

CA - Monroe

8-April-76

Trial Brief of Defendant, Tusk.
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Monroe

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April 8, 1976

Daniel A. Searing, Esquire
NCDH
1425 H Street, NW
Washington, D. C. 20005

RE: Urban League of Greater New Brunswick
vs. The Mayor and Council of the
Borough of Carteret, et al,
Docket No. C 4122-73

Dear Mr. Searing:

Enclosed herewith please find copy of Trial Brief
of Defendant, Township of Monroe, relative to the
above captioned matter.

Very truly yours,



THOMAS R. FARINO, JR.,
Attorney, Township of
Monroe

TRF, Jr.:njs

Enclosure

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, A Non-Profit :
Corporation of the State of :
New Jersey, et al, :

Plaintiffs, :

-vs- :

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

Defendants. :

CIVIL ACTION

DEFENDANT, TOWNSHIP OF MONROE, TRIAL BRIEF IN SUPPORT OF
MITIGATING FACTORS

THOMAS R. FARINO, JR., ESQ.
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POINT I

AGRICULTURE IS AN IMPORTANT AND VIABLE INDUSTRY WITHIN MONROE TOWNSHIP; LAND USE REGULATIONS SHOULD REFLECT THIS CONSIDERATION AND ACTIVE FARMLAND SHOULD BE CONSIDERED DEVELOPED LAND.

Farming is a significant and viable industry in Monroe Township. As the testimony of Mr. Joshua Siegel, Professional Planner for the Township of Monroe, revealed during the presentation of the defense of the Township of Monroe in this matter, agriculture is the predominant land use within the Township of Monroe, this use consisting of approximately fifty-five (55%) percent of Monroe's 26,752 acres of land mass including 219 acres for the combined one family farmhouse on land used or designated as agricultural. Figures from defendant's exhibit in evidence as DM6 introduced during the testimony of Mr. Warner Thurlow of the Middlesex County Cooperative Extension Service, reveals that all land in active farming within the Township of Monroe amounted to 5,752 acres. This figure represents those farming operations for which farm motor vehicle registration was requested through the State Division of Motor Vehicles for the year 1974. It is significant to note that this farm land acreage figure respecting the Township of Monroe was the second highest acreage figure in the County of Middlesex.

If the Court were to consider active farmland within

Monroe Township as available for development it would be contrary to the public policy of the State of New Jersey. That policy is not only spelled out in the New Jersey Constitution Article 8, Section 1, the Farmland Assessment Act, the Report of the Blue Print Commission on the Future of New Jersey Agriculture (1973), but in the new Land Use Act, N.J.S.A. 40:55 D-2 (g) states as one of its purposes, "To provide sufficient space in appropriate locations for a variety of agriculture. . . to meet the needs of all New Jersey Citizens." Therefore the farm land in Monroe Township is not available for development since it is being actively and seriously used for agricultural use. To eliminate this agricultural use for the development of housing would be contrary to the public policy of the State of New Jersey and would not promote the general welfare of the citizens of the State of New Jersey.

Farming operations in the Township of Monroe have been characterized as being of high quality. Mr. Thurlow's testimony revealed that produce derived from farming operations within the Township of Monroe was of an excellent quality. He further indicated that farming operations in Monroe Township contribute a significant quantity of produce to County and Statewide production. Significant yield crop types within Monroe Township would include potatoes, vegetables and grains. Mr. Thurlow further testified that farming operations in the Township of Monroe are profitably run.

An examination of the soil within the Township of

Monroe reveals soils of very high quality in terms of produce bearing characteristics. During the testimony of Mr. Neil Munch of the State Soil Conservation Office, an exhibit marked for identification as D-CR-3 depicted soil classes within Middlesex County. An examination of this exhibit revealed a predominance of classes 1 and 3 soil types within the Township of Monroe. Mr. Munch testified that classes 1 and 3 are soils of very high quality from a standpoint of produce bearing capacity.

Agriculture plays an extremely important role in the economy of the Township of Monroe as well as representing the livelihood of a significant number of its residents. The quantity and quality of agricultural operations within the Township of Monroe is such that the recognition of farming as a valid land use disposition is justified. This recognition is further reenforced by an examination of exhibit DM-1 entitled Existing Land Use, Monroe Township 1974. This exhibit not only depicts an overwhelming predominance of agricultural land use within the Township of Monroe but in addition displays the nature of said agricultural use. An examination of this exhibit reveals many relatively small individual parcels of agricultural land, the majority of which have an associated residential use. As such, an established character, of an agrarian, rural residential nature becomes immediately evident. It is submitted that this established character of the Township of Monroe further justifies the

recognition of agriculture as a valid land use disposition.

POINT II

MONROE TOWNSHIP IS CONFRONTED WITH VALID ENVIRONMENTAL AND ECOLOGICAL CONSTRAINTS ON THE DEVELOPMENT OF LAND. LAND USE REGULATIONS MUST TAKE DUE ACCOUNT OF SAID CONSTRAINTS.

