

Rural Development Corp.

(1982)

v. Commercial Township Zoning Board of Adjustment

Judicial Opinion (Judge Miller)

20 pgs

> Twp of Commercial (Yes its a ~~real~~ real name!)

AA0000030

SUPERIOR COURT OF NEW JERSEY  
CUMBERLAND COUNTY  
DOCKET NO. L-47510-80PW

RURAL DEVELOPMENT CORPORATION, a  
non profit corporation of the State  
of New Jersey,

Plaintiff,

v.

COMMERCIAL TOWNSHIP ZONING BOARD OF  
ADJUSTMENT,

Defendant.

Civil Action

OPINION

DECIDED: April 6, 1982

Peter J. O'Connor for plaintiff

Christopher H. Riley for defendant

EDWARD S. MILLER, J.S.C.

This case presents a record so lamentably full of the deprivation of the constitutional rights of the plaintiff by the defendant and its members that it requires the court to take the unusual step of disqualifying the entire membership of a municipal body from further participation in the case.

This is an action in lieu of prerogative writ to review a decision of the Commercial Township Zoning Board of Adjustment denying the application of Rural Development Corporation for a use variance to develop multi-family, federally-subsidized housing for low and moderate income families, elderly, handicapped and disabled persons. Rural Development Corporation application requested permission to develop multi-family housing on 18 acres of land zoned R-A (Residential Agriculture), a site which was selected only after all land in the Township's two multi-family zones was determined either to be unavailable or unsuitable for development of multi-family housing for the poor.

The 38 units of federally-subsidized housing propose to address part of an overwhelming and uncontroverted housing need of the low and moderate income families in Commercial Township. The living conditions of the poor in Commercial Township are among the worst of all residents of the State of New Jersey. The Township's present plans for subsidized housing do not satisfy the need.

The record presented by the Rural Development Corporation is not only uncontroverted, but the investigation and reports of the Board's own experts concurred with the RDC presentation. The reasons given for denying the variance are arbitrary and capricious since RDC satisfied its burden under the affirmative and negative criteria for a use variance.

Rural Development Corporation (hereinafter "RDC") is a non-profit New Jersey corporation established in 1975. Its purpose is the upgrading of the economic and social conditions of farmworkers and other low income persons in the State of New Jersey.

RDC originally requested grant assistance from the Rural Housing Alliance, Washington, D.C. (hereinafter "Alliance") to establish a staff position of Rental Housing Specialist to develop housing for low-income families. The Alliance, founded in 1973, was a coalition of groups spread across the country who were interested in promoting housing in rural areas. The Alliance was concerned about expanding opportunities of the rural poor under the housing programs of the Farmers Home Administration.

RDC's first task in implementing the Rural America grant was to compile information on housing conditions in Salem and Cumberland Counties. RDC desired to gather as much statistical data as possible in order to decide where to put their housing effort to meet the greatest need in the two county area. A Ms. Harvey spent the summer of 1977 visiting each Planning Board, talking to Township officials, collecting studies over the past 15 years on housing, economic and other socioeconomic conditions in the 29 municipalities in Salem and Cumberland counties.

RDC, during July and August, 1977, used the newspaper and radio media to advise the public of their efforts, seek support and local assistance. Public meetings were held to explain the RDC program, including the meaning of rental housing assistance, nonprofit sponsorship by RDC, Farmers Home Administration aid, eligibility for housing assistance and applications to join RDC.

On August 25, 1977 a public meeting focused on the potential for new subsidized housing in Salem or Cumberland Counties, RDC's interest in providing such housing, the need for such housing and the process of applying for and obtaining Farmers Home Administration funds.

RDC staff utilized seven criteria in evaluating the housing data and conditions in Salem and Cumberland counties in order to present its Board of Trustees a recommendation on the municipality to select for the RDC housing project. The seven criteria were commonly accepted planning criteria under HUD and Farmers Home Administration subsidized housing programs.

