CA - Oakwood @ Madison v. Madison TWP 9/25/75

letter re: ~~Xxx~~ & request for supplementary briefs & re-arguments in S.C.

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Re: Oakwood at Madison v. Twp. of Madison
A-80/81-75 (A-52/53-74)

Gentlemen:

The Supreme Court has ordered reargument in the above case and has tentatively scheduled it for October 20 or 21, 1975. You are each requested to file supplementary briefs (simultaneously) on or before October 7 as to the following points:

1. Is it necessary, for fair share purposes, for the Court to fix a specific "region", or may the municipality zone on the basis of any area which it reasonably may regard as an appropriate region?

2. Is it sufficient that the ordinance permits satisfaction of the housing needs of low and moderate income people as a single category, or is it necessary that separate estimates of the housing needs for low income, as distinguished from moderate income, people, be formulated and the number of necessary housing units in each category be determined?

3. What are to be the determinants of the income qualifications for low income and moderate income categories, respectively, as of any given date?

4. In framing zoning regulations to achieve the opportunity for adequate low and moderate income housing, how does a municipality accommodate the lag in the rate of rise of median income behind the rate of rise in construction and land costs? During such a period, must the municipality continually revise the zoning ordinance to reduce the size and increase the density of permissible housing in order to accommodate such lag? Are the 1970-1975 figures in the record suitable for 1975 and beyond?

5. Can a developing municipality, in the light of the evidence in this case, "affirmatively afford the opportunity" for adequate low and moderate income housing (Mt. Laurel, 67 N.J. at 174) short of eliminating all minimum bulk, size or density requirements, not mandated by health statutes or regulations, in sufficiently large areas zoned residential?

6. In view of the absence of assurance of any degree of public subsidization of privately built housing, must the zoning regulations be such as to permit a developer, operating privately, to build housing of a character which will both meet normal profit incentives and be affordable by low and moderate income renters and purchasers? Or is a municipality entitled to assume that a given degree of subsidization will be forthcoming?

7. Are "density bonus" provisions in zoning ordinances valid as against existing zoning law or the general police power authority of municipalities (i.e. relaxation of requirements as to maximum units per acre or percentage of lot for building, in return for agreement by builder to rent some units at low rental rates)?

8. What other valid zoning devices are available to encourage construction of low and moderate income housing?

9. In order to affirmatively provide low and moderate income housing, may the zoning ordinance set aside residential zones in which, for purposes of single-family unattached houses, maximum lot widths, are fixed (e.g. 25 feet, 30 feet, 40 feet); or in which minimum density units per acre may be fixed for multi-unit housing? (e.g. 15 or 20).

10. In seeking to encourage lower housing costs to accommodate low income purchasers and renters, how does the municipality resolve the dilemma that low income families generally require more bedrooms than upper income families, which in turn increases the cost of construction of housing units?

11. If the Court affirms the determination of the trial court that the ordinance, as amended, still does not affirmatively provide adequately for low and moderate income housing, how specific should the Court be as to the terms of an ordinance which will satisfy Mt. Laurel? Do the interests of bringing this litigation to a final determination dictate some degree of specificity in the determination of the Court?

12. In connection with the latter question, would it be serviceable for the Court to appoint a Special Master to consult with the municipality and frame specific zoning guidelines to assist the municipality in meeting the Court's judgment?

13. Referring to the trial court's opinion, 128 N.J. Super. at 443, invalidating the AF multi-family zone because "construction of efficiency and one-bedroom units will dominate", how would plaintiff and amici modify the ordinance as to the AF zone to render it valid?

14. In considering what is Madison's fair share of low and moderate income housing for an appropriate region, is it not necessary to determine whether the areas which the municipality seeks to exempt from fair share requirements on ecological grounds, are factually entitled to such exemption (a question the trial court found unnecessary to decide)? Should there be a remand for that purpose?

15. Independently of the general question as to the validity or invalidity of the ordinance on the fair share issue, has the corporate plaintiff factually established its entitlement to be relieved of the restrictions of the ordinance as to its own property on grounds of unreasonableness to the point of confiscation? See Schere v. Township of Freehold, 119 N.J. Super. 433, certif. den. 62 N.J. 69.

16. Plaintiff and amici are invited to submit an outline of the basic contents of a zoning ordinance, including specific provisions governing residential zones, which in their opinion would satisfy that Mt. Laurel case.

17. Discuss the relevance of Construction Industry Association of Sonoma County v. City of Petaluma decided August 13, 1975, 9th Circuit Court of Appeals, which has been summarized at 44 Law Week 2093.

18. What effect, if any, should be given to the financial ability of the municipality to meet the fiscal requirements of additional schools, police, firemen, utilities, etc. in determining its fair share of moderate and low income housing?

Very truly yours,

Florence R. Peskoe

FRP:dk