

Facts and Arguments of Borough of Middlesex

6 pages

CAC01561Z

Railroad right of way. Relatively small amounts of vacant land exist within the industrial district north of the railroad line and further, the vacant land areas north of the railroad zoned for industrial uses are restricted as to future development owing to flood plain and property access considerations.

There is considerable vacant land areas south of the railroad lines zoned for industrial development. In many cases, the vacant areas are considered future expansion areas of existing industrial uses. Several industrial operations occupy large acreage parcels and over a period of time, it is anticipated that expansion will take place at the industrial sites.

The location of the bulk of all public land area is along the Bound Brook and the Ambrose Brook, which run in a southerly to northerly direction as tributaries to the Green Brook. With minor exceptions, the public lands along Ambrose Brook are flood plain areas. Substantial portions of the public lands along the Bound Brook are also flood plain areas. However, considerable public acreage located to the West of Bound Brook and to either side of Mountain Avenue are not subject to flooding.

The Borough of Middlesex, therefore is predominantly a residential community featuring two corridors of industrial and commercial development running in an east-west direction along the major traffic and transportation corridors within the municipality. The two major traffic corridors are Route 28 and the New Jersey Central Railroad.

The majority of all vacant land not subject to flooding (as per the flood hazard map of the Borough Ordinance #583) are located in the industrial districts along the New Jersey Central Railroad right of way.

The Zoning Ordinance of the Borough of Middlesex provides for eight different zones. The Borough Zoning Ordinance permits two family residential development and conversion of single family residential homes to two family homes in the R-60(B) residential district. In most cases, the area of two family residential development is located within the R-60(B) zone. However, there are other locations wherein a predominance of two and three family residential buildings exist, although zoned otherwise. (In most cases in the R-60(A) zone or the general business zone).

The locations exhibiting a one and two family residential character not included in the R-60(B) zone are as follows:

- a) residential development located between Route 28 and Rock lane.
- b) residential development located between Lincoln Avenue and Parker Street
- c) residential development east of Pond Street between Runyon Avenue and Bound Brook Road

An R-4 high-rise residential zone is located in the approximate geographic center of the Borough. The district extends from Mountain Avenue westerly to Woodland Avenue. Marlborough Avenue crosses through the center of the aforesaid district. The portion of the R-4 district located between Marlborough and Mountain Avenues is currently carried as tax-exempt land and owned by the Borough. However, considerable litigation involved with (1) sale of this property by the Borough to private developers and (2) ultimate utilization of said property has existed. Based upon current estimates, the subject area will ultimately be used for both multi-family and commercial purposes. The section of the R-4 district located west of Marlborough Avenues used for multi-family and single family residential purposes. The area located south of Hancock Street is developed exclusively for single family residential and owing to the very limited amounts of vacant land (two lots), a replacement of single family residential homes by new multi-family construction is highly unlikely. Single family residential dwellings are not a permitted use in the R-4 district.

There are five large garden apartment complexes located within the Borough of Middlesex. The largest of these is Middlesex Village which has a total of 218 rental units. The four other garden apartment complexes are Hamiltonian Apartments with 140 rental units; Hampton Gardens with 120 rental units; Grammercy Gardens with 76 Rental Units and Parkbrook Apartments with 42 rental units. The total number of garden apartment rental units in the Borough of Middlesex at the present time, therefore is 596.

The Borough of Middlesex has experienced substantial sustained land development over the last twenty five year period. The population of the municipality has increased from approximately 6,000 persons in 1950 to nearly 16,000 persons today. The sustained rate of residential development within the community experienced from 1950 to 1970 has decreased sharply in the past five year period. The following table shows the number of dwelling units constructed in the Borough from 1970 through 1974.

**HOUSING CONSTRUCTION BY NUMBER OF DWELLING UNITS
BOROUGH OF MIDDLESEX
1970 - 1974**

Year	Single Family	Two Family	Three or more Family	TOTAL
1970	17	6	0	23
1971	20	8	0	28
1972	16	0	0	16
1973	14	0	0	14
1974	20	0	0	20
Total 1970-1974	87	14	0	101

A sharp decline in the amount of residential dwelling construction is a result of the extremely limited amounts of buildable land suitable for residential construction as well as the economic depression associated with the housing industry during this same time period.

According to the 1970 census figures, the Borough of Middlesex had a total population of 15,038 people, which was broken down as 14,769 whites, 233 negroes and 36 others. According to those same census figures, there were 3,497 single family dwellings in the Borough of Middlesex and of these 7 were valued under \$15,000; 53 were valued between \$15,000 and \$25,000; and 1,485 were valued between \$25,000 and \$35,000; and 1,892 were valued over \$35,000.00.

According to these same 1970 census figures, there were a total of 4,349 housing units located in the Borough of Middlesex and, of these, 3,266 were owner occupied and 1,022 were renter occupied, which indicates that approximately one fourth of the units located within the Borough of Middlesex are renter occupied.

