

Real Estate Equities v. Holmdel

2/28 (1984)

Complaint in lieu of prerogative writs for
declaratory + injunctive relief

15 pgs

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REAL ESTATE EQUITIES, INC., a New Jersey Corporation,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
Plaintiff,	:	MONMOUTH COUNTY/OCEAN COUNTY DOCKET NO. L-
v.	:	Civil Action
	:	<u>Mount Laurel</u>
HOLMDEL TOWNSHIP, a municipal corporation of the State of New Jersey, located in Monmouth County, New Jersey,	:	COMPLAINT IN LIEU OF <u>PREROGATIVE WRITS FOR</u> <u>DECLARATORY AND INJUNCTIVE</u> <u>RELIEF</u>
Defendant.	:	

Plaintiff, by way of its complaint against the defendant, states that:

STATEMENT OF THE CASE

1. Plaintiff bring this complaint in lieu of prerogative writs seeking declaratory and injunctive relief pursuant to the Constitution and laws of the State of New Jersey. In essence, this is an action brought pursuant to Southern Burlington Co. N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"). Plaintiff has been unable to obtain municipal approval to produce affordable housing in the defendant Holmdel Township.

The defendant's land use scheme is clearly and unlawfully exclusionary, patently offensive to the Constitution and laws of this State and in wanton disregard of pertinent judicial mandates. Since the effectuation of its municipal control over land uses, the defendant has engaged in a conscious design, pattern and practice which has, by intent and effect, constrained residential growth to dwellings for middle and upper income persons while encouraging the development of commercial, industrial and office research tracts. Little has been done to benefit even lower income residents. Intervening Court decisions have been completely disregarded and no affirmative action has been undertaken to provide a realistic opportunity for the provision of housing for lower income persons in response

to either regional needs or those needs generated within the defendant municipality itself. Plaintiff seeks an order declaring the defendant's land use ordinances unconstitutional and unlawful, providing it with a builder's remedy to effectuate the production of such housing, and appointing a master to secure compliance with the Court's orders.

PLAINTIFF

2. The plaintiff is REAL ESTATE EQUITIES, INC. (hereinafter referred to as "the plaintiff"), a New Jersey corporation with its principal office located at 213 Highway 35, Middletown, New Jersey. Plaintiff is the owner of a parcel of land located in Holmdel Township and designated as Block 58, Lots 21 and 22 of the Tax Map of Holmdel Township, and consisting of approximately ninety-nine (99) acres, more or less. Plaintiff desires to construct approximately one thousand eight hundred and thirty six (1,836) multi-family units on its lands of which a substantial percentage will be affordable to persons of low or moderate incomes.

DEFENDANT

3. The defendant, HOLMDEL TOWNSHIP (hereinafter sometimes referred to as "the defendant", "Holmdel Township", or "the Township"), is a municipal corporation chartered under

the Constitution and laws of the State of New Jersey to exercise, on behalf of the State and for the general welfare of its citizenry, the delegated powers of local government over approximately eighteen (18) square miles situated in the northern part of Monmouth County, New Jersey.

FACTUAL ALLEGATIONS

4. The defendant has elected to exercise, at all times relevant hereto, 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.

5. Pursuant to those delegated powers, the Township adopted a General Land Use Plan in 1979. The defendant has also imposed constraints over the use of land within its borders which include, but are not limited to: a Zoning Ordinance designating exclusive land use classifications for areas of the Township and which, collectively, encompass all of the lands governed by the defendant and which includes provisions for a Zoning Board of Adjustment and Planning Board. The land use

scheme also includes, but is not limited to, controls over site plan review and the subdivision of lands.

6. 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 said actions, the defendant has exercised complete regulatory control as to the existing and permitted uses of the land over which it governs.

7. The standards for residential development in all of the residential zones are more exclusionary than those land use controls invalidated by the New Jersey Supreme Court both in Southern Burlington Co. N.A.A.C.P. v. Tp. of Mount Laurel, 67 N.J. 151 (1975) ("Mount Laurel I") and in Mount Laurel II.

8. Other than housing for senior citizens, the zoning ordinance permits single-family, detached units in several zones and townhouses, as a conditional use, in two zones. Provisions constraining construction of residential units are unduly exclusionary and include, but are not limited to:

a. densities for single-family, detached units:

(1) R-11 - 11,000 square foot lots or clustered on 8,000 square foot lots at a density of three (3) units per acre;

(2) R-15 and M - 15,000 square foot lots or clustered on 8,000 square foot lots at a density of two and one-half (2.5) units per acre;

(3) R-30 and R-30SC - 30,000 square foot lots or clustered on 17,000 square foot lots at a density of one and one-fifth (1.2) units per acre;

(4) R-TH - 15,000 square foot lots or clustered on 9,600 square foot lots at a density of two and one-half (2.5) units per acre; and

