

CA- Old Bridge

6/18/84

Affidavit of Andrew Sullivan, professional planner certified by NJ, in support of motion for summary judgment declaring Old Bridge Twp's Land Development Ordinance Constitutionally Invalid

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BRENER, WALLACK & HILL
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 ATTORNEYS FOR Plaintiff

Plaintiff	:	SUPERIOR COURT OF
	:	NEW JERSEY
O & Y OLD BRIDGE	:	LAW DIVISION
DEVELOPMENT CORPORATION	:	MIDDLESEX COUNTY/
A Delaware Corporation	:	OCEAN COUNTY
	:	(MOUNT LAUREL II)
vs.	:	Docket No. L- 009837-84 P.W.
	:	
Defendant	:	CIVIL ACTION
	:	
THE TOWNSHIP OF OLD BRIDGE in the	:	Affidavit in Support of
COUNTY OF MIDDLESEX, a municipal	:	Motion for Summary Judgment
corporation of the State of New Jersey,	:	Declaring Old Bridge Township's
THE TOWNSHIP COUNCIL OF THE	:	Land Development Ordinance
TOWNSHIP OF OLD BRIDGE and the	:	Constitutionally Invalid
PLANNING BOARD OF THE TOWNSHIP	:	
OF OLD BRIDGE	:	

STATE OF NEW JERSEY)
) SS:
 COUNTY OF MERCER)

ANDREW T. SULLIVAN, of full age, having been duly sworn according to law upon his oath deposes and says:

1. I am a professional planner certified by the State of New Jersey, a principal of Sullivan Arfaa which is a planning/architectural firm located at 2314 Market Street, Philadelphia, Pennsylvania, and am the principal planning expert for the plaintiff in the above captioned case.

2. This Affidavit is submitted in support of plaintiff's motion for summary judgment on the constitutional invalidity of Old Bridge Township's Land Use Ordinances.

3. As part of my responsibilities as a planner, I have reviewed many land use ordinances including, in New Jersey, the ordinances of the Townships of Bedminster, Clinton Galloway, Gloucester, Princeton and Eastampton, and in many cases my

review has been for the purpose of determining whether said ordinances contain provisions which have an exclusionary and/or cost-generative impact.

4. To my knowledge, land use control in Old Bridge Township is exercised by virtue of the administration and enforcement of the latest Township of Old Bridge Land Development Ordinance, as amended and supplemented, and adopted by the Township Council of Old Bridge in 1983.

5. Prior to the filing of this Affidavit, I reviewed the State Development Guide Plan, the 1983 Township of Old Bridge Land Development Ordinance as amended through May 31, 1984, a copy of which is attached hereto as Exhibit A, the Methodology for Off Site Pro-Rata Analysis for Township of Old Bridge, submitted to the Township of Old Bridge in August 1980 by Louis Berger & Associates, a copy of which is attached hereto as Exhibit B, Standards for Room Sizes promulgated by the United States Department of Housing and Urban Development, attached hereto as Exhibit C, Standards for Mobile Homes, promulgated by the United States Department of Housing and Urban Development, attached hereto as Exhibit D, the Complaint filed by O & Y Old Bridge Development Corporation in this action, and the Answers of the defendants in this action.

6. Set forth below is my summary of the Old Bridge Township Land Development Ordinance, and my conclusions as to the impact of these zoning regulations on the ability of a developer to supply low and moderate income housing.

7. My summary also includes an analysis of the cost-generative nature of the Old Bridge Township Land Development Ordinance as well as an analysis as to the presence or absence of affirmative measures which would assist the Township to meet its low and moderate income housing obligations.

I. ZONING:

The Township of Old Bridge is divided into seven residential districts. The Township has also identified two (2) Planned Development (PD) districts which may

be developed as a class I (PD-I) or a class II (PD-II) planned development if certain qualifying criteria are met.

Each zoning district has by-right uses. The PD zone also has "provisionary uses" based on qualification as either class I or Class II planned development. The following is a zoning summary.

A. R40/20 Single-family Residential Zone:

1. Permitted Residential Uses:

Single Family Detached

Religious Quarters

2. Minimum lot size: 20,000 Square Feet (S.F.) with public utilities

40,000 S.F. with on-site utilities

B. R-20 Single Family Residential Zone.

1. Permitted Residential Uses:

Single Family Detached

Religious Quarters

2. Minimum lot size: 20,000 S.F.

C. R-15 Single Family Residential Zone.

1. Permitted Residential Uses:

Single Family Detached

Religious Quarters

2. Minimum lot size: 15,000 S.F.

D. R-7 Single Family Residential Zone.

1. Permitted Residential Uses:

Duplex

Religious Quarters.

