

Real Estate Equities v. Holmdeh ^{9/17}

(1984)

Pretrial Memo & IT

5 pgs

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JUDGE SERPENTELLI'S CHAMBERS

CARL S. BISGAIER
LINDA PANCOTTO

September 17, 1984

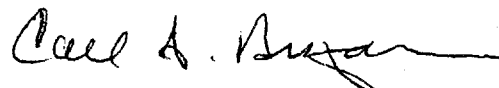
HONORABLE EUGENE D. SERPENTELLI, J.S.C.
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

Re: Real Estate Equities, Inc.
v. Holmdel Tp. (Dkt. #L-015209-84PW)

Dear Judge Serpentelli:

Enclosed please find original and two copies of
Pretrial Memorandum of plaintiff, Real Estate Equities, Inc.,
in regard to the above matter set down for Thursday, September 20,
1984.

Respectfully yours,


CARL S. BISGAIER

CSB:emm

Encls.

cc: Ronald L. Reisner, Esquire
J. Peter Sokol, Esquire
Douglas K. Wolfson, Esquire

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CARL S. BISGAIER, ESQUIRE
510 Park Boulevard
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(609) 665-1911
Attorney for Plaintiff

REAL ESTATE EQUITIES, INC., etc., : SUPERIOR COURT OF NEW JERSEY
Plaintiff, : LAW DIVISION
v. : MONMOUTH COUNTY/OCEAN COUNTY
: DOCKET NO. L-015209-84 PW
HOLMDEL TOWNSHIP, ETC., : Civil Action
Defendant. : (Mount Laurel)

NEW BRUNSWICK HAMPTON, INC., :
Plaintiff, :
v. : DOCKET NO. L-33910-84 PW
TOWNSHIP OF HOLMDEL, etc., :
Defendant. :

GIDEON ADLER, etal, etc., :
Plaintiff, :
v. : DOCKET NO. L- 54998-84 PW
HOLMDEL TOWNSHIP, etc. :
Defendant. : PRETRIAL MEMORANDUM OF REAL
ESTATE EQUITIES, INC.

1. NATURE OF ACTION: consolidated action in lieu of
prerogative writs under Mount Laurel II seeking declaratory and
injunctive relief. This action has been consolidated with other

actions raising similar issues regarding Holmdel Township. Plaintiff is seeking the appointment of a master to review its plans for the construction of a residential development containing low and moderate income housing.

2. ADMISSIONS AND STIPULATIONS: None
3. and 4. FACTUAL AND LEGAL CONTENTIONS: See Attached.
5. DAMAGES AND INJURY CLAIMS: None; however, plaintiff reserves its right to file a separate action arising out of actions undertaken by the Township and its officials related to this action. Resolution of those issues in this action is foreclosed by the exhaustion requirement imposed by statute.
6. AMENDMENTS: amend allegation "2" on page 3 of the complaint to reflect plaintiff's ownership of one hundred and nine (109) acres more or less.
7. ISSUES AND EVIDENCE PROBLEMS: Fair share (fair share time-frame; region; regional present and prospective need; indigenous need; fair share allocation); presumptive validity of AMG v. Warren; phasing compliance of the municipal land use plan under Mount Laurel II; impact of post-litigation zoning amendment on presumption of validity, burden of proof and site specific relief; site specific relief; prioritization among developer-plaintiffs for site-specific relief.
8. LEGAL ISSUES ABANDONED: None
9. EXHIBITS: Land Use Ordinances; Master Plan; State Development Guide Plan; expert reports; concept map of plaintiff's lands; land use map; zoning map; other exhibits to be determined.
10. EXPERT WITNESSES: Harvey Moscowitz, P.P.
11. BRIEFS: As determined by the court.
12. ORDER OF OPENING AND CLOSING: As determined by the court.
13. ANY OTHER MATTERS AGREED UPON: None

14. TRIAL COUNSEL: Carl S. Bisgaier, Esquire.

15. ESTIMATED LENGTH OF TRIAL: seven (7) days on fair share and compliance.

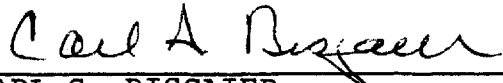
16. TRIAL DATE: October 15, 1984.

17. ATTORNEYS FOR PARTIES CONFERRED ON MATTERS THAN AGREED UPON: Attorneys for the parties have periodically met at status conferences with the court and have met and talked privately. There has been no agreement among counsel as to any issue.

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED EXCEPT: Plaintiff has received neither answers to Interrogatories nor complete expert reports. Plaintiff will submit a supplemental expert report on defendant's newly adopted zoning ordinance.

19. PARTIES WHO HAVE NOT BEEN SERVED: None

PARTIES WHO HAVE DEFAULTED: None



CARL S. BISGAIER
Attorney for Plaintiff

Dated: September 17, 1984

Real Estate Equities, Inc.
v. Tp. of Holmdel

ATTACHMENT

3. and 4. FACTUAL AND LEGAL CONTENTIONS: Plaintiff is the owner of approximately 109 acres of land in the defendant Holmdel Township. Plaintiff wishes to develop these lands for residential uses and to provide a substantial percentage of units for low and moderate income persons. The defendant's land use plan and zoning ordinance splits plaintiff's lands into two zones which provide for commercial use (50 acres) and residential use (50 acres). Plaintiff unsuccessfully sought a zoning change to permit its development and filed this litigation seeking Mt. Laurel II compliance and a builder's remedy. Thereafter, two additional lawsuits were filed which were consolidated due to the similarity of factual and legal issues. Defendant's land use plan and zoning ordinance as otherwise approved do not provide for defendant's provision of a realistic opportunity for the construction of its fair share of its region's low and moderate income housing needs. Defendant has zoned an insufficient amount of land for higher density uses and subject to a zoning scheme which will not produce sufficient low and moderate income housing. The zoning ordinance in effect when the complaint was filed was totally inimical to Mt. Laurel II. An ordinance purportedly adopted in August, 1984, is now under review by plaintiff's expert. With regard to the aforementioned claims, plaintiff seeks declaratory and injunctive relief, invalidating the land use plan and land use ordinances of the defendant, appointing a master to facilitate the adoption of appropriate land use ordinances and providing plaintiff with a builder's remedy, in accordance with its plans to build a residential development of 1836 units - a substantial percentage of which will be affordable to lower income households.