(5) R-40A - 43,000 share foot lots or clustered on 30,000 square foot lots at a density of one (1) unit per acre;

b. densities for townhouse units at two and one-half (2.5) units per acre and at net densities of five (5) units per acre in the R-15 and R-TH zones;

c. densities for senior citizen housing at six (6) units per acre in the R-30SC zone;

d. mobile homes are permitted in a single zone, RMH, which is extremely small, at densities of eight (8) units per acre on 3,000 square foot lots with required thirty (30) foot frontage and two off-street parking spaces per unit;

e. the R-11 and R-15 zones are almost totally developed;

f. townhouses are permitted in two zones; however, there is minimal land remaining, gross and net densities, as previously set forth, permit only luxury development, if any, and include unduly exclusionary features such as staggered setbacks and limitations as to units in a building group or structure;

g. senior citizen housing is permitted but only if subsidized by state and/or federal agencies and only if sponsored by non-profit or limited dividend entities. It is permitted in a single zone as a conditional use but at densities too low to assure project feasibility and to be competitive with other permitted uses. Furthermore, height limitations of thirty (30) feet preclude cost savings typical of senior citizen housing in higher structures;

h. unfettered discretion in local boards as to approvals for planned developments and townhouses;

i. excessive frontage, width, side and rear yard requirements; and

j. there are few parcels of substantial size in the R-30SC, R-TM, R-11 and R-15 zones, the effect of which is to limit choice as to development in the Township of the permitted uses in those zones to a minimal number of landowners in contrast to vast areas zoned for low density, residential (R-40A) and non-residential (OL) uses.

9. Furthermore, development controls for land subdivision and site plan review exceed those minimum standards necessary for the protection of health and safety.

10. The defendant has not adopted a single land use ordinance or provision which creates incentives for and/or mandates the production of housing affordable to persons of low

and/or moderate incomes; with the exception of senior citizen housing in the R-30SC zone, but which has not produced a single unit and, for reasons previously set forth, is unlikely to produce a single such unit.

11. Present rentals and recent sales in the Township are virtually all at prices which are in excess of affordability to persons of low or moderate incomes; and, in fact, make the defendant one of the most expensive municipalities in the region from the perspective of housing affordability. This is further reflected by the fact that the defendant is one of the wealthiest in the state as measured by median income statistics. Thus, in 1980, whereas the median family income for New Jersey was \$19,801, the median in Holmdel was \$40,793 or over 200% of the statewide median.

12. The aforementioned exclusionary policies have not constrained the defendant from experiencing substantial, albeit selective population growth. Between 1960 and 1970, the population grew by 107% (from 2959 to 6117) and from 1970 to 1980 it grew by 38% (from 6117 to 8447). Its growth in the 1970-1980 decade was over four (4) times the county rate of nine percent (9%). More significantly, between 1970 and 1980, households in the Township increased by approximately fifty percent (50%) from 1482 to 2229 households.

13. Growth in employment in the Township has also outstripped county growth. Thus, between 1972 and 1982, the defendant's covered employment increased fifty-two percent (52%) from 7229 to 10,976 jobs; an increase of 3747 jobs. In the same period, county covered employment grew thirty-seven percent (37%) from 96,182 to 131,493 jobs; an increase of 35,311 jobs.

14. In the eleven year period (1972-1982) one in every ten added covered jobs in Monmouth County was located in Holmdel Township; however, between 1970 and 1980, only one in every twenty added persons in Monmouth County located in Holmdel Township.

15. While this growth and projected growth has been occurring, little has been done to provide a realistic housing opportunity for lower income persons, even those residing in the Township.

16. The defendant has not adopted and/or specified a specific number and/or range representing its indigenous housing need; however,

a. of renteroccupied lower income households in the Township in 1980, 17 represented households that paid more than 25% of their income for shelter;

b. of owner occupied lower income households in the Township in 1980, 153 paid more than 25% of their income for shelter;

c. approximately 10,976 persons were employed in the Township in 1982 representing a need (assuming conservatively that at least thirty percent (30%) of the employees are lower income) for over 2500 units of affordable, standard housing for lower income employees; and

d. while there is limited objective data for the total number of units in the Township which are substandard, certain base data exists from the 1980 Census of Housing:

(1) seven (7) units were without complete plumbing;

(2) seventeen (17) units lacked adequate heat; and

(3) eighteen (18) units were overcrowded.

17. The defendant was a developing municipality under Mount Laurel I and has a fair share obligation under Mount Laurel II; yet:

a. the defendant has never adopted and/or specified a fair share plan for the defendant Township;

b. the defendant has never adopted and/or specified a specific region of which it is a part for fair share purposes; and

c. the defendant has never adopted and/or specified a specific number and/or range representing its fair share of its region's present and prospective housing needs of low and/or moderate income persons. This failure is further

exacerbated by the fact that on May 15, 1975, almost nine (9) years ago, and only two months after Mount Laurel I, the defendant was declared to be a developing municipality; and its land use plan was declared unconstitutional and invalidated. Middle Union Associates v. Zoning Board of Adjustment of Township of Holmdel, L-1145-72 P.W. (Sup. Ct., Monmouth Co., May 15, 1975).