These evaluation criteria were: (1) overcrowding; (2) vacancy rate; (3) age of housing; (4) lack of adequate plumbing; (5) lack of basic kitchen facilities; (6) substandardness; and, (7) population growth. In addition to the seven criteria and all available housing studies on the 29 municipalities, RDC reviewed household size, income, household income, percentages of rental and homeowner communities and took photographs of housing conditions.

Housing data, including the 1970 census data on housing, 1975 Cumberland County Report on Housing Analysis in Commercial Township, a 1975 State Planning Agency study on housing need in Commercial Township; a New Jersey Department of Community Affairs Report; and HUD statistics disclosed that among all municipalities in Salem and Cumberland Counties, in 1970, Commercial Township had the highest percentage of overcrowded housing (12.8%); 65% of all housing was more than 30 years old; had the highest percentage of units lacking kitchen facilities (21.1%); and that 16.3% of all units were substandard.

The governmental housing studies indicated a need for new housing in Commercial Township of 668 units - Cumberland County Planning Board, 1975 study; 366 units - State Planning Agency; 464 units - New Jersey

Department of Community Affairs; and, United States Department of Housing and Urban Development (HUD) cited a need for 514 units.

Based on the above data, field visits, inspections and meetings with local officials, RDC in late summer, 1977, selected Commercial Township as the area most in need of Farmers Home Administration Section 515 housing.

The RDC Board is comprised of volunteers such as its Vice President Daniel O'Connor, a researcher at the Oyster Research Laboratory, Port Norris. O'Connor is active in community service in Port Norris and served on the volunteer fire and rescue squad for two years. During this time he visited all parts of Commercial Township, including the Port Norris area, Berrytown, Shellpile and Frogtown.

The survey established that in the 195 units visited 101 contained no indoor bathrooms; 78 had no running water; about 100 had severe structural problems; rats were present in 54 units; and approximately 133 of the 195 interviewed expressed interest in moving to better accommodations.

O'Connor's findings were reported in a four-page document entitled "Characteristics of Households in Shellpile, New Jersey". Shellpile is a small, unincorporated community in Commercial Township on the outskirts of Port Norris. It is one of several such communities in Commercial Township, the others being known as Frogtown, Bivalve and Berrytown. O'Connor's analysis of the Shellpile portion of the survey which involved 27 households established the following: 92% had annual income of less than \$5,000; the average cost of utilities was \$990-1200 annually; 59% complained of rat infestation; and, most of the units had structural problems,

such as cracked walls, ceilings and windows..

The areas of Commercial Township which contained concentrations of substandard housing, identified in the RDC survey and 128 photographs, were presented on a map, Exhibit A-40. The map lists the area known as Shellpile, Frogtown, Berrytown, Bivalve, North Avenue and Cobb Street. In addition, O'Connor testified there were many other substandard units scattered throughout other areas of Commercial Township.

As further proof of the deplorable housing conditions and to support the continued existence of the conditions discovered in its October-November, 1977 survey, RDC, between June 16, 1980 and July 16, 1980, took 128 large photos of housing conditions in the Commercial Township areas of Shellpile, Frogtown, Berrytown and the outskirts of Frogtown. These were submitted to the Board of Adjustment as Exhibits A-37, 38 and 39.

The photographs show a series of problems with the housing, including the following: Foundations often consist of uncemented concrete blocks with buildings propped up on them; corrugated metal roofing strips are placed around crawl spaces in order to block rats from entering the residences; siding is warped or broken, or pieces of siding are missing from the exterior of the houses, or the siding is rotten or unpainted; windows are broken or cracked; there is a lack of storm windows, sashes, and sills are cracked, warped, or broken, and there is a lack of screening over the windows; doors do not properly close so that there are gaps; there are leaking roofs, water damage to ceilings, crumbling plaster, and rotting and broken rafters.

