

Palmer Ass. v. Holmdel

9/20

(1984)

Pre-trial ~~memorandum~~ memo for TT

5 pgs

ML000096D

McOMBER & McOMBER

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
54 SHREWSBURY AVENUE

RED BANK, NEW JERSEY 07701

RICHARD D. McOMBER
ADRIENNE HAROUTUNIAN McOMBER

THOMAS J. WARREN
JEFFREY M. NOLEN
J. PETER SOKOL

AREA CODE 201
842-6500

September 20, 1984

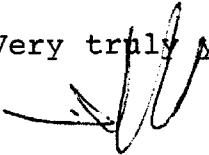
The Honorable Eugene D. Serpentelli, J.S.C.
Ocean Court Court House
CN 2191
Toms River, NJ 08754

Re: Palmer Associates vs. Holmdel Township
Docket No. L-54998-84 PW
Our File No. 3900

My Dear Judge Serpentelli:

Enclosed herewith please find an original and two copies of Pre-Trial Memorandum of plaintiff, Gideon Adler, in regard to the above-captioned matter which is set down for Thursday, September 20, 1984.

Very truly yours,


J. PETER SOKOL

JPS/amd
Enclosures

cc: Bisgaier & Pancotto, Esqs.
Attention: Carl S. Bisgaier, Esq.
Gagliano, Tucci, Iadanza & Reisner, Esqs.
Attention: Ronald L. Reisner, Esq.
Douglas K. Wolfson, Esq.
Mr. John R. Fiorino, Sr.

ML000096D

McOmbler & McOmbler
A Professional Corporation
54 Shrewsbury Avenue
Red Bank, NJ 07701
(201) 842-6500
Attorneys for Gideon Adler.

REAL ESTATE EQUITIES, INC., etc., : SUPERIOR COURT OF NEW JERSEY
Plaintiff, : LAW DIVISION
vs. : MONMOUTH COUNTY/OCEAN COUNTY
HOLMDEL TOWNSHIP, etc., :
Defendant. : Docket No. L-015209-84 PW
: CIVIL ACTION
: (MOUNT LAUREL)

NEW BRUNSWICK HAMPTON, INC., :
Plaintiff, :
vs. : Docket No. L-33910-84 PW
TOWNSHIP OF HOLMDEL, etc., :
Defendant. :

GIDEON ADLER, et al, trading under:
the name of Palmer Associates :
Plaintiff, :
vs. : Docket No. L-54998-84 PW
HOLMDEL TOWNSHIP, etc., :
Defendant. : PRE-TRIAL MEMORANDUM
: OF GIDEON ADLER

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 attachment.
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 at this time.
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 vs. 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: Carl E. Hintz, PP, AICP, ASLA, of Hintz/Nelessen Associates, P.C., 12 North Main Street, Pennington, NJ 08534.
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: J. Peter Sokol, Esq. of McOmber & McOmber, P.C.
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. (This party has been recently consolidated into the action and is at present unaware of any such conferences.)
18. IT IS HEREBY CERTIFIED THAT ALL PRE-TRIAL DISCOVERY HAS BEEN COMPLETED EXCEPT: Because of the late date of consolidation, this party does not anticipate the submittal of Interrogatories. Plaintiff will submit its expert report in accordance with the Court Order by September 24, 1984. It is anticipated that certain depositions of experts may be taken.
19. PARTIES WHO HAVE NOT BEEN SERVED: None.
- PARTIES WHO HAVE DEFAULTED: None.

McOmber & McOmber
A Professional Corporation
Attorneys for Gideon Adler

By: 

J. PETER SOKOL, ESQ.

Dated: September 19, 1984

ATTACHMENT

3 and 4.

FACTUAL AND LEGAL CONTENTIONS:

Plaintiff is the owner of a parcel of land located in Holmdel Township, designated as Block 52, Lot 19 on a Tax Map of Holmdel Township and consisting of approximately 26 acres of land, hereinafter referred to as "Palmer Square." Plaintiff desires to develop the Palmer Square acreage to provide for low and moderate income housing units. The defendant's original land use plan and zoning ordinance effectively prohibits the development of Palmer Square in order to provide for units for low and moderate income persons. The litigation instituted by the plaintiff, now consolidated with other suits against the Township of Holmdel, seeks permission to develop its property in accordance with Mount Laurel II and Mount Laurel I. The original land use plan and zoning ordinance of the Township of Holmdel does not provide a realistic opportunity for the construction of its fair share of the region's low and moderate income housing needs. The zoning ordinance is exclusionary and is in direct opposition to the existing Mount Laurel precedent. The ordinances adopted in August of 1984 are similarly exclusionary. Plaintiff seeks declaratory and injunctive relief invalidating the use plan and land use ordinances of the defendant, the original and recently adopted plans and ordinances. Plaintiff also seeks the appointment of a master to facilitate the adoption of appropriate land use ordinances and to provide a builder's remedy to the plaintiff in accordance with its plans to develop Palmer Square.