18. The defendant is designated by the State Development Guide Plan (hereinafter referred to as "the Guide Plan") as a municipality which contains a substantial "Growth" area; yet, it has virtually disregarded the designation as to permitted residential uses and lower income housing needs.

19. Holmdel Township, as population and employment growth statistics indicate, is well-located in the greater New York Metropolitan region and is serviced by a major highway system which includes the Garden State Parkway, New Jersey Route 34 and Route 35, and county roads. Furthermore, access to commuter rail service to New York and shore communities is nearby and public bus transportation is also available.

20. The defendant has refused to cooperate with the plaintiff which stands ready, willing and able to provide units consistent with the constitutional mandates.

21. On November 28, 1983, plaintiff, through counsel, communicated its desire to provide such housing and sought a meeting with the defendant. On February 1, 1984, a meeting was

finally held before the Township Committee with Planning Board representation. The meeting was closed to the public since it was determined to relate to a matter "in anticipation of litigation".

22. At and since the meeting, plaintiff was informed that the Planning Board and Township was aware of the site, rejected it for residential use and wished to maintain it as commercially zoned.

23. Plaintiff's proposal is reasonable and consistent with sound land-use planning; and the defendant's actions have been arbitrary, capricious, inconsistent with sound land use planning, and in violation of state laws.

24. Plaintiff's site is ideally located for higher density, residential development:

- a. the site is of a substantial size and will permit ease in site planning for multi-family structures;
- b. it is adjacent to areas zoned for townhouses, moderate density single-family uses and senior citizen's housing;
- c. it is in an area designated by the Guide Plan for "growth" and is now zoned C (Commercial);
- d. according to the defendant's Master Plan:
 - (1) the site is shown as one of the few remaining areas of undeveloped land with virtually no on-site constraints and is a proposed "neighborhood" (Plates 8 and 20);

(2) it shows minimal topographic variations (Plate 5);

(3) it contains no steep or moderate slopes and no agricultural soils (Plates 6 and 13); and

(4) it is well-to-moderately drained with no serious flood plain problems (Plate 6);

e. the site has substantial frontage on Route 35 (a primary, arterial road) and Laurel Avenue (a secondary, arterial road);

f. presently, the site has a designated reservation of sewer capacity of 144,000 g.p.d.; and the plaintiff is a member of a consortium of landowners now negotiating to finance construction of a major sewer line for the site and the area which will bring ample sewer capacity for plaintiff's proposed development; and

g. it has easy access to existing employment and commercial facilities.

25. The site is ideally located for the development of lower income units because it is adjacent to or in close proximity to highways, public transportation, existing neighborhood commercial areas, areas designated for non-residential growth and areas which are being developed for non-residential uses with many job opportunities in Holmdel and adjoining municipalities.

26. There is, in fact, no legitimate planning reason to deny plaintiff's request for rezoning; and there is an overwhelming factual and legal basis to mandate its approval even if plaintiff was not proposing a single lower-income unit.

27. All of the aforementioned actions and/or failures to act by the defendant have occurred in a context in which it had actual knowledge of its legal obligations both for the needed housing and to the plaintiff and occurred in wanton and callous disregard of those obligations.

LEGAL ALLEGATIONS

28. The defendant's land use plan and ordinances violate the Constitution and laws of the State of New Jersey in that they violate the constitutional mandate as enunciated in Mount Laurel I and II; and are inconsistent with the comprehensive planning and zoning mandates of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

WHEREFORE, plaintiff demands judgment:

1. Declaring the defendant's land use ordinances invalid and unconstitutional in their entirety and/or in relevant part;

2. Appointing a special master to recommend the revision of said ordinances and the effectuation of municipal action in compliance with the Constitution and laws of this State and to supervise the implementation of a builder's remedy in order to insure the prompt production of needed units;

3. Ordering the revision of said ordinances and the effectuation of compliance with the Constitution and laws of this State and implementing a builder's remedy;

4. Ordering a builder's remedy for plaintiff consistent with its proposal to build 1836 multi-family units of which a substantial number will be affordable to low and moderate income persons;

5. Enjoining all agreements, unused reservations, and/or approvals relating to water and sewer utilization, which might affect plaintiff's development; requiring reserve capacity for plaintiff's development or the upgrading of facilities to provide capacity; and requiring the defendant to permit plaintiff, if necessary, to provide an interim solution for water and sewer utilization;

6. Enjoining approval of all multi-family developments and major, single-family subdivisions which do not provide a substantial percentage of affordable units for lower income persons; and

7. Granting plaintiff such other relief as the court deems just and equitable.



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