

CA - Discataway

May 2, 1985

- Notice of Motion for Order dissolving restraints on
Site 3

- Affidavit of Peter J. Saker, Jr.

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REC'D - CIVIL DIVISION

N/M; AFF

MANDELBAUM, SALSBURG, GOLD & LAZRIS
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(201) 736-4600
Attorneys for Intervenor
Peter J. Saker, Jr.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY/OCEAN COUNTY
DOCKET NO.

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al,

Plaintiffs,

-vs-

THE MAYOR AND COUNCIL OF
THE BOROUGH OF CARTERET,
et al,

Defendants.

NOTICE OF MOTION

TO: ALL COUNSEL

SIRS:

PLEASE TAKE NOTICE that on short notice pursuant to
order of the Court entered December 11, 1984 and, in any event,
on ~~Tuesday, May 7~~ *Friday, June 7*, 1985 at 9:00 a.m. in the forenoon or as so
thereafter as counsel may be heard, the undersigned, attorneys

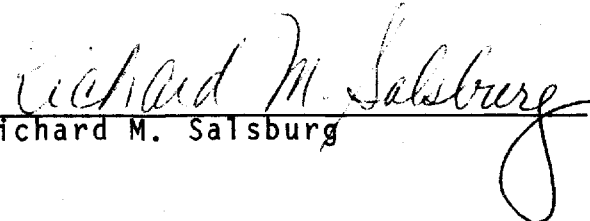
for Intervenor, Peter J. Saker, Jr., shall apply to the Honorable Eugene D. Serpentelli or such other Judge as may be sitting at the Ocean County Court House, Toms River, New Jersey for an order dissolving the restraints as to Site No. 3 (Lots 33 through 67, Lot 134, Block 228) in the Township of Piscataway and permitting Intervenor to proceed with all applications before the appropriate Boards of the Township of Piscataway for the construction of a shopping center;

PLEASE TAKE FURTHER NOTICE that Intervenor, Peter J. Saker, Jr., shall rely upon the annexed Affidavit in support of this motion;

PLEASE TAKE FURTHER NOTICE that this motion is being submitted pursuant to Rule 1:6-2 and Intervenor waives the right of oral argument.

MANDELBAUM, SALSBERG, GOLD
& LAZRIS
Attorneys for Intervenor
Peter J. Saker, Jr.

By


Richard M. Salsburg

DATED: May 2, 1985

MANDELBAUM, SALSBURG, GOLD & LAZRIS
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155 Prospect Avenue
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Peter J. Saker, Jr.

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URBAN LEAGUE OF GREATER
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THE MAYOR AND COUNCIL OF
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et al,
Defendants.

AFFIDAVIT OF PETER J. SAKER, JR.

STATE OF NEW JERSEY:

COUNTY OF *Monmouth* ^{ss.}

PETER J. SAKER, JR., of full age being duly sworn
according to law, deposes and says:

1. I am a general contractor in the State of New

Jersey and have been so engaged for the past fifteen years essentially with my father, constructing for others in the private sector.

2. A few years ago, after constructing a small shopping center for third parties, I embarked on an initial attempt to acquire land for the construction of a shopping center for my own account.

3. In late 1983, I started active investigation of the Piscataway area and particularly lands then owned by Piscataway Associates. The principals of Piscataway Associates advised of their attempts to rezone their large parcel of land from shopping center to residential and refusal by the Township. Since they were not shopping center developers they were willing to enter into a contract for the purchase of the property for the total consideration of \$1,800,000.00. After many months of negotiation, on February 14, 1984, a contract was agreed upon by the parties.

4. During my investigation of the feasibility of the site as a shopping center as well as negotiations with the owners, I made special inquiry to the officials of the Township of Piscataway and confirmed that the zoning of the property was for shopping center, confirming that prior requests to alter the zoning to residential had, in fact, been rejected. I further confirmed that the Township of Piscataway would only permit a shopping center on this site.

5. Armed with this information, I concluded the transaction and acquired title on May 11, 1984 designated as

Lots 33 through 67 and Lots 134, Block 228; the same premises referenced as Site No. 3 in the present litigation.

