

New Brunswick-Hampton v. Holmedel

Pretrial Memo of TI

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(1984)

5 pgs

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GREENBAUM, ROWE, SMITH, RAVIN, DAVIS & BERGSTEIN

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September 19, 1984

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OF COUNSEL

REPLY TO:

ENGELHARD BUILDING


Hon. Eugene D. Serpentelli  
Superior Court of New Jersey  
Ocean County Court House  
CN 2191  
Toms River, NJ 08754

Re: New Brunswick-Hampton, Inc.  
vs. Township of Holmdel  
Docket No. L-33910-84 PW

Dear Judge Serpentelli:

Enclosed please find original and two copies of Pretrial Memorandum of plaintiff, New Brunswick-Hampton, Inc., in regard to the above matter. The pretrial conference is scheduled for Thursday, September 20, 1984.

Respectfully submitted,

  
Douglas K. Wolfson

DKW/cm

cc: Ronald L. Reisner, Esq.  
J. Peter Sokol, Esq.  
Carl S. Bisgaier, Esq.

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New Brunswick-Hampton, Inc.

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REAL ESTATE EQUITIES, INC., etc.:	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	MONMOUTH COUNTY/OCEAN COUNTY
vs.	:	DOCKET NO. L-015209-84 PW
HOLMDEL TOWNSHIP, ETC.,	:	Civil Action
Defendant.	:	(Mt. Laurel)
-----:	:	
NEW BRUNSWICK HAMPTON, INC.,	:	
Plaintiff,	:	DOCKET NO. L-33910-84 PW
vs.	:	
TOWNSHIP OF HOLMDEL, etc.,	:	
Defendant.	:	
-----:	:	
GIDEON ADLER, et al, etc.,	:	
Plaintiff,	:	DOCKET NO. L-54998-84 PW
vs.	:	
HOLMDEL TOWNSHIP, etc.,	:	
Defendant.	:	PRETRIAL MEMORANDUM OF NEW BRUNSWICK HAMPTON, INC.

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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

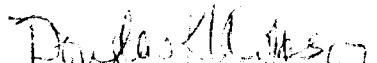
raising similar issues regarding Holmdel Township. Plaintiff is seeking the appointment of a master to review its plans for the construction of a residential development containing low and moderate income housing.

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: None
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; Time of Decision rule; impact of post-litigation zoning amendment on presumption of validity, burden of proof and Builders Remedy; 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: Schwartz and Associates - Peter Ables and/or Geoffrey Weiner.
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: Douglas K. Wolfson, Esquire.
15. ESTIMATED LENGTH OF TRIAL: Two (2) weeks.
16. TRIAL DATE: October 15, 1984
17. ATTORNEYS FOR PARTIES CONFERRED ON MATTERS AND 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 will be providing expert reports and answers to Interrogatories. Plaintiff may submit a supplemental expert report on defendant's newly adopted zoning ordinance, depending upon the court's determination regarding defendant's ability to rely upon said ordinance. This plaintiff hereby reserves the right and intends to seek judicial determination regarding which ordinance will be tried by the court on the issue of compliance with Mt. Laurel II.

19. PARTIES WHO HAVE NOT BEEN SERVED: None

PARTIES WHO HAVE DEFAULTED: None

  
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DOUGLAS K. WOLFSON, ESQ.,  
Attorney for the Plaintiff,  
Brunswick-Hampton, Inc.

Dated: September 18, 1984

GREENBAUM, ROWE, SMITH, RAVIN,  
DAVIS & BERGSTEIN  
COUNSELLORS AT LAW

ATTACHMENT

3. and 4. FACTUAL AND LEGAL CONTENTIONS: Plaintiff, New Brunswick-Hampton, Inc., is the contract purchaser by assignment of two (2) parcels of land in the defendant Holmdel Township; one parcel of approximately 107 acres and a second parcel of approximately 87 acres. Plaintiff wishes to develop these lands for residential uses and to provide a substantial percentage of units for low and moderate income persons. Both of plaintiff's parcels are within the R-40A residential and agricultural district which permits single family detached dwellings on minimum lots of 43,000 square feet. Both parcels are within the SDGP growth area and are well suited for the high density residential development which renders feasible construction of units affordable to low and moderate income households. Plaintiff seeks to build 428 single family homes at a density of approximately 4 units per acre on the 107 acre tract and 1,218 apartment units at a density of 14 units per acre on the 107 acre tract. Defendant's land use plan and zoning ordinance as 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 1,646 units, of which 329 will be affordable to low and moderate income households.

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