With regard to the heating units, they are old, poorly maintained kerosene burners, wood stoves which are sometimes placed on bare wood without insulation, improperly installed, and uninsulated stove pipes. The electrical systems have exposed wiring, not enough outlets and extension cords. Some units do not have electricity. The walls have holes stuffed with rags or newspapers or lids of tin cans. Many units lack plumbing, and many people use outhouses, and there is no running water inside homes.

The Commercial Township survey made RDC aware of the significant amount being paid for utilities by those low and moderate income families who were in need of housing. This led to the hiring in December, 1977 of Harrison S. Fraker, Jr., a Professor of Architecture at Princeton University and an expert on the passive solar design of residential developments. RDC, with Fraker's guidance, planned a 65-unit development with 10 of the units to be one-story apartments for senior citizens and handicapped citizens. The project was to be federally-subsidized housing under the Section 515 rental housing program of the Farmers Home Administration and the Section 8 rental subsidy program of HUD. "Vol. I, T64-2 to T66-16".

Approximately 150 local residents attended a presentation at the Port Norris Township Hall of the RDC housing proposal in May, 1978. The meeting was publicized locally and covered by the news media. The meeting permitted an exchange of ideas on the project and its design between RDC and local residents. The desires of local residents were attempted to be incorporated into the planning and design of the project.

On June 7, 1978, the New York Times featured an article on Shell-

pile. On June 11, 1978, the Philadelphia Bulletin further exposed the living conditions in Shellpile in an article entitled "A Place Time Forgot"; ABC-TV did a documentary on Port Norris which was shown nationally; the Atlantic City Press on June 30, 1978 focused on conditions in a story entitled "Berrytown: One Tree, Humor, Aid in Survival"; and WNBC, New York, filmed a half-hour shown in July, 1978.

In August, 1978, RDC filed a preapplication for federal housing subsidies with the Farmers Home Administration. The proposal reduced the plan from 65 units to 45 units and the site of the development was Strawberry Avenue. This is the same plan for which the "variance" is sought, except the total number of housing units was reduced from 45 to 38 units. The project is proposed to be funded with Section 515 Farmers Home Administration funds and HUD Section 8 rent subsidies. As part of the A-95 federal review process, the project received the endorsement of the Cumberland County Planning Board as being consistent with its comprehensive plan, Exhibit A-20, County Planning Board letter and September 21, 1978 article in Atlantic City Press entitled "Low-Income Units Clear a Hurdle".

On May 19, 1978, RDC entered into an Agreement of Sale to purchase the 18-acre Strawberry Avenue site for \$23,000. However, before this decision to purchase was made, RDC investigated the availability and suitability of all 20 lots which comprised the only two multi-family R-2 zones in Commercial Township, known as the Buckshutem and Sockwell areas.

The result of the RDC study of the lots in the R-2 zones was that only two lots were available and neither of these two lots were suitable for the RDC project.

RDC applied a four-step analysis of the Buckshutem and Sockwell lots. The approach was as follows: (1) Did the lot contain 15 acres which was the minimum for multi-family housing development in the R-2 zones; (2) Was the land for sale; (3) Was the land suitable for the development of the RDC project; and, (4) Was the location of the land appropriate for the RDC project.

The following chart summarizes the application of Test #1 (lot size) and Test #2 (available for sale) to the lots in the Buckshutem Site, Block 116.

R-2 MULTI-FAMILY ZONE  
BUCKSHUTEM SITE - BLOCK 116

<u>Lot #</u>	<u>#of Acres</u>	<u>Test #1 15 Acre Test</u>	<u>Test #2 For Sale</u>	<u>Available After Tests #1 and 2</u>
1	28.6	Yes	No	
2	19.0	Yes	No	
3	7.5	No		
4	21.42	Yes	No	
5	10.0	No		
8	-1.0	No		
9	29.96	Yes	Yes	Yes
10	3.52	No		
11	7.00	No		

Test #2 was applied as follows: RDC determined the names and addresses of the owners of the four Buckshutem lots whose acreage exceeded 15 acres (Lots #1, 2, 4, and 9). On April 12, 1978, certified letters, return receipt requested, were sent by RDC to each of the owners.

