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Real Estate Equities v. Holmdel

(1984)

Answer of Δ Twp relative to above
matters

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March 27, 1984

Mr. W. Lewis Bambrick
Clerk of the Superior Court
CN-971
Trenton, New Jersey 08625

Re: Holmdel Township ads
Real Estate Equities, Inc.
Docket No. L-15209-84

Dear Sir:

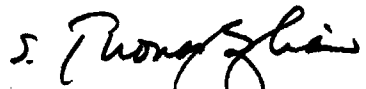
Enclosed herewith please find the original and two copies of the Answer of Defendant Township of Holmdel relative to the above entitled matter.

Also enclosed is our check in the amount of \$40.00 representing payment of the filing fee.

Would you kindly file the enclosed Answer returning one copy with filing information endorsed thereon to this Office in the reply envelope provided.

Thank you for your cooperation.

Very truly yours,



S. Thomas Gagliano

STG:cm
Enclosures

cc: Hon. Eugene D. Serpentelli
Carl S. Bisgaier, Esquire

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Attorneys for Defendant

REAL ESTATE EQUITIES, INC., A New Jersey Corporation,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MONMOUTH COUNTY/OCEAN COUNTY
Plaintiff,	:	DOCKET NO. L-15209-84
vs.	:	CIVIL ACTION
HOLMDEL TOWNSHIP, a municipal corporation of the State of New Jersey, located in Monmouth County, New Jersey	:	ANSWER
Defendant.	:	

Defendant Township of Holmdel, for its Answer to the Complaint herein, states as follows:

1. As to Paragraph 1, the allegation that plaintiff has been unable to obtain municipal approval to produce affordable housing in the defendant Township is denied.

The second unnumbered paragraph under Paragraph 1 of the Complaint violates the requirement of R.4:5-7 that allegations be simple, concise and direct. The paragraph is denied.

2. As to Paragraph 2, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations.

3. As to Paragraph 3, defendant admits it is a municipal corporation in Monmouth County and refers to the statutes of the State of New Jersey for its powers.

4. As to Paragraph 4, defendant admits it is exercising its powers relating to zoning and refers to the statutes of the State of New Jersey and defendant's Development Regulations as to the agents through which such powers are exercised.

5. As to Paragraph 5, defendant admits it has adopted a master plan; it has not adopted a "General Land Use Plan". As to the remainder of the paragraph, defendant refers to its Development Regulations for their provisions.

6. Paragraph 6 is denied. The Board of Adjustment and the Planning Board share regulatory control with the Township Committee.

7. As to Paragraph 7, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations.

8. As to Paragraph 8, defendant refers to the Development Regulations or their provisions. The adjective "unduly exclusionary" is denied. Subparagraph a. is admitted except for the omission of references to "flag lots" in a.(5) (° 78-77c). Subparagraphs b., c. and d. are admitted except for the adjective "extremely small" in d. As to subparagraph e., the rear area behind Maurice Avenue is undeveloped in the north-east corner; otherwise e. is admitted. Subparagraph f. is denied. The first sentence of subparagraph g. is admitted. The remainder is denied. Subparagraphs h., i. and j. are denied.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

11. As to Paragraph 11, it violates the requirement of R.4:5-7 that allegations be "simple, concise and direct", thereby precluding a simple, concise and direct response. See e.g. terms "virtually", "affordability", "most expensive", "one of the wealthiest". The 1980 "median family income" for New Jersey was \$22,906, not \$19,801.

12. As to Paragraph 12, it violates the requirement of R.4:5-7 that allegations be "simple, concise and direct", thereby precluding a simple, concise and direct response. See e.g. terms "exclusionary policies", "substantial", "selective". The population figures are admitted.

13. As to Paragraph 13, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations.

14. As to Paragraph 14, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations.

15. As to Paragraph 15, it violates the requirement of R.4:5-7 that allegations be "simple, concise and direct", thereby precluding a simple, concise and direct response. See, e.g. terms "little", "realistic".

16. As to Paragraph 16, defendant has no knowledge or information sufficient to form a belief as to the number of its "indigenous housing need" or as to the truth of the allegations in subparagraphs a., b., c. and d.

17. As to Paragraph 17, defendant denies it was a developing municipality under Mount Laurel I; it admits it has a fair share obligation under Mount Laurel II.

Subparagraphs a. and b. are admitted. The first sentence of subparagraph c. is admitted except that defendant has no knowledge or information sufficient to form a belief as

to its fair share. Defendant refers to the decision cited in subparagraph c. for its terms and effect.

18. As to Paragraph 18, defendant admits that the State Development Guide Plan shows a "Growth Area" in Holmdel and refers to the text of the Plan for its terms and import.

19. Paragraph 19 is admitted.

20. Paragraph 20 is denied.

21. Paragraph 21 is admitted.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied except that subparagraphs b. and c. are admitted. Defendant refers to its Master Plan for its terms with respect to the allegations under subparagraph d. Defendant admits subparagraph e., denies subparagraph f. and has no knowledge or information sufficient to form a belief as to subparagraph g.

25. As to Paragraph 25, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations.

26. Paragraph 26 is denied.

27. Paragraph 27 is denied.

28. Paragraph 28 is denied.

FIRST DEFENSE

1. Defendant's zoning is in compliance with provisions of the Municipal Land Use Law that property should be zoned in accordance with the land use portion of a master plan devised by the Planning Board and with "reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land". If developers cannot under such ordinance economically

build or rent for low income housing, this is not representative of an exclusionary policy by defendant but the result of conscientious adherence to the statute by defendant and the economics of housing construction.

