

CA - South Brunswick

3/11/76

transcript of twp's motion
+ certification

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CA 0020335

1 MR. GRUBER: This is the end. South Brunswick
2 would like to at this time rest its defense, your
3 Honor, and I would like to make a motion at this time.

4 THE COURT: All right. You may put a motion on
5 the record. I would think that you have raised some
6 meritorious points but there still are some problems.
7 If you want to make a motion you may.

8 MR. GRUBER: In the Mount Laurel decision the
9 New Jersey Supreme Court made several rulings; that a
10 town has to provide a balanced housing, has to provide
11 a variety of housing, might have not only a legal
12 obligation but a moral obligation to provide assis-
13 tance to groups for low and moderate income housing.
14 And I just wish to quote--my motion will be short,
15 your Honor--I just wish to quote some concepts under
16 the Mount Laurel decision.

17 One, the Court ruled basically that the town
18 should not have any negative, to take any negative
19 actions to exclude low and moderate income housing.
20 There is no testimony on the record that this
21 township actively did anything to exclude low and
22 moderate income housing. There is nothing on the
23 record that indicates that there is not a variety
24 of housing. There is nothing on the record that
25 indicates that South Brunswick has not met its fair

1 share of low and moderate income housing. In fact,
2 the only testimony on the record is that the present
3 zoning ordinance does.

4 In addition to that, the master plan is in evi-
5 dence which indicates that there is a time growth
6 factor built into the master plan over a three to five
7 year interval period which allows the growth of South
8 Brunswick in a flexible manner based upon utilities
9 and roads that will allow South Brunswick to reach the
10 population projections of the Middlesex County Planning
11 Board which, by the way, have been revised as in-
12 troduced into evidence from the approximately 95, 96,000
13 that they projected in 1970 down to 42,000 in the new
14 projection of January this year.

15 Several questions that the Mount Laurel decision
16 raised was is it the intent of the ordinance to
17 exclude low and moderate income housing. Is there
18 anything that would exclude low and moderate income
19 housing. Are there any negative actions.

20 Now, I believe, your Honor, that the superficial
21 review of this ordinance by Mr. Mallack does not stand
22 up against the detailed work that Mr. Hintz put in
23 to the ordinance in its preparation taking into account
24 all of the environmental considerations in developing
25 the zones that will protect our aquifers and our water

1 recharge areas.

2 I believe that we have shown conclusively
3 that South Brunswick Township by its land use regula-
4 tions make realistically possible an appropriate
5 variety and choice of housing under the terms on
6 page 174 of the Mount Laurel decision. Specifically,
7 an inclusionary zoning policy for low and moderate
8 income housing, a mandatory inclusionary policy.

9 It bases its consideration on region. It does
10 not exclude multi-family housing and Mr. Hintz
11 testified as to the reason why South Brunswick did not
12 choose to zone areas other than PUDs for multi-family
13 housing because the zoning of those lands for multi-
14 family housing, smaller than one hundred acre minimums,
15 would not feasibly allow developers to provide low and
16 moderate income housing and therefore this in fact,
17 rather than being an exclusionary method, it's an
18 inclusionary method as has been testified before and
19 has been mentioned in Mount Laurel that there are
20 many things that on the surface could be exclusionary,
21 but if handled properly are not only not exclusionary
22 but inclusionary with regard to low and moderate in-
23 come housing.

24 In addition, the only testimony has been that of
25 Mr. Hintz that the dangers to the environment are

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very real and substantial under the terms of the Mount Laurel decision. There is no limitation on bedrooms.

There is a balance--all of the records that your Honor has before him in evidence--there is a balance between the jobs generated by the industries as promoted by South Brunswick and the residents. South Brunswick believes that they will have 40,000 job holders in the year two thousand. Mr. Hintz testified that the industrial development will provide a round estimate three units to three jobs per acre, 8,000 acres, is 24,000 jobs. If we concede that it's five jobs to the acre, five times 8,000 is 40,000 jobs. There's no imbalance between jobs and residents or workers.

On page 192 of the Mount Laurel decision the Court says that the township should have the first opportunity to act without judicial supervision.

Your Honor, I think rather than try to strike down the ordinance of South Brunswick Township, I think the Court should hold South Brunswick's ordinance and its planning efforts up as a model to the county and the State. Even in Judge Pashman's opinion, as part of the Mount Laurel decision, he indicates that the municipality has a legislative interest in

1 placing an upper limit on the extent of uses which
2 are permitted to expand without limit might reasonably
3 be forced to operate to the general detriment. And
4 he also said that the municipality did not altogether
5 give up control of the pace and sequence and develop-
6 ment of its community but that it should proceed a
7 pace without undue burdens on municipal services and
8 do not increase faster than the projected ability to
9 pay.

10 Your Honor, I submit that South Brunswick has
11 taken your Madison Township decisions of Oakwood into
12 account, the Mount Laurel decision, have applied them
13 to South Brunswick and produced this ordinance, and
14 I think that meets the standards and I so move the
15 motion.

16 THE COURT: I have the impression that South
17 Brunswick officials have endeavored to cooperate with
18 the developing law as to zoning. At the same time
19 I sense inclusionary rhetoric and exclusionary effect
20 of the present zoning. There are present housing
21 needs. It appears on the face of the zoning ordinance
22 the proportion of low and moderate income housing
23 units can be built under the present zoning is low
24 indeed. There are housing needs.

25 We have had testimony by Mr. Hantz of a somewhat

1 embrative region; half of Somerset County, all of
2 Mercer County, half of Middlesex County. Unquestion-
3 ably housing shortages are creating housing needs
4 radiating to South Brunswick Township which would be
5 provided for by reasonable opportunity for low and
6 moderate income housing at the present time.

7 I am sympathetic to the problem of water-sewer
8 installations, infrastructure, pacing or staging the
9 development. We have had testimony that the R-1 and
10 R-2 zones are holding areas for future PRD zoning.
11 I do not see anything wrong with that but I neverthe-
12 less have to evaluate the present effect of this
13 zoning ordinance and I have to reach findings of
14 present exclusionary effects.


15 We have had considerable testimony as to protec-
16 tions of environmental and ecological areas of the
17 township. We have heard extensively about the
18 aquifers, legitimate zoning objectives, to make sure
19 there is no depletion or significant depletion of
20 underground water resources. At the same time, as I
21 recall, Mr. Hintz testified in response to my question,
22 physically the township could support a population
23 of 100,000, industrial zoning seems in excess,
24 certainly far in excess of the county projections,
25 it seems in excess of any reasonably realistic

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projections in the year 2000, but if the jobs were filled at the rate of three per acre, in view of the calculations made of a great many jobs, I do not see the present realistic possibility or possibility even by expanding PRDs of providing housing for the so-called blue collar workers, these industries which you sought.

I would consider the serious deficiencies here are maldistribution, overzoning for industry, overzoning in the low density residential zones, excessive minimum lot and minimum frontage requirements, the absence of multiple family housing outside PRDs. I suppose that the 10 per cent limitation on low and moderate income housing in the PRDs could be sustained as valid, if there was adequate other available low and moderate income housing, recognizing the problems of encouraging builders. I do not mean to be harsh with the phrase inclusionary rhetoric. I feel on balance it proves it is more than rhetoric, good intentions, and so forth, but as of now falling short, so the motion is denied.

I hereby certify that the foregoing is a true and accurate transcript of proceedings as taken stenographically.


JUNE ANDRIAN, C.S.R.
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