

Randinelli v. Old Bridge

13 August 1986

Letter from Convery (1)

Letter from Barbara (1)

Pretrial Memorandum (6)

Pgs 8

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**TOWNSHIP OF OLD BRIDGE**  
MIDDLESEX COUNTY, N.J.

JEROME J. CONVERY  
TOWNSHIP ATTORNEY  
679-0010

August 13, 1986

Honorable Robert P. Figarotta  
Middlesex County Superior Court  
New Brunswick, NJ 08903

Re: Rondinelli v. Township of Old Bridge  
Docket No. L 082456-85

Dear Judge Figarotta:

This is to confirm my conversation with your secretary, Elaine Graves, today wherein the above referenced Pretrial Conference was adjourned by you without date, pending the determination of the Motion by Old Bridge Township before Judge Serpentelli regarding the Judgment of Repose.

Thank you for your courtesy and consideration in this matter.

Respectfully,

Jerome J. Convery

JJC/jd

/cc: Mark Breitman, Esq.  
ycc: Barbara Stark, Esq.  
cc: Alan Karcher, Esq.

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**  
Campus at Newark

School of Law-Newark . Constitutional Litigation Clinic  
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15 Washington Street. Newark . New Jersey 07102-3192 . 201/648-5687

August 12, 1986

The Honorable Robert P. Figarotta  
Judge, Superior Court  
Court House

New Brunswick, New Jersey 08903

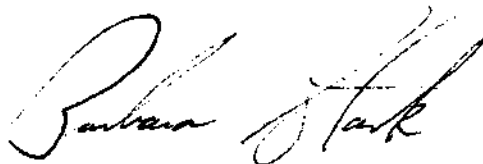
Re: Rondinelli v. Old Bridge, No. L 082456-85

Dear Judge Figarotta:

Enclosed please find original and copy of Pretrial Memorandum submitted on behalf of the Civic League intervenors. Kindly return the copy stamped "filed" or "received" to this office in the stamped, self-addressed envelope enclosed for that purpose.

I hereby certify that by copy of this letter, Mark Breitman, Esq., attorney for plaintiff Rondinelli, and Jerome Convery, Esq., attorney for defendant Township of Old Bridge, are being served with copies of the within Pretrial Memorandum.

Respectfully yours,



ends

cc/Jerome Convery, Esq.  
Mark Breitman, Esq.



Edward Rondinelli dated March 10, 1986, plaintiff obtained a "use variance" on April 17, 1985. Plaintiff argues, in pertinent part, that this variance effectively preempts the subsequent density ordinance. Intervenors take no position on this narrow issue.

On December 19, 1985, however, amendments to the Land Use Development Ordinance, No. 55-85, and the Affordable Housing Ordinance, No. 54-85, (the "Mount Laurel ordinances") were adopted by the defendant Township. These ordinances required all residential developments which had not received preliminary site plan approval as of December 19, 1985 to provide 10% of their total number of units for lower income housing units. It is undisputed that the Rondinelli development had not received preliminary site plan approval as of December 19, 1985.

As set forth in the Order and Judgment of Repose dated January 24, 1986, defendant Township agreed to "continue in force" the aforementioned December 19th ordinances. Paragraph 2(e) of that Order, moreover, explicitly provided that 40 housing units affordable to lower income households would be constructed in the Rondinelli development. The Civic League intervened in this action to ensure plaintiff Rondinelli's and the defendant Township's compliance with these ordinances and the Order and Judgment of Repose.

## 2. Admissions or Stipulations

None at this time.

3. Plaintiffs<sup>1</sup> Factual and Legal Contentions

See plaintiffs<sup>1</sup> Pretrial Memorandum.

4. Factual and Legal Contentions of Defendant as to  
Nonliability

See defendants<sup>1</sup> Pretrial Memorandum.

There is no claim by any party currently pending against intervenors. To the extent plaintiffs<sup>1</sup> original demand may be construed as asserting rights with regard to all subsequent ordinances, including the Mount Laurel ordinances, intervenors respectfully submit that the Mount Laurel ordinances speak for themselves. Nor, as the Township freely confirms, was it ever the Township's intention to carve out a special exception for plaintiff. Indeed, plaintiffs<sup>1</sup> contribution was expressly contemplated by the Township at the time it entered into the January 24, 1986 Order. Finally, intervenors submit that as a matter of law the use variance allegedly obtained by plaintiff is not the equivalent of preliminary site plan approval, which plaintiff has not obtained as of this date.

5. Claims as to Damages and Injury

Plaintiffs<sup>1</sup> continued defiance of the Mount Laurel ordinances will result in the loss of the 40 lower income units assured by the January 24th Order. If plaintiff builds more than 400 units, its refusal to construct the mandated 10% for lower income households will result in a correspondingly greater loss. Calculation of the injury attributable to plaintiffs<sup>1</sup> delay will require discovery.

6. Amendments to Pleadings

Intervenors do not seek to amend at this time. If other parties are permitted to amend, of course, intervenors request the opportunity to respond.

7. Issues to be Determined at Trial

The only determination of concern to intervenors is whether plaintiff shall be permitted to avoid its obligations under the Mount Laurel ordinances. It is not necessary for that determination to be made in this proceeding and if the court declines to decide that issue, intervenors request only that their rights be reserved; that is, even if plaintiffs<sup>1</sup> use variance is deemed valid against the subsequent density ordinance, it should not be deemed valid against the Mount Laurel ordinances.

8. Legal Issues Abandoned

No legal issues have been abandoned to intervenors•  
knowledge.

9. Exhibits Marked in Evidence by Consent

a) Amendments to the Land Use Development Ordinance, No. 55-85, and the Affordable Housing Ordinance, No.54-85,

b) Order and Judgment of Repeal dated January 24, 1986.

10. Limitation on Expert Witnesses

Intervenors do not plan to call any no expert witnesses at this time.

11. Direction with Respect to the Filing of Briefs

As the Court may direct.

12. Order of Opening to the Jury

Not applicable.

13. Matters Agreed Upon to Expedite Disposition of this Case

Old Bridge has advised that it intends to file a motion before the Honorable Eugene D. Serpentelli regarding the January 27, 1986 Order and Judgment of Repose. Plaintiffs request that this matter be stayed pending the resolution of that motion. Intervenors have no objection to such a stay.

14. Designated trial counsel

Intervenors are not designating trial counsel at this time.

15. Estimated Length of Trial

Half-day to one day.

16. When Case Should be Placed on Weekly Call

Not applicable.

17. Date Attorneys Conferred

Counsel for intervenors telephoned and left a message for Jerome Convery, Esq. on August 11, 1986/ and conferred with Mark Breitman, Esq. on August 12, 1986.

18. Pretrial Discovery


Intervenors intend to serve interrogatories on plaintiffs and defendants following the determination of defendants' motion before the Honorable Eugene D. Serpentelli.



19. Statement as to Default

Not applicable.

Dated: August 12, 1986

A handwritten signature in cursive script, appearing to read "Barbara Stark", is written over a horizontal line.

JOHN PAYNE, ESQ.

ERIC NEISSER, ESQ.

BARBARA STARK, ESQ.

ATTORNEYS FOR THE CIVIC LEAGUE  
INTERVENORS

On Behalf of the American Civil  
Liberties Union of New Jersey