

~~12/13/88~~ (CL v. Edison)

6/13 1988

- Complaint in Lieu of Perogative Writs for Declaratory and Injunctive Relief

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P.I. 5174

- MLO00044C

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

CIVIC LEAGUE OF GREATER NEW BRUNSWICK, :
:
Plaintiff :
:
-vs- :
:
EDISON TOWNSHIP, a municipal :
corporation of the State of New :
Jersey, located in Middlesex :
County, New Jersey, :
and :
THE PLANNING BOARD OF EDISON :
TOWNSHIP, :
:
Defendants :

CIVIL ACTION
(MOUNT LAUREL)

~~COMPLAINT IN LIEU OF
PREROGATIVE WRITS
FOR DECLARATORY AND
INJUNCTIVE RELIEF~~

Plaintiffs, by way of ~~their~~ complaint against the
defendants, state that:

FIRST COUNT

1. This is a "Mount Laurel" action, see Southern
Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J.

insert p, defs & factual allegations

158 (1983) ("Mount Laurel II"), brought by plaintiff, a public interest organization representing the interests of poor and minority urban households in need of affordable housing, as an ~~action in lieu of prerogative writs~~ seeking declaratory and injunctive relief pursuant to the Constitution of the State of New Jersey and the state and federal Fair Housing Acts. By this action, plaintiff seeks to bring defendant Edison Township into compliance with its constitutional obligation to provide a realistic opportunity for production of its fair share of the regional need for low and moderate income housing.

2. More than a decade ago, Edison Township's then-existing land use ordinances were declared invalid by this court in Urban League of Greater New Brunswick v. Mayor and Council of the Borough of Carteret, 142 N.J. Super. 11 (Ch.Div., 1976). On January 13, 1977, having made changes in its ordinance satisfactory to the Court in accordance with then-prevailing Mount Laurel standards, Edison Township received a judgment of compliance from the Court. After the decision of the Supreme Court in Mount Laurel II, however, Edison Township ~~did not~~ ^{failed to} make significant additional revisions in its ordinances to encourage production of low and moderate income housing in accordance with that decision, despite the fact that it permitted a substantial amount of non-residential and higher income residential construction. The six-year period of repose granted pursuant to Mount Laurel II, not

I don't think this adds anything. Just raises question why nobody

sued them. if the point is that nothing's been done in 10 years, say so in a phrase at beginning of next ¶.

strictly applicable because this is a pre-Mount Laurel II case, has long since expired in any event.

3. On March 25, 1987, the Edison Planning Board filed with the Council on Affordable Housing ("COAH") a "Housing Element and Affordable Housing Plan for the Township of Edison," in accordance with the Fair Housing Act of 1985, N.J.Stat. Ann. 52:27D-309. A copy of this Housing Element is attached to this Complaint ^{as} ~~an~~ ^{Exhibit A} and made a part hereof. In this Housing Element, Edison concedes that it has a fair share obligation under the Act and COAH Regulations of 1,111 affordable housing units, but it erroneously claims a credit for a large portion of this obligation as a result of affordable housing units constructed prior to 1988.

4. Edison has ^{failed to} ~~not~~ moved for substantive certification of its Housing Element ^{as required by} ~~in accordance with~~ §313 of the Fair Housing Act, thus evading review of its inadequate Housing Element.

5. On June 1, 1988, the Edison Planning Board held a public hearing on the so-called "Rivertown" development, a billion-dollar, 4,000-unit mixed-use project to be developed over a twenty-year period on a portion of the former Raritan Arsenal site. The Chair of the Planning Board has announced that the Board will vote on general approval for this development on June 15, 1988. The Rivertown development provides a particularly significant opportunity to meet the town's affordable housing obli-

gations because it is on municipally-owned land, and will use 60 of the township's 90-acre inventory of developable land.

