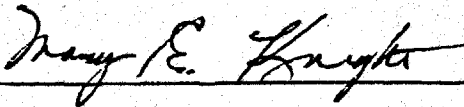

HANK BIGNELL

Worn to and subscribed to

before me this 6th day of

May

1985.



MARY E. KNIGHT
A Notary Public of New Jersey
My Commission Expires Jan. 26, 1987