2. Minimum lot size:

Single Family Detached - 7,500 S.F.

Duplex - 15,000 S.F.

E. A-F Apartment-Family Residential Zone.

1. Permitted Residential Uses:

Single Family cluster

Patio Homes

Triplex

Quadruplex

Townhouses

Multiplex

2. Minimum tract size: 6 acres

3. Maximum gross density. Density is determined by dimensional and building separation requirements as there are no specific density standards.

F. A-R Apartment Retirement Residential Zone.

1. Permitted Residential Uses:

Single Family Cluster

Patio Homes

Triplex

Quadruplex

Townhouses

Multiplex

Religious Quarters

2. Minimum tract size: 6 acres

3. Maximum gross density: density is determined by dimensional requirements as there are no specific density requirements.

G. TH Townhouse Zone.

1. Permitted Residential Uses:

Single Family detached

Patio homes

Triplex

Quadruplex

Townhouses

2. Minimum tract size: 5 acres
3. Maximum gross density: 6 dwelling units per acre (Du/Ac)

H. PD Planned Development Zone.

1. Primary Zoning

a. Permitted Residential Uses:

Single-family detached

Religious quarters

b. Minimum lot size: 20,000 S.F. with public utilities.

40,000 S.F. with on-site utilities

2. Provisional Zoning:

a) Planned Development Class I (PD-I)

1. Qualification standards:

i) Provide for a mix of residential housing types.

ii) Provide for a mix of residential housing densities in order to provide for open space and recreational land areas.

iii) Provide for required PD open space and recreational facilities to be integrated throughout the planned development. Acreage for such open space uses shall comprise not less than 23% of the planned development's gross project area.

2. Permitted Residential Uses:

Single-family cluster

Patio homes

Duplex

Triplex

Quadruplex

Townhouses

Tract size: 25-300 acres

4) Maximum gross density:

2.2 units per acre - no density benefits

3.2 units per acre - max. density benefits

5) Density Bonuses:

The following items in combination can produce an optional maximum density bonus of 1.1-1.2 units/acre.

(a.) Ground water recharge in addition to that occurring for existing conditions.

Bonus = 0.1-0.4 units/acre

(b.) Making 90% of the dwelling units in the project energy efficient.

Bonus = 0.2 units/acre

(c.) Committing to making 10% of the total units affordable (defined as being affordable to families making not more than 120% of the median income for the New Brunswick/Perth Amboy/Sayreville SMSA).

Bonus = 0.2 units/acre.

(d.) Developing up to 10% of the total project area as commercial or office/industrial. The developer must also build those uses in conformance with a phasing schedule which sets up incremental ratios between commercial and office/industrial uses and the residential component of the project during the construction period.

Bonus = 0.3-0.6 units per acre

b. Planned Development Class II (PD-II)

1) Qualification standards

i) Provide for a mix of residential housing types as well as provide for open space and recreational, commercial and office/industrial land use.

ii) Provide for a mix of residential housing densities in order to provide open space and recreational land area.

iii) Provide for required open space and recreational facilities to be integrated throughout the planned development. Acreage for such open space and community facility use shall not comprise less than 23% of the planned development's gross project area.

iv) The acreage provided for such commercial, office or industrial land uses shall not be less than 10% of the gross project area. In addition to requiring the inclusion of these uses in a PD-II the ordinance also has a mandatory phasing schedule which sets up a ratio between the amount of commercial, office and industrial and numbers of residential units which may be built at certain increments during the project build out.

2. Permitted Residential Uses:

Single-family cluster

Patio homes

Duplex

Triplex

Quadruplex

Maisonettes

Multiplex

- 3) Minimum tract size: 300 Ac.
- 4) Maximum gross density:
 - 3.4 units per acre - no density benefits
 - 4.0 units per acre - max. density benefits

3. Mini-Cluster Option

2. Permitted Residential Use: Single-family detached

- b. Tract size: 5-25 acres
- c. Minimum lot size: 7,500 S.F.
- d. Tract must have been a "lot of record" noted on the Tax Map of the Township of Old Bridge as of July 10, 1978.