SECOND DEFENSE

1. Plaintiff has not brought this action in good faith to secure zoning to provide Holmdel's asserted fair share of regional lower income housing needs and the present housing needs of indigenous poor but to achieve profitable rezoning of its own tract of about 100 acres. Previous submissions by plaintiff were for 1252 housing units and 1400 housing units on its 100 acre tract. The Complaint demands 1836 units.

THIRD DEFENSE

1. In the judgment of the plaintiff and its planning officials, and within the fair compass of their statutory zoning authority, Block 58, Lots 21 and 22 of the Tax Map of Holmdel Township, is best devoted, from a planning standpoint, for the varied commercial or industrial uses for which it is now zoned. At least most of the tract, which fronts on Route 35, should be retained in such zoning. If defendant has an obligation to rezone districts to render possible development of lower income housing, there is ample developable land elsewhere in the Township better suited for this purpose without rezoning plaintiff's property. The defendant public body should be allowed to make the choice, not be subject to the choice of the unelected plaintiff developer with its profit motive.

FOURTH DEFENSE

1. Defendant is confronted with demands of other developers, besides plaintiff, for rezoning of property under the aegis of Mount Laurel II. The grant of a builder's remedy in this case may spawn other similar actions with demands for grants of multiple builder's remedies throughout the township "growth area". The resulting massive influx of multi-family high density zoning, far more for middle and upper income housing than lower income, would constitute housing in such quantity and density, and would increase Holmdel's population so substantially, as to radically transform Holmdel practically overnight. Such a result is prohibited by Mount Laurel II.

FIFTH DEFENSE

1. Plaintiff has failed to lay out before the defendant specific particulars of its plans for constructing and financing the proposed "substantial percentage" of both low and moderate income housing so as to assure defendant that if its plans to build some 1836 (or any lesser number) units of middle and upper income housing through grant by defendant of density bonuses therefor are consummated, the lower income housing promised will actually be constructed simultaneously and be saleable or rentable to lower income households qualified therefor and at prices specified under Mount Laurel II guidelines.

2. At this stage of the demonstration by plaintiff, its purported project to produce lower income housing upon the basis of its requested rezoning by defendant of its property is purely speculative and not realistic.

3. Moreover, plaintiff has not proposed any control mechanism to assure that housing actually specified for and sold or rented to lower income household units will not be resold or rerented later at market housing prices, contrary to Mount Laurel II.

SIXTH DEFENSE

1. Rezoning of plaintiff's property as demanded in the Complaint will instantly increase the market value of the property substantially above what plaintiff paid for it. This is a common phenomenon in such cases. Plaintiff has not guaranteed that it will itself build the projected housing, including for lower income households, rather than use any judgment in this case for realizing a substantial capital gain. If the benefit of any favorable judgment is assigned to a third person, along with title to the land, at an inflated resale price, the possibility of the assignee actually building lower income housing becomes even more speculative than as asserted in the Fifth Defense herein because of the inflated land costs thus incurred. Mount Laurel II does not intend to give a "builder's remedy" to one who brings an action not to build but to capitalize on land values.

SEVENTH DEFENSE

1. If rezoning of plaintiff's property for multi-unit high density housing is to be ordered by the court to achieve some lower income housing, this should be done in stages of not in excess of one-third of the projected units at the present time and the remainder over two six-year periods. This is to prevent excessively rapid population increases and to render feasible the provision of necessary infrastructure. This assertion is supported by Mount Laurel II.

EIGHTH DEFENSE

1. Plaintiff's proposal must be rejected because the location, number and design of the units, so far as now apparent, are not in accord with sound zoning and planning concepts and will have adverse environmental impact. See Mount Laurel II.

NINTH DEFENSE

1. Defendant professes its willingness to comply with the directions of Mount Laurel II on its growth areas insofar as it is reasonable to do so in the light of defendant's existing character. Defendant and its Planning Board have begun researches looking toward the determination of an appropriate region, the present need for adequate housing for defendant's indigenous poor and a fair share for Holmdel of the prospective need of the region for lower income housing in the foreseeable future, e.g. by the year 2000. Defendant has engaged planning experts for the purpose of providing the court with evidence as to the foregoing. Defendant will give serious consideration to specific suggestions by plaintiff's experts and by any master appointed by the court as to the foregoing elements of a remedial judgment and as to any particular zoning revisions or other stipulations within the legal authority of the defendant to render a realistic possibility, if such exists at all, for construction of Holmdel's fair share of such housing, and for assurance that any lower income housing constructed will be made available only to qualified lower income families and will not be resold or rerented to unqualified households. Revision of Holmdel's Development Regulations for the stated purpose has been drafted and ordinances have been introduced by the Township Committee.

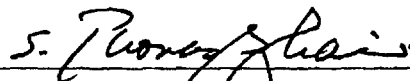
TENTH DEFENSE

1. The action is deficient as to parties under R.4:28-1. The court cannot determine fair share without

affording an opportunity to be heard thereon to all municipalities having growth areas in the region wherein Holmdel is situated. Said municipalities should be made parties to assure a just adjudication of the case.

GAGLIANO, TUCCI, IADANZA and REISNER, P.A.
Attorneys for Defendant Township of Holmdel

by



S. THOMAS GAGLIANO
A Member of the Firm