6. In addition to the purchase price of the property, I was also obligated to pay and discharge the real estate commission of \$50,000.000 to the Docs Agency together with incurring the costs for closing, legal fees, title search, as well as the preliminary feasibility studies that were necessary and required to insure not only the propriety of the site for shopping center but, to submit to prospective tenants in order that there be a reaonsable probability of success with the center.

7. Just prior to execution of the contract on February 14, 1984, I concluded preliminary negotiations with Foodarama Supermarkets, Inc. the operator of Shop Rite Supermarkets for commitment of intent to enter into lease for the shopping center. Annexed hereto and made a part hereof is a true copy of Foodarama Supermarkets, Inc. letter of intention dated January 19, 1984. After execution of contract, I retained the services of the engineering firm of Abbington & Ney, Inc. in order to prepare all necessary and required documents for the purposes of submittal of site plan approval to the Township of Piscataway. All of the necessary and required engineering studies have, in fact, been completed prior to November, 1984 at the cost in excess of \$55,000.00.

8. On or about November 9, 1984, upon filing of the site plan applications to the Township of Piscataway, I learned for the first time of the proceedings before this court as well

as the then request for restraint, prohibiting any further consideration of my application.

9. As a result of the restraining order entered by this court, I am now placed in a very real and immediate danger of losing my entire investment and facing possible economic ruin.

10. Prior to November of 1984, I had entered into preliminary negotiations with various other retailers for space within the intended center and have been met most favorably within the trade and was about to conclude these negotiations with two major companies. Obviously, as a result of the restraints all negotiations were suspended.

11. To date, my total financial commitment exceeds \$1,935,000.00 plus interest. As a result of the temporary restraints, I have not been able to conclude the applications for site plan approval, the preliminary commitments for construction funding have been suspended by the prospective lenders; prospective tenants will no longer negotiate since construction and thus occupancy time cannot be rationally projected; and, unless this circumstance can be reversed in short order I will lose the building season and the project will be irrevocably defeated.

12. The Township of Piscataway has repeatedly asserted that they intend to maintain the applicable shopping center zoning for my land and, based upon the investigation of the lands available in the Township of Piscataway in general by the various experts which have appeared before this Court, it

*How far
Burlington
Piscataway*

How

is clear that there is more than sufficient available land within the Township to meet any criteria or requirement imposed by the court pursuant to the applications of plaintiff.

13. While I am uniquely sensitive to the requirements of housing within the Township of Piscataway, I am equally sensitive to the fact that I face financial ruin in short order absent appropriate relief. I purchased the property in good faith, expended an enormous sum as a legitimate businessman and am prepared to improve property that has remained fallow for years. I am willing to eliminate a downstream water problem and an onsite flooding problem that has been vexing to the community for years, ready to provide a needed service to the community and now I find that, for no fault of my own, fifteen years of effort could be wiped out by the inability to proceed with this project.


14. I respectfully assert to the court that the fundamental equities do not justify a further restraint on my ability to develop this property. I respectfully believe that my land is not necessary or required to fulfill any obligations that the Township of Piscataway may have pursuant to the "Mt. Laurel" doctrines and I most genuinely believe that the development of this site will have a beneficial effect on the community equally as valid and as important as the establishment of additional housing.

15. I am not a partisan one way or the other as to the housing issue but respectfully suggest to the court that a continuation of the restraint is not merely fundamentally

unfair but would result in an immediate, irrevocable and final financial disaster.

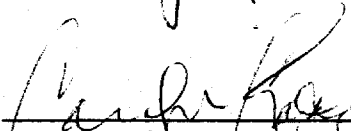
16. For all of the reasons above, I respectfully urge the court that I be relieved of the burden of the restraint and be permitted to proceed with the site plan applications before the appropriate boards of the Township of Piscataway, and if properly approved by said boards, be permitted to construct the intended shopping center. In the event the court does not deem it appropriate to grant the foregoing relief at this time, I would at least request the court to permit me to proceed with the municipal approval process, awaiting the further order of this court.

17. I make this affidavit knowing that the court will rely upon same and assert that the facts contained herein are true to the best of my information and belief.



Peter J. Saker, Jr.

Sworn to and subscribed
to before me this 26th
day of April, 1985.



Notary Public
April 26, 1985