U.L. v. Carteret, Piscataway (1984?)

Memorandum In Support of Motion For Temp. Rest. Order & Interlocutory Injunction

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX/
OCEAN COUNTIES

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

MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER
AND INTERLOCUTORY INJUNCTION

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In this motion, the Urban League plaintiffs seek to preserve their opportunity for adequate and appropriate relief against the defendant Township of Piscataway, by restraining the Township's Planning Board from taking action that might irrevocably divert vacant and developable land in the township to non-Mount Laurel purposes. Such action is threatened as early as September 12, 1984, when the Planning Board is scheduled to hear Reidhal, Inc.'s applications for preliminary and final subdivision approval.

Application of the methodology adopted by this Court in AMG Realty Company, et. al. v. Township of Warren, Docket Nos. L-23277-80 PW and L-67820-80 PW (July 16, 1984) and in its Letter Opinion in this case dated July 27, 1984 yields a fair share obligation for Piscataway Township for the decade 1980 to 1990 that is in excess of 3,800 units of low and moderate income housing. Affidavit of Bruce Gelber, ¶ 3. It is evident, as the Township has repeatedly argued, that there is insufficient vacant and developable land in Piscataway to completely satisfy an obligation of this magnitude. Lerman Report, p.2; Affidavit of Alan Mallach, ¶ 4.

Notwithstanding these facts, the township has undergone substantial growth in the recent past, and continues to experience substantial growth at this time. None of this growth has provided low and moderate income housing opportunities; indeed, by concentrating on commercial and office structures, it has served to exacerbate the need for affordable housing in the township. See Affidavit of Alan

Mallach, ¶ 5. The township's growth policy, which has required the active participation of the governing body and the planning board, vividly demonstrates Piscataway's insensitivity to its Mount Laurel obligation.

The Planning Board of the Township of Piscataway now has before it applications for preliminary and final subdivision approval that would permit construction of single family residences on one-quarter acre lots with no provision for the set aside of low or moderate income housing. Affidavit of Bruce Gelber, ¶¶ 6-8. The Planning Board has scheduled a public hearing on these applications for September 12, 1984, and could act upon the applications at that time.

The Urban League plaintiffs submit that approval of the pending applications will cause it irreparable harm. They therefore ask the Court to restrain all action with respect to these applications, pending completion of the Urban League trial, that would make this parcel unavailable for rezoning as part of a remedy in this case.

The familiar standard which plaintiffs must meet in order to obtain temporary relief was recently restated by the Supreme Court in Crowe v. DeGioia, 90 N.J. 126, 447 A.2d 173 (1982). Plaintiffs must show: (1) a valid legal theory and a "reasonable probability of ultimate success on the merits," id. at 133; (2) irreparable harm, not adequately redressable by money damages; and (3) a relatively greater harm to the plaintiff if relief is denied than to the defendant if relief is granted.

Plaintiffs amply meet this test.

Probability of success. In light of the Supreme Court's decision in Mount Laurel II, 92 N.J. 158 (1983), and this Court's rulings in AMG Realty Company, et. al. v. Township of Warren and this case, it goes without saying that plaintiffs' Mount Laurel theory is legally valid. It is also virtually certain that plaintiffs will prevail on the merits and that Piscataway's zoning ordinance will be found to be in non-compliance with Mount Laurel II. At trial, the township conceded that its zoning ordinance does not provide for a mandatory set aside of lower income housing. In addition, the township acknowledged that, even if its voluntary density bonus provision were fully utilized, it would result in the development of only 462 units of Mount Laurel housing. Because the fair share number for Piscataway resulting from the AMG methodology is in excess of 3800 units, even if that number were reduced to account for "credits" sought by the township, it would still greatly exceed the number of lower income units that may be developed under Piscataway's existing ordinance.

Irreparable harm. Given the probable size of Piscataway's fair share number and the limited amount of vacant and developable land in the township, it is obvious that any action that removes otherwise suitable land from the remedial reach of the Court and its master in the compliance phase of this proceeding will undermine the Urban League plaintiffs' ability to achieve complete relief. In addition, alternative money damages are wholly inappropriate

in a case of this nature.

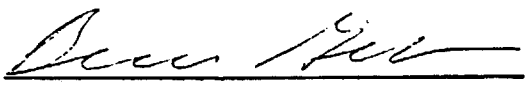
Approval of the pending applications will for all practical purposes make these parcels unavailable for development of Mount Laurel housing. Under N.J.S.A. 40:55D-49(a), a developer's right to an approved "use" becomes vested upon preliminary approval, thus precluding a rezoning from commercial to residential or from single-family to multi-family uses. It also would presumably preclude any revision of the approval to include low and moderate income housing as a component of the proposed development. Although the statute refers to "general terms and conditions," this language has been interpreted to mean any basic or fundamental aspect of the project for which preliminary approval is granted. See Hilton Acres v. Klein, 64 N.J. Super. 281, 165 A.2d 819 (App. Div., 1960), aff'd, 35 N.J. 570, 174 A.2d 465 (1961). Although there is no case law directly in point, whether a proposed development is a Mount Laurel or non-Mount Laurel one would seem to fit within the Hilton Acres concept of a "basic" or "fundamental" aspect of the developer's thinking, and therefore would come within the reach of N.J.S.A. 40:55D-49(a).

Balancing of harms. The defendants, as public bodies, would suffer little, if any, harm should temporary relief be granted, since their role is that of a regulator rather than a principal. Indeed, the absence of prejudice to the township is especially evident here, since the temporary

restraint sought by plaintiffs allows the Planning Board to continue to process and approve the applications, subject only to the plaintiffs' right to request rezoning of the tract as part of the remedy in this case.

Assuming that the developer-applicant is entitled to have its interests considered in the balance, the balance still remains overwhelmingly in the plaintiffs' favor. As a matter of law, the applicant is not entitled to approval simply because its applications are complete and pending; the applications could be disapproved by the planning board on grounds unrelated to the present action. More importantly, however, except for the issues of site suitability and appropriate densities, trial in this action has been completed and the temporary restraints are likely to last at most for a couple of months until a decision is rendered. Plaintiffs thus submit that they fall amply within the requirements of Crowe, having shown a probability of success on the merits, irreparable harm, and a balancing of interest that is overwhelming in their direction. Accordingly, plaintiffs respectfully move for entry of a temporary restraining order regarding the processing and possible approval of the Reidhal, Inc. applications.

Respectfully submitted:



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