

CA-Metuchen

2/25/76

transcript of judge's decision

pr 33M

pg 6

CACW 15298

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY
Docket No. C 4122-73 /

RECEIVED
MIDDLESEX COUNTY
176 42 AM 10 68

URBAN LEASUE OF GREATER NEW BRUNSWICK, :
et al, :
Plaintiffs, :

BOOK FRANK SCHAFER CLERK

-vs-

Judge's Decision
(Metuchen)

BOROUGH OF CARTERET, et al,

Defendants.

FILED
MAR 22 1976
BRIAN A. FURMAN, JSC

314

New Brunswick, New Jersey
February 25, 1976

B E F O R E:

HONORABLE DAVID D. FURMAN, JSC

A P P E A R A N C E S:

DANIEL SEARING, ESQ.,
Attorney for the Plaintiffs.

MARTIN A. SPRITZER, ESQ.,
Attorney for the Deft. Metuchen.

Daye F. Fenton,
Official Court Reporter.

1 THE COURT: With respect to the qualifications
2 of Mr. Mallach, and weight of the evidence and
3 so forth, I would reject the motion to dismiss
4 on those grounds for the reasons approximately,
5 generally as stated before.

6 The Borough of Metuchen has virtually no
7 vacant land acreage, 38.5 acres, according to the
8 table P-27 in evidence, 24 of which are located
9 in the Manufacturing Zone.

10 Mr. Mallach has indicated that he accepts
11 the information from the Borough of Metuchen,
12 through Mr. Spritzer, much of that 24 acres is
13 not open for development, that is it's located
14 in railroad rights of way or for other reasons,
15 swampy, low lying, located in stream beds and
16 so forth, not available for residential development,
17 even if rezoned out of the manufacturing zone.

18 I note that the chart P-104, indicated
19 significantly more vacant acreage in Metuchen,
20 for instance 115 acres developable land zoned
21 under 10,000 square feet. Now, recognizing
22 that that table was prepared, completed in 1970
23 and that the date it was based on, goes back to
24 1966, the early '60's, '67, '68, or '69, also
25 recognizing as Mr. Sullivan conceded, that :

1 treatment was given or no allocation was made
2 for roads or streets or, he thought, railroad rights
3 of way, it appears that the acreage available, as
4 shown in P-104, has been swallowed up in
5 subsequent building or does not fit into the table
6 P-104 because it is in fact railroad right of way,
7 bands of concrete highway or whatever it maybe.

8 In any event, the Plaintiff, has submitted
9 as an exhibit, the table and has adopted the
10 information in the answers to interrogatories
11 or requests for admissions as to available vacant
12 land, thus it appears that to meet reasonable
13 housing need, not only of Metuchen but of the
14 region surrounding it, no solution of any
15 significance can be sought here. The Municipality
16 is substantially built up, it has a dense population,
17 based upon p-28 in evidence and the other
18 evidence as to income break-down of the population,
19 it appears to me, at this time, that the present
20 population of Metuchen is between 25 and 30 percent
21 low and moderate income and that that is fairly
22 evenly divided, that is approximately the same
23 numbers of low as moderate income households.

24 Mr. Searing has referred to the administrative
25 practice it may be of refusing permits for multi-

1 family housing, outside of the R-4 and R-5 zones
2 since the mid '60's, that would appear to be a
3 separate cause of action challenging either a
4 practice or a denial on a specific application.

5 Mr. Searing, has also referred to present
6 substandard housing and also to testimony that
7 a number of persons in Metuchen are paying more
8 than the 25 percent of their income, that they
9 should be paying for rental housing. It seems
10 to me that those factors would go toward
11 establishing or tending to establish, that there
12 were housing needs for low and moderate income
13 people, both in Metuchen and radiating out of
14 Metuchen to the region around it, it maybe the
15 entire County of Middlesex. There are, however,
16 specific infirmities in the zoning ordinance, in
17 particular the minimum floor area in the R-1 zone or
18 1400 square feet, I am not convinced on the
19 testimony before me at this time, that the
20 minimum floor area of 1000 feet is unreasonable for
21 single family home, that is not in reasonable
22 relation to factors of health, safety and the
23 other elements of the general welfare. I would
24 consider that the Metuchen Zoning Ordinance is
25 vulnerable with respect to the minimum floor area
of 1400 square

1 feet in the R-1 zone.

2 I would hold open subject to further proof
3 in the case, whether the Metuchen Zoning Ordinance
4 is vulnerable and should be struck down in the
5 particular of 1000 as opposed to the 800 or 850
6 square feet minimum floor area in the R-2 zone.
7 I don't see how based upon the Vickers decision of
8 the Supreme Court, upholding the prohibition of
9 mobile homes anywhere in a sprawling, substantially
10 undeveloped township, how at this level I can
11 hold open the attack on the Metuchen Zoning
12 Ordinance for failing to provide mobile homes.

13 However, as I have suggested earlier, that
14 does remain an issue in the case in this whole
15 case against all Defendants. I would suggest
16 that a record should be made or at least may
17 be made and that if there is an ultimate review of
18 this case by the New Jersey Supreme Court, it
19 maybe based upon that record, the Vickers case
20 would be overruled.

21 AT this point the motion for a dismissal
22 as against the Borough of Metuchen, will be
23 granted, on the basis there is no solution of
24 to fair share allocation of low and moderate
25 income housing, with virtually no vacant la

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

no available land resources, except that the complaint against the Borough of Metuchen will not be dismissed with respect to minimum floor areas in the R-1 and R-2 zones.

MR. SPRITZER: Thank you, your Honor.

I assume that if, during the course of the litigation, that the offending portions would be eliminated from the ordinance that would end the matter.

THE COURT: That would appear to be so, yes.

MR. SPRITZER: Thank you, your Honor.

* * * *

CERTIFICATE

I, DAYE F. FENTON, do hereby certify that the foregoing is a true and accurate transcript of the proceedings, as taken by me stenographically at the time and place hereinbefore set forth.

Daye F. Fenton
DAYE F. FENTON, CSR