

CA - ~~East~~ Brunswick 3-Dec-74

Brief in support of motion
for severance

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DAVID D. FURMAN, J.S.C.

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URBAN LEAGUE OF BANK SCHATZMAN :
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-4122-73

314

Plaintiff,

vs.

Civil Action

MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et als,

Defendants.

BRIEF IN SUPPORT OF MOTION FOR
SEVERANCE

BERTRAM E. BUSCH, Esq.
of Counsel

RULS - MTL - 441

LEGAL ARGUMENT

The Township of East Brunswick is presently the Defendant in a law suit instituted by Rowin Corp. pending in the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-10449-73 P.W. The complaint in that action alleges exclusionary zoning by the Township of East Brunswick for the following reasons:

1. The only multi-family dwellings which are permitted are Garden Apartments with a minimum of eighty (80%) per cent one bedroom units and a maximum of two bedrooms for the remaining units.

2. There is no vacant land in the Township which is zoned for Garden Apartments.

3. The zoning ordinance makes no provision for town houses, residential structures over two-stories in height, condominiums or any other form of housing units.

4. With the exception of 150 acres of vacant land zoned R3 (which requires minimum lot area of 15,000 square feet) the remaining vacant residential land is zoned R-2 (which requires a minimum lot area of 20,000 square feet) and R-1 (which requires a minimum lot area of 40,000 square feet).

5. As a result of the zoning ordinance the starting price for new dwellings in East Brunswick is approximately \$50,000.00.

In reliance upon its position the plaintiff in the Rowin case refers to the following:

1. Governor Cahill's special message to the Legislature entitled "New Horizons in Housing" dated March 27, 1972 referring to a severe housing shortage.

2. The Comprehensive Master Plan published by the Middlesex County Planning Board.

3. The East Brunswick Master Plan.

4. Proposals by the East Brunswick Planning Board for a Town Center and Planned Unit Development.

The issues raised in the Rowin suit are being repeated by the plaintiff in the instant suit. Under Rule 4:28-1 East Brunswick is not a necessary party to the action by plaintiff against any of the other parties. It is also possible under this rule that the Township of East Brunswick will be subject to a substantial risk of incurring double, multiple, or other inconsistent obligations if the same provisions of the zoning ordinance are adjudicated in two separate trials.

Rule 4:29-2 authorizes the court to order separate trials in order to prevent a party from being delayed or put to expense by the inclusion of the party against whom he asserts no claim and who asserts no claim against him.

Rule 4:30 also gives the court discretion to sever claims and proceed separately in the case of misjoinder. A similar power is set forth in Rule 4:38-2.

For the reasons set forth above it is submitted that the complaint against the Township of East Brunswick should

be dismissed or stayed pending the outcome of the suit instituted by Rowin Corp. against the Township of East Brunswick and in the alternative to sever the claim against the Township of East Brunswick.

Respectfully submitted,

BUSCH AND BUSCH, ESQS.
Attorneys for Defendant,
Township of East Brunswick

BY: Bertram E. Busch

BERTRAM E. BUSCH
A Member of the Firm