The Block 116, Lot 2 letter was sent to Charles Waselon. The receipt was signed and returned by the Post Office on April 17, 1978. No postcard was returned, Exhibit A-25. The Block 116, Lot 4 letter was sent to Henry Reeves. The receipt was signed and returned by the Post Office on April 17, 1978. No postcard was returned, Exhibit A-26. RDC presumed that Lots 2 and 4 were not for sale.

The Block 116, Lot 9 letter was sent to Harry Keller, c/o Globe Manufacturing Company. The receipt was signed and returned, Exhibit A-27. No postcard was returned, but Keller called RDC and advised that the property was for sale. The lot was 29.96 acres and Mr. Keller wanted \$75,000 as the purchase price. "Vol. I, T94-22 to T95-6".

RDC applied Test #3 (suitability for development) and Test #4 (location) and requested Harrison Fraker, RDC Architect, to examine the site with RDC. "VOL. I, T95-7 to T98-1 (Daniel O'Connor) and VOL. IV, T27-24 to T30-3." Both O'Connor and Fraker advised the RDC Board that Block 116, Lot 9 had a very high water table; standing water on 30-40% of the site; the site was divided by a stream perhaps necessitating a bridge; poor soil with severe limitations for septic system; wooded causing limitations for solar access and development; and, costly to develop because of these factors. In addition, the location of site (Test #4) was poor. O'Connor reported that Lot 9 was 4 1/2 miles away from the volunteer fire company causing concern about fire protection; very distant from the Port Norris community; far from churches, stores and services, and work locations of the prospective tenants. The conclusion of the RDC Board was that Block 116, Lot 9 was not desirable

and should not be considered for the RDC housing development. See also, the expert testimony of Alan Mallach and John B. Sinton.

The other R-2 multi-family zone was the Sockwell site which contained 9 lots. RDC applied the same four-step analysis to each of the 9 Sockwell lots. The following chart summarizes the application of Test #1 (lot size) and Test #2 (available for sale). "VOL. I, T98-6 to T102-3".

R-2 MULTI-FAMILY ZONE  
SOCKWELL SITE, BLOCK 152

<u>Lot #</u>	<u># of Acres</u>	<u>Test #1 15 Acre Test</u>	<u>Test #2 For Sale</u>	<u>Available After Tests #1 and 2</u>
1	5.0	No		
2	14.76	No		
3	-1.0	No		
5	25.5	Yes	No	
69	36.91	Yes	No	
70	25.72	Yes	No	
71	18.8	Yes	Yes	Yes
71A	1.0	No		
72	24.57	Yes	No	

In applying Test #2, RDC on April 12, 1978 sent the same form letter and postcard to the owners of Lots 5, 69 and 70, as were used in the Buckshutem lots. The Block 152, Lot 5 letter was sent to Kenneth and Charlotte Elwell. The receipt was signed and returned on April 17, 1978. No postcard was returned, Exhibit A-29. RDC presumed the property was not available for sale.

It is unnecessary to recount in detail the procedures thereafter

followed by RDC. Suffice it to say that it was established, and the court finds as a fact, that no land was available in the R-2 multi-family zone except two lots. One of these was Block 116, Lot 9. As to this lot it is completely unsuitable both from physical considerations and the fact that it is too remote from anything (except wildlife) to be seriously considered. Moreover the price quoted was so excessive as to lead inescapably to the inference that the owner was insincere in his negotiation.

The other site, the Sockwell site, was properly rejected as completely unusable due to drainage and water table as well as location. Mankind must not be required to live in swamps.

This narrowed the site down to the one under discussion, the Strawberry Avenue site. This was purchased by RDC in 1979. The court finds as a fact that no other land in the township was, or is, available.