6. Edison's land use regulations ^{fail to} ~~do not~~ comply either with the requirements of the New Jersey Constitution as interpreted in Mount Laurel II or with the provisions of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ^{Wherefore,} ~~By this complaint,~~ plaintiffs ^{demand judgment} ~~seek to trigger review of Edison's Housing Element by~~

~~the Council on Affordable Housing;~~ if substantive certification is not granted by COAH in accordance with §314 of the Fair Housing Act, plaintiffs then seek adjudication by this Court of the

~~constitutional and statutory validity of~~ Edison's existing land use regulations, ^{1. striking} ~~as unconstitutional and invalid under N.J.S.A.~~ By Order to Show Cause filed with this

Complaint, plaintiffs also seek an order preventing the Edison Planning Board and any other municipal agencies or officials from selling municipal land or approving significant development projects, including Rivertown, until ~~authoritative~~ review of Edison's fair share compliance has been completed by

COAH or this Court, unless otherwise ordered(?) by COAH

PLAINTIFFS

7. Plaintiff CIVIC LEAGUE OF GREATER NEW BRUNSWICK is a not-for-profit charitable corporation of the State of New Jersey, located at 47-49 Throop Avenue, New Brunswick, New Jersey 08901. One of its principal goals is to facilitate provision of non-discriminatory access to affordable housing throughout Mid-

don't explain strategy

probably should include in complaint since you will contemplate with rev. by COAH

insert language

dlesex County. Among other activities, it was plaintiff in Urban League of Greater New Brunswick v. Borough of Carteret, Docket No. C-4122-73, filed July 24, 1974, which ultimately resulted in orders or settlements after 1983 providing almost 10,000 units of affordable housing in nine Middlesex County communities.

DEFENDANTS

8. The TOWNSHIP OF EDISON is a municipal corporation chartered under the Constitution and laws of the State of New Jersey. It is authorized to exercise, on behalf of the State and for the general welfare of all the citizens thereof, the delegated powers of local government over a portion of Middlesex County located north of the Raritan River.

9. The PLANNING BOARD OF EDISON TOWNSHIP is an agency created by defendant Edison Township pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-25, to exercise land use regulatory powers in Edison Township pursuant to law and subject to the authority of the governing body of the Township. Reference herein to "Defendant" or "Defendant Township" refer both to the Township of Edison and the Planning Board of Edison Township unless specified to the contrary.

FACTUAL ALLEGATIONS

10. At all times relevant hereto, the Township of Edison has elected to exercise those powers, derived from the

Constitution of the State of New Jersey and delegated to it by the Legislature, relating to the control over the use of land contained within the Township through its Township Committee, Planning Board and/or Zoning Board of Adjustment, and such other local public agencies, officials, employees and agents authorized by law to effectuate said delegated functions.

11. Pursuant to those delegated powers, the Township has adopted a Master Plan and a Zoning Ordinance.

no. delegation was for lawful, constitutional exercise

12. The Township, pursuant to its delegated powers, has imposed constraints over the use of land within its borders which include, but are not limited to, ordinances relating to zoning (designating exclusive land use classifications for areas of the Township and which, collectively, encompass all of the lands governed by the Defendant), site plan review, and land subdivision. This system of land use constraints is administered in part by the Planning Board and in part by other agencies and officers of the Township.

13. As a direct result of those actions taken pursuant to its delegated land use functions and more specifically set forth above, with the exception of non-conforming uses which may have predated such actions, the Defendant has exercised complete regulatory control over the existing and permitted uses of the land within its borders.

14. Edison Township has a fair share affordable housing obligation of 1,111 units to be provided through 1992, as

COAH 7 --

determined by the Council on Affordable Housing pursuant to the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. This obligation consists of an indigenous need of 216 units and a combined reallocated present need and prospective need of 895 units.^{as}

is defective in the following

15. Defendants' Housing Element relies on rehabilitation of substandard units occupied by low and moderate income households to meet its entire indigenous need obligation of 216 unit. This part of its Housing Element is deficient because the upper limit of the dollar amount it will contribute to rehabilitation is below the minimum amount recognized by COAH as adequate to gain credit for rehabilitating a unit. In addition, the Housing Element fails to identify the units to be rehabilitated, the method of financing the rehabilitation, the scope of the work intended to be done, or the methods for enforcing eligibility and affordability controls. As a result, defendants are not entitled to credit for past rehabilitations (100 units) and have not presented a valid plan for achieving compliance as to the 116 units which it concedes must still be provided.