The Borough of Middlesex has commissioned its Planning Consultants to do a comprehensive re-examination of the land use plan and policies of the municipality as part of its ongoing comprehensive planning program. One of the unique factors affecting the industrial land of the Borough of Middlesex is the fact that the Middlesex industrial base is characterized by high hazard industry. Due to the high hazard nature of many of the existing industrial uses, protection to residential areas and provisions for the general public safety requires that the industrial areas contain substantial physical separation from residential areas.

Defendant, Borough of Middlesex, maintains that the principals of the Mount Laurel decision does not apply to the Borough of Middlesex, taking the position that the Borough is basically a fully developed municipality. The Borough further takes the position that its zoning ordinance is designed to preserve the character of a fully developed community and all zoning provisions are authorized under the criteria set forth under the zoning statutes. The Borough of Middlesex provides a large variety of choice of housing for all categories of people. There are no provisions in the Middlesex Zoning Code that discriminates against any race or economic class.

The rental range can be summarized as follows:

\$100 to \$149	\$150.00 to \$199.00	\$200.00 to \$249.00	\$250.00 and over
None	109	467	78

According to the 1970 census, the median family income in the Borough of Middlesex was \$12,268.00.

The Borough of Middlesex further questions whether the

Plaintiffs constitute a proper class due to the fact that it is combining both low income persons and moderate income persons and Defendant raises the question whether the interests of these two classes of persons are sufficiently diverse so that the Plaintiff representatives cannot represent both interests adequately.

The Borough of Middlesex further takes the position that the Corporate Plaintiff lacks the standing to institute suit in connection with any Federal claims under the rationale set forth in the recent United States Supreme Court case, Robert Warth et al vs. Ira Selvin 43 U.S.L. Week 49: 06 (U.S. June 25 1975). It is also submitted that the Plaintiffs have not sought to rent or purchase in Middlesex Borough and therefore, lack standing to institute this suit. The Borough of Middlesex further contends that Construction Industry Association of Sonoma County v. City of Petaluma, 375 F.Supp. 575 (N.D. Cal. 1974), affirmed, U.S.L.W. 2093 (Ninth circuit 1975) controls with respect to the rights of builders, potential residents, and land owners and inherent zoning power of the municipality.

The Borough of Middlesex contends that it is not a developing municipality, as was the case with Mount Laurel, and takes the further position that it is a municipality which is not of "sizeable land area" and thereby is not governed by the Mount Laurel decision. Segal Construction Company v. Zoning Board of Adjustment of Wenonah 134 N.J. Super 421 (App.Div. 1975).

The Borough of Middlesex further takes the position that any substantial increase in population beyond that presently provided for by its present ordinances would prevent the establishment or preservation of "green belts" within the municipality.

TABLE I

Existing Land Use
 Borough of Millis, May 1975

	Acres	% of Total Land	% of Developed Land
<u>RESIDENTIAL</u>	<u>816.38</u>	<u>34.7</u>	<u>44.0</u>
Single-Family	743.52	33.7	39.8
Two-Family	33.42	0.9	1.1
Apartments	39.44	1.7	2.1
<u>COMMERCIAL</u>	<u>107.74</u>	<u>4.9</u>	<u>5.9</u>
General Business	40.70	1.9	2.3
Office/Professional	3.37	0.2	0.2
Wholesale/Nursery	54.34	2.4	2.9
Automotive/Gas Station	9.33	0.4	0.5
<u>INDUSTRIAL</u>	<u>249.67</u>	<u>11.1</u>	<u>13.5</u>
Heavy Industrial	193.70	8.6	10.5
Light Industrial	55.97	2.5	3.0
<u>QUASI-PUBLIC</u>	<u>16.45</u>	<u>0.7</u>	<u>0.9</u>
<u>DEVELOPED PUBLIC</u>	<u>144.01</u>	<u>6.4</u>	<u>7.8</u>
Recreation	93.81	4.2	5.1
Other	50.20	2.2	2.7
<u>RIGHTS-OF-WAY/WATER</u>	<u>519.58</u>	<u>23.2</u>	<u>28.0</u>
Streets and Water	441.76	18.9	22.8
Railroad	97.82	4.3	5.2
Bay Parkway Central	42.23	1.8	2.4
Falling Valley	35.51	1.6	1.9
Highway	10.32	0.4	0.9
<u>UNDEVELOPED</u>	<u>1,853.98</u>	<u>83.7</u>	<u>100.0</u>
<u>VACANT LAND</u>	<u>386.00</u>	<u>17.3</u>	<u>47.5</u>
Private	309.58	13.9	38.5
Public	86.42	3.8	10.7
<u>WOODLAND</u>	<u>2,240.00</u>	<u>100.0</u>	<u>100.0</u>

SOURCE: E. Eugene Cross Associates