Since, with the zoning ordinance in effect, multi-family use is not permissible in the zone which includes the land in question, a variance was sought. It is the application for this variance which is the vehicle for this decision.

The proceedings on the variance application were spread over seven public meetings and one closed meeting, fortunately on the record. It is simply impossible to get the full flavor of this case without reading all of the transcripts in their entirety. Suffice it to say that the case was so poisoned by the partiality and active opposition of the Board of Adjustment as to constitute it a legal chamber of horrors and a classical example of a perversion of the judicial process distorted by a thinly veneered layer of professed neutrality. Concededly the amenities were preserved, in form at least. RDC was permitted to present its case and build a record. Follow-

ing this the meeting was opened for public comment during which citizens appeared both for and against the project. It was during this phase of the proceedings that the veneer began to wear thin. Thus:

At Vol. V, T11-2 to 7:

"... We do need houses in this Township to relocate people in Shellpile, Berrytown, Frogtown, but it is up to the Township Housing Authority to see that these houses get built, not outsiders coming in to this Township and telling us what to do".

And, at Vol. V, T11-25 to T12-6:

"... We welcome newcomers who will help the town to progress, but not one like you, Dan O'Connor, or who will destroy our way of life. Mr. Dan O'Connor, we don't need upstarts like you and your friends Susan Grant and Mary Jo Harvey telling us what to do. We have blue bloods who can run this town..."

So much for government of the people, by the people and for the people!

At Vol. V, T12-14 to 18:

"... You (Dan O'Connor) refer to the ministers in this town not taking an interest in the welfare of the poor. They do care about the poor, but you don't. You are looking out for yourself and how to make a fast buck".

It is pointless to further summarize the testimony. The record must be read in its entirety.

The absolute nadir of judicial process was attained on November 6, 1980 following an open meeting. At that meeting it was announced that the board would meet "procedurally in a closed caucus". When reminded by counsel for RDC of the "Sunshine Law", N.J.S. 10-4, et seq., the chairman stated: "I also sit on some other boards and I am well aware of the Sunshine Law. I know we can only caucus in a case like this on procedure, and that is what we have to get together on. There will be no substantial discussion of the case." Vol. IV T65-2-7. (Emphasis supplied)

This "procedural" session commenced with the chairman saying: "I think the kind of experts we want are, first of all (inaudible) to the people that live in the township would be." One is reminded of the omission in the Nixon tapes.

Then followed a 20 page strategy session designed solely to enable the board to obtain expert testimony to rebut RDC's case and instructing its solicitor to do so. Thus: "Chairman: Put together a case, Doctor Riley". T19-21. And "Chairman: Let's put it this way, Mr. Riley. We want you to put something together". This must be viewed in light of the fact that the solicitor had already advised the board that RDC's case was "excellent", "what they did on an overall basis is to cover their position very well". "What I'm saying is its been very evident that, and factually proven that, the township needs housing and you cannot legally say that we want individual housing and not multiple".

The naked truth, like murder, will eventually out. Thus: "Mrs. Carmichael: Here's, here's this thing here. He talked about, this Mallach person, he talked about minority concentration, low income concentration, health services, education, close to education services, social services and recreation and another I challenged was the services that are offered by Port Norris which about, every service we ever had is closed up and everybody goes to Millville for services including the cashing of their welfare checks." (Emphasis supplied)

"Mr. Sheppard: See, I should, I should be fighting this, all of that is right across from where I live and is zoned multiple housing and I sure don't want them up there either, see, but

Mrs. Carmichael: We don't want you out there by yourself.

Mr. Sheppard: I'm not by myself. I got thieves there every night stealing batteries and C B's.

Mrs. Carmichael: You need more people to keep an eye on you.

Mr. Sheppard: Yeah, wonder what they'd steal if they were all there."

and finally:

"Mrs. Carmichael: If they put it on Sockwell site it's going to be racially impacted too, even more so because you're going to be away from the town.

