

Real Estate Equities v. Holmdel

(1984)

Pretrial order

9/20

7 pgs

ML 0000970

PRETRIAL ORDER

Pretried by Judge SERPENTELLI

on (date) 9/20/84

Reporter C. WOLGAST

SUPERIOR COURT OCEAN COUNTY LAW DIVISION

DOCKET NO. L-15209-84 P.W.

REAL ESTATE EQUITIES,

CALENDAR NO. _____

COMPLAINT FILED _____

PLAINTIFF,

VS.

TOWNSHIP OF HOLMDEL,

DEFENDANT.

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

1. Prerogative writs seeking Mount Laurel relief.
2. Adoption of comprehensive zoning ordinance 84-7 on August 27, '84. The adoption of Master Plan of 1980. SDGP classification is both growth and limited growth.
 - d. Real Estate equities of PQ classified as growth;
 - e. New Brunswick - Hampton PQ classified as growth;
 - f. Palmer Assocs. PQ classified as growth;
- 3-4 See attached.
5. None.
6. Plft Real Estate Equities amends allegation two on page 3 of its complaint to reflect ownership of 109 acres.
7. a. What is twp's fair share; (region, regional need and location)
 - b. Do ordinances of twp comply with Mount Laurel II;
 - c. Are the plfts intitled to builder's remedy;
 - d. If the remedy sought exceeds fair share allocation, can a greater fair share be assesed;
 - e. If the answer to d. is no, how should the fair share be located to any plft receiving a remedy;

- f. What percentage of low and moderate units must be built by plf;
- g. What is the definition of median income for affordability

purposes;

h. May the present and/or prospective need be phased for compliance purposes;

i. For the purposes of determining ~~the~~ whether plfts are entitled to a builder's remedy, does ordinance in effect at time of trial or the ordinance in effect at the time of filing of complaint affect that decision; (time of decision rule)

7.

8. None.

9. a. All land use regulations fo the twp;

b. Master Plan of the twp;

c. SDGP, HAR, consensus report of April 2, 1984 and CUPR report

d. Concept maps of plfts;

e. Expert reports of all parties.

10. a. Harvey Moskowitz - Real Estate Equities; Peter Abeles or Jeffrey Weiner - New Brunswick-Hampton; Carl Hintz - Palmer Assocs.

d. William Fitzgerald, William Queale, Michal Walsh, Edwin Mills, Malcolm Kasler.

11. Briefs on time of decision rule shall be filed at a date to be set by the court.

12. Usual.

13. None.

14. a. Real Estate Equities, Carl S. Bisgaier;

b. New Brunswick-Hampton, Douglas ~~xxxxxxx~~ K. Wolfson and Jeffr

R. Surenian;

c. Palmer Assocs. - J. Peter Sokol;

d. Twp of Holmdel - Ronald Reisner, S. Thomas Gagliano;

15. Five days for fair share.

16. October 15, 1984.

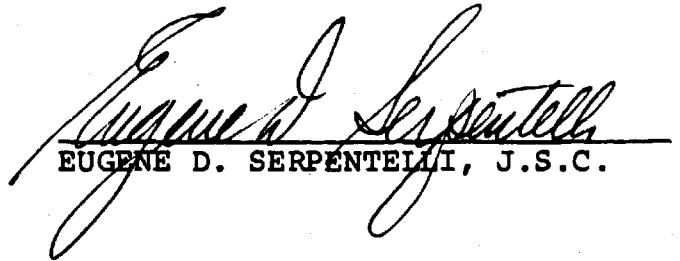
**17. All expert reports and interrogatories to be exchanged and filed with the court by October 1, 1984.

18. ~~Twpxxxxxxx~~ The ordinances in effect prior to Ordinance 84-7 do not comply with Mount Laurel so that the initial phase of the trial shall be limited to fair share allocation;

The second phase fo the trial, at a date to be set by the court, shall relate to the compliance of Ordinance 84-7 and any other ordinances adopted in the 90 day revision period. Twp reserves its right to contend that based upon adoption of Ordinance 84-7, should it be found to be compliant, that the plft is not entitled to a builder's remedy.

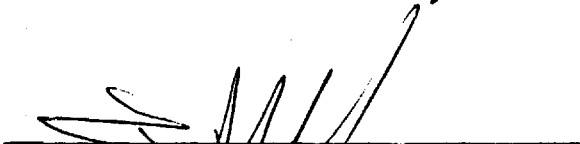
** All depositions to be completed October 10, 1984.

. . . L-15209-84 PW


EUGENE D. SERPENTE, J.S.C.


REAL ESTATE EQUITIES


NEW BRUNSWICK-HAMPTON, INC.


PALMER ASSOCIATES


TOWNSHIP OF HOLMDEL

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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.

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NEW BRUNSWICK-HAMPTON, INC.

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.

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

Palmer Ass

3 B

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.

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FACTUAL AND LEGAL CONTENTIONS
AND LEGAL ISSUES OF
DEFENDANT HOLMDEL TOWNSHIP

- 4(a). Ordinance 84-7 satisfies the defendant's obligation and provides a realistic opportunity for building its fair share of low and moderate income housing.
- (b). The number of units which should constitute the defendant's fair share are set forth in the expert's reports and outline both prospective needs and the present indigenous need for 1980-1990.
- (c). The defendant's determined "fair" share should include thorough consideration of the Township's water and sewer capacities.
- (d). Plaintiff has not presented defendant with specific particulars of its plans for constructing and financing the proposed low and moderate income housing.
- (e). Any construction of proposed multi-unit high density housing should be achieved in stages to prevent excessive, rapid population increases and to render feasible the provision of necessary infrastructure.
- (f). The legal issue to be tried is whether the introduction and passage of an ordinance after the filing of plaintiff's complaints can be utilized by the Court to determine the issue of compliance.
- (g). The issues relating to builders remedy are reserved pursuant to the Order of the Court of August 23, 1984.

7. LEGAL ISSUES AND EVIDENCE PROBLEMS:

Determination of fair share for Township Defendant: Determination of regional present and prospective need and compliance of Ordinance 84-7 with the Mount Laurel II decision.