

- - Proposed Order to Show Cause with Temporary Restraints on Sale and Development of Vacant Land

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY/OCEAN COUNTY
DOCKET NO. L-

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CIVIC LEAGUE OF GREATER NEW BRUNSWICK	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	(MOUNT LAUREL)
-vs-	:	
	:	
EDISON TOWNSHIP, a municipal	:	
corporation of the State of New	:	
Jersey, located in Middlesex	:	
County, New Jersey,	:	<u>ORDER TO SHOW CAUSE</u>
	:	<u>WITH TEMPORARY RES-</u>
and	:	<u>TRAINTS ON SALE AND</u>
	:	<u>DEVELOPMENT OF VACANT</u>
THE PLANNING BOARD OF	:	<u>LAND</u>
EDISON TOWNSHIP,	:	
	:	
Defendants	:	
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This matter having been opened to the Court by the American Civil Liberties Union of New Jersey (John M. Payne, Esq., appearing), attorney for plaintiffs, by way of an application for an Order to Show Cause with Temporary Restraints;

and telephone notice of the application having been given to: Peter DeSarno, Esq., attorney for defendant Township of Edison; Sheldon Schiffman, Esq., attorney for defendant Planning Board of Edison; and Steven Barcan, Esq. (Wilentz, Goldman & Spitzer, Attorneys), attorney for Garden State Buildings, L.P.; and the Court having determined that:

1. Plaintiffs have a reasonable probability of success on the merits of their claim regarding the unconstitutionality of defendants' ordinances as being violative of the Mount Laurel doctrine and the regulations of the Council on Affordable Housing promulgated under the Fair Housing Act of 1985;

2. Developable land appears to be a scarce resource in Edison Township which, if not restrained from sale or unconditional development by Edison Township, is likely to cause immediate and irreparable harm in that the defendants will be significantly hindered in their ability to satisfy their Mount Laurel obligations;

3. A balancing of the hardships weighs against defendants and in favor of plaintiffs and low and moderate income households; and for good cause otherwise shown;

IT IS ON THIS ____ DAY OF JUNE, 1988, ORDERED AS FOLLOWS:

1. Defendant shall show cause before the Honorable Eugene D. Serpentelli, A.J.S.C., Ocean County (Middlesex County),

at the Ocean County Courthouse, Toms River, New Jersey, on the ___ day of _____, 1988, at ___ in the _____, or as soon thereafter as counsel may be heard, why an Order should not be entered converting the temporary restraints and order set forth below in paragraphs 2 and 3 of this Order into an interlocutory injunction.

2. Defendant, its agencies, departments and officers are hereby temporarily restrained until the return date of this Order to Show Cause or further Order of this court, from:

a. public auction and/or sale of any and all municipally owned land;

b. contracting with any person or entity for the purpose of development of any and all municipally owned land;

3. It is hereby further ordered as follows:

a. Any and all development approvals, including but not limited to general approvals, subdivision and site plan approvals and variances (but excluding building permits), which may be granted by defendant, its agencies, departments and officers for any and all publicly-owned land in the Township of Edison and for any and all privately owned land in the Township of Edison in excess of 2 acres (which acreage shall be determined by totalling the entire acreage of contiguous lots included in the same development or under the same ownership or control) shall if granted be made subject to the provisions of this paragraph, provided

that this paragraph shall not apply to any development proposals which acquired vested rights to develop prior to the date of this order.

b. All development approvals covered by this paragraph shall be conditioned on the applicant's compliance with any ordinance, regulations or other requirements adopted hereafter by defendants as a result of a final determination by this Court or by the Council on Affordable Housing that require provision of low and moderate income housing units within the development for which approval has been conditionally granted.

c. No rights shall be vested in lands subject to this paragraph except as limited by the conditions imposed herein.

d. More specifically, the Planning Board and the Zoning Board of Adjustment may continue to process all applications for development filed with them and to hold hearings and render determinations thereon, but in the case of any such applications which fall within the scope of this Order, the municipal agency having jurisdiction over the application for development, if it determines that it will approve the application, shall approve the application with the condition as set forth above.

e. If the municipal agency fails to act on an application for development which is within the scope of this Order, within the time set forth by the appropriate provisions of

the municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq., any automatic or default approval shall be deemed conditioned as set forth above.

f. Approval of an application for development which is within the scope of this Order, within the time period prescribed by the appropriate provisions of the MLUL, shall not subject the approving agency, by virtue of the conditions imposed by this Order, to the claim of any applicant or interested party that the agency has failed to act on the application within the time period prescribed by the MLUL or to any claim that an automatic or default approval has occurred; and

g. No building permits or certificates of occupancy shall be issued or granted to applicants for developments which fall within the scope of this Order.

4. Any person or entity (including but not limited to applicants and interested parties) affected by the Order regarding development approvals contained herein shall have the right to seek a waiver or exemption from the terms thereof by submitting a request for same, with a proposed form of Order attached thereto, to the Court upon notice to plaintiffs' counsel. If plaintiffs wish to object, an objection within 15 days of the receipt of the request and proposed form of Order must be submitted to the Court with a copy to the proponent of the request. If plaintiffs fail to object within this period the court shall may grant the request for the waiver or exemption.

5. Defendants shall have leave to move for dissolution or modification of the temporary restraints and order contained in this Order to Show Cause on five days notice. This Order to Show Cause shall remain in effect if the controversy that is the subject of this suit is transferred to COAH, and thereafter until such time as COAH, in accordance with its procedures, makes a determination on whether continuance of restraints is appropriate.

6. If defendant or any other person or entity affected by this Order to show Cause wish to file a Brief or any papers in connection with the relief sought prior to the return date of this Order to Show Cause, same shall be filed at least 8 days prior thereto.

7. A copy of the within Order shall be forthwith served upon all counsel hereto and counsel to the Board of Adjustment.

EUGENE D. SERPENTELLI, A.J.S.C.

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