In addition to the residential zones outlined above, residential uses are permitted in area G of the Town Centre Design Zone (TCD).

Residential densities must conform to the following schedule:

Low Density Area 3 Du/Ac

Single-family detached

Single-family cluster

Patio homes

Low Medium Density 6 Du/Ac

Single-family detached

Single-family detached cluster

Patio homes

Duplexes

Triplexes

Quadruplex

Townhouses

Multiplexes

CONCLUSIONS

- A. The zoning does not contain any mandatory inclusionary provisions for low and moderate income housing.
- B. The density bonus given in Class I and II PD's of 0.2 units per acre for the construction of affordable housing is too low to make it realistically feasible to construct low and moderate housing.
- C. In the Class I PD, the construction of commercial, office and industrial uses warrants up to a 0.6 unit per acre density bonus. This raises a serious question in my mind about Township's priorities in providing lower income housing.
- D. The mandatory phasing requirements in PD's between the commercial and office/industrial and residential can seriously undermine a developer's ability to provide lower income housing. The residential component of the project is in effect held hostage to the non-residential's marketability. If there is no market for the non-residential, the construction of the residential (including any lower income housing which might be part of the project) would stop as well. This amounts to fiscal zoning, does not benefit public health and safety, and seriously undermines the possibility of constructing lower income housing.
- E. The by-right density for Class I and Class II PD's of 2.2 and 3.4 units per acre respectively is too low to realistically provide an opportunity for lower income housing.
- F. The requirement in PD's that 23% of the tract be provided for open space is excessive and diminishes the opportunity for lower income housing.
- G. Mobile homes are not a permitted use in any zoning district in the township.

II. COST GENERATIVE STANDARDS

This review is of the design and procedures/standards, traditionally known as subdivision standards, contained in the Old Bridge Township Land Development Ordinance. It is presented in this Affidavit for the purpose of identifying those which are:

- A. In conflict with the Municipal Land Use Law;
- B. Are vague and thus subject to multiple and adjective interpretations;
- C. Are too discretionary;
- D. Are excessive in that they make the applicant go beyond that which is necessary to protect the public health and safety.

1. Section 4-4:3 contains the design standards for mobile homes, however mobile homes are not listed as a permitted use in any zoning district in the township. Insofar as the standards themselves are concerned, the following are problematic for the provision of lower income housing:

- a. The maximum gross density of ~~5.0~~ units per acre is approximately half that which would be necessary for a cost-effective site plan.
- b. The ~~building or unit separation requirements are in excess of the~~ minimum requirements specified by H.U.D. for mobile homes. (See Exhibit D, attached)
- c. The ~~minimum tract size of twenty (20) acres~~ limits the opportunity for development of mobile homes on in-fill sites and smaller tracts.
- d. ~~Side-walks are required. H.U.D. standards for mobile homes, while allowing sidewalks, do not require them.~~ (See Exhibit D, Attached)

2. Section 7-3. Section 4-6 contains the minimum room sizes for residential dwellings. These sizes are in excess of those required by H.U.D. for multi-family dwellings. (See Exhibit C, attached)

3. Section 7-3:3. Environment Impact Report Requirements

This section outlines a two-step environmental impact reporting and review requirement. Each application for preliminary subdivision and site plan must first submit an Environmental Impact Assessment. If the project is found to have a "significant impact on the environment", a full Environmental Impact Statement might be required. There is no standard in the ordinance to judge "significant" impact; thus it is open to a wide range of interpretation. Also, it negates the master planning and zoning process since the potential for "significant" environmental impact should be evaluated prior to zoning a parcel for a given use.

4. The Environmental Impact Statement requirements contain many subjective statements and criteria for evaluation such as "undesirable land use patterns", "aesthetic values", and "desirable" growth patterns. It also requires an evaluation of alternatives to the proposal including a "no project" scenerio.

5. Section 7-7:l-2 contains the submission requirements for General Development Plan applications. While these applications are optional, from a practical stand point, it is necessary to use this process on any large planned development, since the requirements for preliminary approval would require a developer to fully anticipate the unit types and configuration for the entire project. This is an impossibility on any large project to be constructed over many years. The General Development Plan application procedure contains a number of problematic submission requirements including:

1. The submission of an environmental impact statement. These requirements were outlined earlier.
2. A report on qualifying criteria and density benefits. This should not be required since the conditional use aspects of a planned development should be removed and the by-right gross density increased without having to qualify for optional density benefits.