In the case of Southern Burlington County NAACP vs. The Township of Mount Laurel 67 New Jersey 151 (Supreme Court 1975), the Supreme Court dealt briefly with a suggested ecological argument. Justice Hall, at page 186, stated:

" . . . This is not to say that land use regulations should not take due account of ecological or environmental factors or problems. Quite the contrary. Their importance, at last being recognized, should always be considered. Generally only a relatively small portion of a developing municipality will be involved, for, to have a valid effect, the danger and impact must be substantial and very real (the construction of every building or the improvement of every plot has some environmental impact) - not simply a makeweight to support exclusionary housing measures or preclude growth - and the regulation adopted must be only that reasonably necessary for public protection of a vital interest."

A study of the natural physical environment, as well as man-made aspects of it has come to be recognized as an important element in a planning program. This now includes more than just physical character. It includes all the aspects of the environment that can be affected by man's activity in building. This is especially important for the Township of Monroe which is still essentially rural and, to a large extent, vacant. A master plan and zoning ordinance should be instruments for controlling the future development in the municipality, and should be responsive to the environment.

Not all natural, physical, aesthetic or social elements can be or even should be controlled by the public, let alone by a municipal body. Only those elements that effect the general welfare and are local in nature should be controlled by municipal regulation. Most such controls should take the form of building and zoning regulations. These will affect the location and physical layout of new construction and to some extent the layout and manner and use of existing development. Controls over natural and physical elements should be oriented not toward control of the element itself, but toward control over man's response to it (i.e. flooding should be controlled, not so much through land filling and walls, but through avoidance of building on the flood plain).

Flooding, marshy ground, the water table, permeability, slope and the combination of all of these factors as they affect a given piece of land must be taken into account in a municipality's control over development. All of these factors except one are related to water and that one exception, slope, is significant in that excessive slopes, if stripped of their plant cover, are subject to erosion from the action of rain water.

It has been recognized in recent years that subtle, barely noticable harm to the environment may result from man's solutions to problems respecting development which ignore effects on the natural environment. This damage can then accumulate slowly until serious harm results. For this reason,

a policy of recognizing natural conditions and working with them is now generally favored. This "design with nature" approach means leaving natural conditions alone, where possible and building only where the ground is suitable for it without extensive changes.

To plan for natural or physical elements of the environment which present problems to development, it is necessary to first locate them on a map. This has been accomplished by the Township of Monroe in the series of maps introduced into evidence as exhibits DM2, DM3, DM4 and DM5 which depict those natural or physical elements of the Monroe Township environment which present limitations on development. The data for these maps was taken from a survey of soil types prepared by the United States Soil Conservation Service with additional sources concerning conditions of flooding.

Exhibit DM4, entitled Stream Overflow Hazard, shows areas subject to flooding in Monroe Township according to likelihood and frequency of occurrence. Considerable portions of Monroe Township's land mass are designated in the "frequent" category. In addition, the HUD Special Flood Hazard Area is delineated and a substantial portion of Monroe Township is designated as flood hazard area.

Exhibit DM3, entitled Water Table, shows the water table heights throughout Monroe Township based on such heights as they generally occur in the various soil types identified by the United States Soil Conservation Service. Even where

the water table never actually reaches the surface and makes the ground marshy, its distance below the surface has a considerable impact on the feasibility of building. Water that is close to the surface can seep into basements where there is none. It can make septic systems infeasible. When such a system is in the groundwater, sewage will pollute it and prevent proper dispersal. Groundwater that is too high will also tend to infiltrate into sewers making them less functional. It can, as well, affect the stability of the soil. An examination of DM3 reveals that the one to five foot range predominates in the Township of Monroe, a condition which creates serious limitations on building.

DM2, labeled Permeability, reflects the ability of water to leach down through the soil, sometimes called percolation. This characteristic is of importance because of its effect on onsite sewage disposal systems and drainage. If water is unable to percolate through the soil, the disposal of both sewage or excess rain water will be difficult. An examination of DM2 reveals a high concentration of poor permeability throughout Monroe Township's land mass.

DM5, labeled Overall Limitation on Building, combines the soil characteristics represented in exhibits DM2, DM3 and DM4 to depict that when all of the characteristics of a particular soil type are taken together, the result is an overall limitation on building which can be characterized as slight, moderate or severe. As is immediately visible from

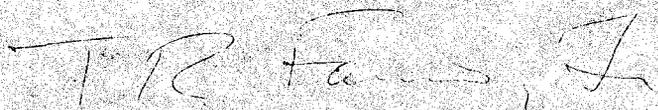
map DM5, most of Monroe is in the moderate or severe category with irregular and restricted areas in the slight category.

Exhibit DM9, entitled Availability of Public Sewerage, shows the general areas where service is being provided in Monroe Township. The MUA serves the northern tip of the Township, the Mill Lake Manor area and the Forsgate Sanitation Company serves about six square miles in the western portion of the Township including Rossmoor and Clearbrook. Sanitary sewers have not been extended to a wider area because of the problems of disposing of effluent in an environmentally sound manner. This problem places severe limitations on growth within Monroe Township since excessive development in an unsewered area creates dangers for the water supply. The present sewerage systems in Monroe Township are not comprehensive and are limited in their expandibility. There are, therefore, valid ecological constraints on the future development of housing in Monroe Township.

CONCLUSION

For the reasons set forth herein, Defendant, Township of Monroe, submits that the agricultural land which is in active farming use should be considered developed land and that valid environmental constraints on the development of more land exist within Monroe Township.

Respectfully submitted,



Thomas R. Farino, Jr.
Attorney for Defendant,
Township of Monroe

DATED: April 8, 1976