16. Defendant's Housing Element is also deficient as to its plan to meet the need for 895 units of reallocated present need and prospective need. It relies solely on credits for affordable housing claimed to have been first occupied after 1980 to do so. This plan is deficient in at least the following ways:

a. The Housing Element contains insufficient detail to demonstrate occupancy after April 1, 1980 by, and pres-

ent here

the important point is that b cant b object to Housing Element before COAH b/ Edison wont file for substantive cert.

isnt there statutory authority for filing

complaint under these circum. stances?

cite either allege defects.

we debate 50 back to

justify dismissal by COAH? if so, note

ently affordable to, low and moderate income households, as required by N.J.A.C. 5:92-6.1.

b. Defendants improperly claim the credit of 1.33 units allowed by N.J.A.C. 5:92-14.4 for rental units occupied between 1980 and 1988.

c. Defendants claim an excessive credit for senior citizen housing, in violation of N.J.A.C. 5:92-14.3.

d. Defendants improperly claim a credit for rehabilitation of pre-existing public housing. See N.J.A.C. 5:92-6.1(2)(i).

e. Defendants improperly claim a credit for hospital beds "occupied" by medicaid and medicare individuals.

17. As a result of deficiencies in its Housing Element, it is unlikely that Edison Township will receive credit for more than a small portion at best of the units for which it claims credit. The Housing Element does not propose any other mechanism for meeting its fair share and therefore it is insufficient to receive substantive certification pursuant to §314 of the Fair Housing Act.

18. Edison Township's present land use regulations do not provide a realistic opportunity for the provision of its fair share of the regional need for low and moderate income housing, as required by Article I of the New Jersey Constitution and Mount Laurel II.

19. Defendants seek to maintain the status quo in Edison Township by refusing to amend their land use regulations to provide a realistic opportunity for achieving its fair share. It is obvious that proposed developments such as Rivertown provide an opportunity for doing so by use of inclusionary zoning techniques specifically required by Mount Laurel II in the absence of other means of achieving the fair share.

20. Defendants actively prevent the likelihood of achieving the township's fair share by failing to move for substantive certification before COAH while at the same time entertaining development applications without imposing inclusionary requirements on such developments.

SECOND COUNT

21. The allegations of Count One are incorporated here by reference.

22. The impact of defendants' exclusionary housing policies bears disproportionately on minority households who are denied the opportunity to find affordable housing in Edison Township. Edison, by permitting and encouraging substantial development in recent years, including multi-family development for households at median income and above, has demonstrated that there are no valid municipal interests which would preclude development of housing affordable to low and moderate income households, including minority households.

23. Edison's land use regulations violate Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq.

WHEREFORE, Plaintiffs demand judgment:

1. Declaring the defendants' land use regulations invalid and unconstitutional in their entirety, ~~and/or in relevant part;~~

2. Appointing a special master to recommend the revision of said regulations and effectuation of municipal action in compliance with the Constitution of this State and the State and Federal Fair Housing Acts;

3. ^{Requiring Edison to} Ordering ~~revision~~ ^{all necessary} of its land use regulations and ^e taking other steps to provide a realistic opportunity for provision of its fair share of the regional need for low and moderate income housing.

4. Ordering the Defendants to pay counsel fees and costs; and

5. Granting Plaintiff# such other relief as the Court deems just and equitable.

JOHN M. PAYNE
Attorney for Plaintiffs,
On behalf of the American Civil
Liberties Union of New Jersey

Dated: June 13, 1988