3. A Fiscal Impact Report is required in which the developer must analyze the fiscal impact of the project on the municipality. This function should be a part of the township planning process since it is the township's responsibility to manage its own fiscal affairs.
4. Community Facilities Plan. The information which the Applicant must supply repeats information required elsewhere in the application. This includes information on circulation, utilities and storm drainage facilities.
6. Section 7-7:2 contains the preliminary plan submission requirements for planned developments. The same comments made previously concerning the required community facilities plans, density benefits calculation and fiscal impact report are relevant here as well.
7. Section 7-7:3 contains the final plan submission requirements for planned developments. The previous comments concerning density benefits and fiscal impact reports are applicable here also.
8. Section 8-1:2 requires that curbs, sidewalks, bikeways and open space pathways be installed "as required by the Township Planner and Township Engineer". This is extraordinarily discretionary. The improvements should be installed according to ordinance and not ministerial requirements.
9. Section 8-1:6 requires the applicant to install street lighting according to township specifications "and/or as approved by the Township Engineer and Township Planner." This is too discretionary. The street lights should be installed according to township specifications only.
10. Section 8-1:8 requires the applicant to bond all utilities and the service lines. This is cost generative and contrary to the Municipal Land Use Law since each utility company is responsible for the proper installation of their respective utilities and may require bonding. This comment is relevant for sections 8-1:10 and 8-1:11 which require the bonding of water service improvements and sanitary sewers.

11. Section 8-2 contains the requirements for off tract improvements.

The methodology employed is from a report entitled Methodology for Off-Tract Pro-Rata Analysis for the Township of Old Bridge, by Louis Berger Associates, August 1980. This report has been made a part of the Land Development Ordinance by reference. The report applies a formulaic approach to calculate pro-rata share for traffic and drainage improvements. The township is divided into districts (in the case of traffic) and watersheds (in the case of drainage). Within each district or watershed specific roadway and drainage improvements are identified as part of a master plan of improvements. A constant formula is applied to each project to determine its pro rata share of off-tract improvements.

In the case of traffic the money assessed is earmarked to be used for improvements anywhere within the district in which the project is located. There is no project specific traffic analysis which determines specifically which roadways are being affected by the project and to what degree the project causes the need for upgrading. There is not an apparent rational nexus between a specific project and the specific roadway improvements assessed to that project. Additionally, there is no mechanism in the ordinance which credits a developer for making improvements to township roads as part of the developer's on-tract improvement program. This is especially cost generative to O&Y Old Bridge Development Corp. since there are many municipal roads which will be realigned and up-graded as part of on tract improvements. Despite these contributions to be made by O & Y, O&Y under the terms of the ordinance will be assessed the improvement costs of these very same roads as part of the pro-rata computation. Effectively they will pay for the improvement twice. The drainage improvement formula would effect the O&Y project in the same manner.

12. Section 10 contains the General Design Standards. These standards are ambiguous and subject to multiple interpretations. For example:

Item

- a. Parking spaces must be "usable, safely and conveniently arranged";
- b. Buildings and parking shall "provide an aesthetically pleasing design and efficient arrangement";
- c. "Adequate" lighting shall be provided;
- d. Landscaping must be "integrated into the building arrangement" and designed in an "imaginative manner";
- e. Signs "shall be designed so as to be aesthetically pleasing";
- f. All infrastructure shall be designed to be "adequate";
- g. Design of the plan "shall minimize any adverse impact on environmental elements.

13. Section 11.1 outlines the classification of streets. The standards are not objective. A particular street could be subject to multiple interpretations as to its classifications and hence there is no certainty as to what design or construction specifications are required.

14. Section 11-2 concerns topography and arrangement of streets. The standard is subjective, for example: "roads shall be appropriately related to the topography."

15. Section 11-1:2-4 states that "culs-de-sac and U-shaped streets shall be encouraged where such use will result in a more desirable layout". This is a subjective standard.

16. Section 11-1:3.2 states that the block length, width and shape "shall be such as are appropriate for the locality and the type of development contemplated". This is a subjective standard.

17. Section 11-1:3.3 states that "in long blocks" the Board may require easements for circulation, utilities and drainage. This is subjective since there is no definition of a long block.