Mrs. Williams: But the thing is that's what they want the racially impacted doesn't make no sense at all they want multiple housing and they know all the people who are going to use the service are

Mr. Perrelli: Blacks.

Mrs. Williams: all one race.

Mr. Perrelli: That's racially impacted.

Mrs. Carmichael: That's not supposed to be if it is federally subsidized.

Mrs. Williams: Right.

Mrs. Carmichael: It has to be open housing.

Mr. Perrelli: Or scattered.

Mrs. Williams: Seems we could have them on that point.

Mr. Sheppard: Maybe we can get them to build two.

Mrs. Carmichael: Two wrongs don't make a right."

Again, the full transcript must be read to appreciate the unconscionability of the process. Perusing it one wonders if the board ever heard of suits under 42 U.S.C. §1983 or realized that they could be individually

liable in damages in a civil suit involving that law, see Monell v. New York City, 436 U.S. 658, 98 S. Ct. 2018 (U.S. Sup. Ct. 1978).

That the Board's designs were thwarted is revealed by the statement of the solicitor on January 8, 1981 that he had retained experts and that "the results were similar to those previously presented by the experts on direct examination".

The Board then proceeded to secure the testimony of 7 citizens for the project and 7 against it. On February 5, 1981 the Board again met and cross-examined at length two of the applicants' previous witnesses.

On March 5, 1981 notwithstanding that there had been adduced some 545 pages of testimony, the Board without any open discussion announced its decision. The entire decision occupied 4 pages of the transcript. The failure to meet and discuss the case prior thereto is significant. N.J.S. 10:4-6 et seq.

The failure to deliberate this case in the light of the extensive record indicates either that each member of the Board had predetermined the result prior to receiving the input of his fellow members or that the decision making process in this case was a "formal re-run" of a decision previously reached at an illegal meeting "off the record", cf. Kramer v. Bd. of Adjustment, Sea Girt, 80 N.J. Super. 454, 463 (Law Div. 1963). A decision of a multi-member body without the benefit of the thought sharing process is to be viewed with extreme caution and is at least prima facie voidable, N.J.S. 10:4-15. Indeed in the instant case it is less difficult to cite specific portions of the Open Public Meetings Act which were ignored than it is to cite portions which were complied with, if any.

Each member of the Board did state his reasons, none of which were supported in fact, and all of which were patently and transparently specious

and only one of which deserves comment.

Three members referred to the necessity to preserve farmland in this state and the record discloses that this factor was mentioned by witnesses opposing the project.

In the presence of counsel the court viewed the land in question. While the site may be farmed at the present time, prime farmland it simply is not, never was, and never will be. Moreover Commercial Township, while rural, is by no means a farming community. The proofs disclosed that of the 21,760 acres in the township but 753 acres, or 3 per cent are devoted to farmland use. The record is full of the arguments of the objectors about preserving farmland but the facts just do not support them, and their testimony is disbelieved.

Moreover it is significant that among the permitted uses of the land in question is trailer parks. The present state of affairs thus is that it would be lawful to pour as many trailers on the property as the sanitary systems would absorb but unlawful to build permanent dwellings in lesser density. This absurd result is itself constitutionally impermissible.

The bottom line is that the record reveals that the present Board of Adjustment is shown to be so biased against not only the individuals and corporation concerned but the entire conceptual basis of this application. that it is constitutionally impermissible for any member of the board to sit in judgment in this case hereafter. All present members and alternates are enjoined from hearing any matter involving the plaintiff or this land in connection with this application. While it is not likely that an opportunity to do so will arise, jurisdiction will be retained to prevent it. Rosko v. Pagano, 466 F. Supp. 1364, 1369-70 (D. N.J. 1979). See also Gibson v. Berry-

hill, 411 U.S. 564, 579, 93 S. Ct. 1689, 1698, 36 L. Ed. 2d 488 (U.S. 1973); Withrow v. Larkin, 421 U.S. 35, 46-47, 95 S. Ct. 1456, 1464, 43 L. Ed. 2d 712 (U.S. 1975). If the future course of events displays the same callous disregard of the constitutional rights of the plaintiff by the rest of the municipal family, they, too, will be dealt with by similar and appropriate action.

