U.L. v. Cateret, (Piscataway + E. Brunswick) 10/10 1983

Internal
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CA000235

To: Urban League Team

From: Rachel Lehr

Re: Piscataway and East Brunswick : Procedural compliance with Municipal Land Use Law, N.J. STAT. ANN. 40 : 55D-1 et seq., (West 1983).

Date: October 10, 1983

Several questionable provisions of the Township of Piscataway's Planned Residential Development Ordinance of 1978 appear to be left unchanged by its proposed Master Plan revision drafted in 1983.

The MLUL, § 40 :55-8 (b) (1) states that fees to be charged an applicant for review by a municipal agency of an application for development "shall be reasonable and shall be established by ordinance." Section VI : General Requirements, of the Piscataway Ordinance, § D. FEES:

> All fees must be received prior to any consideration or formal hearing of said Planning Board. The fee for review, investigation, research and analysis of any Planned Residential Development shall be twenty dollars ($20.00) per unit for preliminary approval and ten dollars ($10.00) per unit for final approval, paid to the Township of Piscataway, sumitted to the Township Clerk.

With a minimum of thirty acres required for such a development, a density of eight units per acre with a bonus of an extra two units for low and moderate income housing, permissable under the latest revision, and figuring such a bonus for twenty percent of the acres, the minimum fee paid by a developer just for consideration by the Board must be over $5000. This does not seem at all "reasonable" when one realizes that this fee is paid without any assurance that the developer's application will be approved. This fee, the thirty acre minimum even though the MLUL § 40:55D-6 defines a "planned unit residential development" as an area with a specified minimum contiguous acreage of 5 acres or more ... , and the more complicated procedure that is required of any plan

which involves more than ten acres must discourage many developers from attempting such an undertaking. However, although permitting a PURD on five acres would make such an undertaking feasible for more developers as well as more desireable in other respects, such as distributing low or moderate income housing more evenly throughout a municipality, it would not cause the complicated procedure to be replaced by the simpler procedure usually accorded a minor site plan or subdivision. The MLUL itself defines both "minor site plan" and "minor subdivision" to exclude planned developments no matter what the acreage (§ 5) and thus excludes them as well from a procedure that allows final approval in a one step process, granted within 45 days of submission of a completed application. (§§46-47)

The Piscataway Ordinance , Section IV. A. 9., requires the developer to present as part of the application for preliminary approval of his plan, "The prelininary approval and agreement of developer to the performance guarantees in the terms of money or other legal surety, as submitted to the Planning Board by the Township Engineer, for the improvements necessary relative to each stage of construction . . ." This may not conflict with the MLUL but it looks suspicious. Section 40:55D-53 : Guarantees required: Before recording of final subdivision plats or as a condition of final site plant approval or as a condition to the issuane of a zoning permit pursuant to subsection 65 of this act, the approving authority may require and shall accept ... :

> (1) The furnishing of a performance guarantee in favor of the municipality in an amount **not to exceed 120% of the cost of** installation for improvements it may deem necessary or appropriate including: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, as shown on the final map and required by the "Map Filing Law," . . . water mains, culverts, storm sewers, sanitary sewers . . . drainage structures, erosion control and sedimentation control devices, public improvements of open space and , **in the case of site plans only, other on-site improvements and lanscaping.**

Piscataway has not put a maximum percentage on its mandatory guarantee

seems to leave it at the discretion of the Township Engineer, and requires the developer to agree to the amount when submitting his preliminary application. This seems a long time before actual posting of such bond, or even calculation of the cost, which could occur as long as five years later, and the absence of a proportional figure in the ordinance makes it look as though it could be a quite arbitrary figure. And where the MLUL counts among these improvements required, landscaping and other on-site improvements only for site-plans, the Piscataway Ordinance covers surety for every stage of construction " inclusive of the recreational, convenience, commercial or public areas necessary to satisfy each stage." By' site plan' the MLUL must not mean PURDs, because in § 65, ennumerating the contents of a zoning ordinance it is stated :

> (c) Provide districts for planned developments, provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of this act.

While §49 of the MLUL gives a developer three years which can be extended twice for one year each time to apply for final approval of a site plan or major subdivision after acquiring preliminary approval, it does not specifically provide a length of time for a PUD. But § 39, while discretionary seems to be encouraging added flexibility in most respects in the case of PUDs. And §65 provides for planned developments in a manner consistent with article 6, so it appears that the same five years would apply to a PUD as well as to site and subdivision plans. The Piscataway Ordinance, however, in Section V:

> 1. An application for final approval . . . shall be made to the Planning Board . . . within the time or times specified by the resolution granting preliminary approval.

And Section. IV. C. 3 :

> In the event a plan is granted preliminary approval . . . the Planning Board shall set forth in the written resolution the time within which an application for final approval of the plan shall be filed . . .

This seems to be another arbitrary decisionmaking process contrary to the MLUL.

This period of time is longer for PUDs of more than fifty units in both the MLUL and the Piscataway Ordinance and can be important because during this period a plan which has been given preliminary approval"shall not be modified, revoked or otherwise impaired by action of the municipality pending an application for final approval, without the consent of the developer . . ."IV D 2. Section 49 of the MLUL.

The Environmental Impact Assessment is much too extensive for compliance with the MLUL , § 45 which only requires that prior to approval the planning board shall find (d): That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established. Nor does it represent the spirit of Mt. Laurel doctrine enunciated in Mt. Laurel I, where while recognizing the importance of ecological or environmental factors, the Court stressed that "the danger and impact must be substantial and very real" and that generally only a relatively small portion of a developing municipality will be involved. Further, the Court said that the regulation must be "only that reasonably necessary for public protection of a vital interest." (67 N.J. 151, at (1975) [Urban League Document #22,Pleadings, Folder 1-1]

The East Brunswick Land Use Procedures, contain provisions required in application that are not required in MLUL: 132-50 B:

(14) A statement of why the public interest would be served by the proposed development, such statement to be supported by a detailed economic, social and physical study.

(15) The proposed number of bedrooms for all dwelling units.

§D : "A transcript of the hearing shall be provided by the developer with a copy for the Planning Board . . . "

The section on hearings in the MLUL, § 10 (f) requires the municipal agency to provide for the verbatim recording of the proceedings and to

furnish a copy to any interested party upon request but at his own expense. Like section IV. A. 11, of Piscataway's Ordinance, East Brunswick in §132-50 E, requires a statement of the "impact on the school system in terms of projected number of students and grade levels; . . . " There is no such provision in the MLUL. § K provides that after preliminary approval, three months must elapse before application for final approval can be made; six months between applications for a development to be built over a period of years. East Brunswick allows a plan submitted for final approval a much broader definition of substantial compliance with the preliminary plan than does either the Piscataway Ordinance or perhaps even the MLUL, depending upon how the language of the latter (MLUL) is interpreted.

Piscataway allows gross residential density to vary only 2%, East Brunswick,5%. But good cause has to be shown by the developer why such variation was necessary. Section 50 of the MLUL allows minimal deviations from the conditions of preliminary approval if these deviations were caused by conditions beyond the control of the developer.