18. Section 11-1:6-2 states that the length of culs-de-sac is at the discretion of the planning board. This is subjective. The ordinance should contain a standard.
19. Section 11-2:1 contains the schedule of public street dimensions. These require an eight (8) foot parking lane on culs-de-sac and minor streets. This is cost generative, inasmuch as the cost of the street is increased since wider roads are required. Provision for off-street parking should be sufficient to meet the parking requirements thus allowing the street to be narrower and less costly.
20. Section 11-2:2.6 states that collector streets servicing 100 lots or more must be widened by 24' for a distance of 200 ft from the intersection with another collector street. This is cost generative and could cause confusing and unsafe traffic movements if all four approaches to the intersection are widened.
21. Section 11-3:1 requires sidewalks on both sides of the street on minor, collector and minor arterial in projects of 4 Du/Ac or larger. Although 11-3:2 contains waiver provisions, the waiver is discretionary on the part of the board. The requirement is cost generative.
22. Section 12-1:1 requires parking space size of 10' x 20'. This is cost generative since acceptable standards provide for spaces sized at 9' x 18'.
23. Section 12-1:5 states that acceleration and deceleration lanes are required for off-street parking areas. This is cost generative and unnecessary for off-street parking serving housing units.
24. Section 12-1:7 states that the design of paving for parking areas is at the discretion of the township engineer. This is subjective and could be cost generative.
25. Section 12-2:1 requires parking islands at the end of each row of parking. This is an aesthetic consideration which bears no relationship to the public health and safety and increases the cost of parking areas.
26. Section 13 requires a Land Disturbance Permit. Since this is in addition to the Soil Erosion and Sediment Control permit required by the Soil Conservation District, this adds an additional step to the approval process and unnecessarily to cost.

27. Section 15-1:3.2 requires that drainage facilities must be sized to accommodate up stream drainage in a "potentially developed" rather than an existing condition. Since every project is required to control its own post-development runoff, this standard creates a redundancy which is unnecessary and cost generative.

III. LACK OF AFFIRMATIVE MEASURES TO PROVIDE LOW AND MODERATE INCOME HOUSING.

In Class I and Class II PD's, section 9-5:2.1.3 provides an optional density bonus of 0.2 units per acre if 10% of all the units are designated as "affordable housing".

Eligibility for this housing is based upon a family of four (4) whose income does not exceed 120% of current median family income for the New Brunswick/Perth Amboy Sayreville SMSA . This provision is totally inadequate to meet the Township's obligation as defined in Mt. Laurel II.

- A. The income requirement of ~~120% of median~~ is far in excess of the definition of low (0-50% of median) established in Mt. Laurel II. It is also outside the definition of moderate (51-80% of median) established in Mt. Laurel II. Therefore, the housing is, by definition, not lower income housing.
- B. This Ordinance provision is not a mandatory inclusionary provision which was noted by the Court as the most effective method of providing an opportunity for the construction of lower income housing.
- C. The Ordinance provision is an optional density bonus mechanism. However, the ~~0.2 units per acre~~ bonus is ~~too little~~ to act as a reasonable incentive to induce a developer to provide low and moderate income housing.
- D. There are no mechanisms in this section of the ordinance or elsewhere to encourage the use of State or ~~federal~~ subsidies to provide low and moderate income housing.

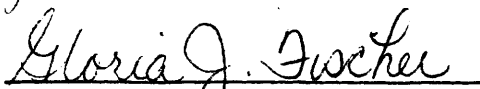
- E. Mobile homes, which were noted by the court in Mt. Laurel II as a means of providing lower income housing, are not permitted in any zoning district in the township. This is specially problematic since there are no other affirmative measures in the Ordinance.
- F. There are no other apparent mechanisms in the ordinance to encourage the inclusion of lower income housing.

Since there are no realistic affirmative measures to provide an opportunity for lower income housing the cost generative standards outlined previously take on a more significant role in reducing the likelihood that low and moderate income housing will be built.

8. It is apparent, given the conclusions stated in this Affidavit, no low and moderate income housing units will be provided in Old Bridge Township, given the combination of low gross densities, paucity of affirmative measures to promote the provision of lower income housing and the restrictive cost-generative provisions pursuant to the Township of Old Bridge Land Development Ordinance.


Andrew T. Sullivan

Sworn and Subscribed to
before me this 18th day of
June, 1984.



GLORIA J. FISCHER
A Notary Public of New Jersey
My Commission Expires Feb. 10, 1987