The constitutions of the United States and of this state guarantee to all persons the equal protection of the law. This concept embraces such widely diverse subjects as equality of educational opportunity, Brown v. Board of Education of Topeka, 347 U.S. 483, 495, 74 S. Ct. 686, 692, 98 L. Ed. 873 (U.S. 1954); equality of enjoyment of Civil Rights, Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 700-01, 98 S. Ct. 2018, 2041, 56 L. Ed. 2d 611 (1978), and equality of the opportunity to live in decent housing, David v. Vesta Co., 45 N.J. 301, 312-13 (1965), Southern Burlington County NAACP v. Tp. of Mt. Laurel, 67 N.J. 151, 179 (1975). Moreover, the "proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation." Southern Burlington County NAACP, supra at 179. Such compliance must conform to minimum standards of tolerance and fair play. This proceeding does not.

Significantly, the Board was by no means ignorant of Mt. Laurel for the record discloses that at the closed meeting the following transpired:

"Mr. Riley: No, you can't do it. You can't say, I mean then your getting right, almost, of of the primary questions of Mount Laurel, I don't know whether you've heard about the Mount Laurel.

Mrs. Carmichael: Yes, we've heard about the Mount Laurel.

Mr. Perrelli: Yes.

Mr. Riley: The biggest case in the world concerning zoning. The initial point of the case stems in a community not wanting multiple housing.

Mr. Sheppard: But they still don't have it. (emphasis supplied)

Mrs. Williams: What happened, or is it still hung up?

Mr. Riley: That's still in litigation. Since that time there's been at least 40 decisions saying that if, if housing is needed and that's shown by whatever factual evidence. In this township it is shown by our request, then you cannot discriminate between multiple housing and individual housing."

It is strange that many persons fail to realize that justice works both ways; that depriving the poor of their rights impoverishes the rest of us; that justice must be for all and not just for a few; that where a few are deprived all of us are deprived. John Donne was demonstrably right when he said:

"Send not to ask for whom the bell tolls  
It tolls for thee."

or as Mr. Justice Holmes put it:

"...if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought-- not free thought for those who agree with us but freedom for the thought that we hate." U.S. v. Schwimmer, 279 U.S. 644, 654-655, 49 S. Ct. 448, 451, 73 L. Ed. 526 (1929).

The plain truth is that the concepts of decent housing for the poor and for minorities, which have been the law of this state since South Burlington County NAACP v. Mt. Laurel, 67 N.J. 151 (1975) have not been accepted by Commercial Township. It would be repetitious to recite that which is settled

law except to mention DeSimone v. Greater Englewood Housing Corp. No. 1, 56 N.J. 428, 442 (1970); Brunetti v. Mayor and Council of the Tp. of Madison, 130 N.J. Super. 164, 168 (Law Div. 1974), and Weiner v. Zoning Board of Adjustment of Glassboro, 144 N.J. Super. 509, 515 (App. Div. 1976).

One not conversant with the facts may well complain about intervention of the courts, especially the federal courts, in matters formerly deemed the exclusive province of local authorities. The inescapable truth is that when local authorities abdicate their responsibilities the court must ex necessitu enforce these rights or they wither away. Further, if a state court abdicates its duties inexorably the federal courts will take over. Only by the proper local and judicial officials doing their duty will the decay of our federal system be prevented.

The action of the Board of Adjustment is reversed and a variance is hereby granted to RDC for the use as specified in its application. The present members and alternates of the Board of Adjustment are directed to disqualify themselves from any further action in this case. Jurisdiction is retained. An order may be submitted.