

Holmdel

1984

11/30

Letter in lieu of formal brief re motion
Attn: Enclosures (not enclosed)

pgs. 3

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GAGLIANO, TUCCI, IADANZA AND REISNER

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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S. THOMAS GAGLIANO
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RONALD L. REISNER
FRANK J. FISCHER

November 30, 1984

Honorable Eugene D. Serpentelli
Judge of the Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

Please accept this letter in lieu of a more formal Brief with respect to our motion in the above referenced matter. You may recall at the conclusion of the fair share trial we objected to the appointment of a master on the terms outlined by the Court which were then embodied in the Order of November 9, 1984. The thrust of that objection was essentially that the use of a master at the Township's expense to provide a fifth set of numbers for fair share was repetitive and that to now delve into site evaluation prior to compliance rulings of the Court prematurely establishes the plaintiffs' rights to a builder's remedy. Although my objection was not so artfully phrased on the record at the end of the proceedings in view of the late hour, the objection to the appointment of the master at the time was made. We would simply ask

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that the Court reconsider the site evaluation at this time, for if the Township's position of providing a compliant ordinance and its position regarding "the time of decision" rule are upheld, plaintiffs would be denied a builder's remedy. To compel the Township to pay for a master at this time is simply unfair and unjustified.

The Mt. Laurel decision outlines the use and powers of a master in such litigation. 92 N.J. at 280-285. The Supreme Court requires payment of the master by the municipality. 92 N.J. at 281 n. 38. The Court may recall at the pretrial, we sought to have the fair share and compliance issues with respect to the newly enacted ordinance tried at the same time. The Court ruled that the proceedings should occur in accordance with a master and then builder's remedy. The effect of the Court's order is to disrupt that order, and we submit the Court should reconsider the order of November 9 to delete site evaluation at this time.

Respectfully submitted,

S. Thomas Gagliano
Township Attorney


By: Ronald L. Reisner

RLR:db

cc: Carl Bisgaier, Esq.
J. Peter Sokol, Esq.
Douglas K. Wolfson, Esq.
Mr. Richard T. Coppola

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Honorable Eugene D. Serpentelli
Judge of the Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Re: Real Estate Equities, Inc. vs. Holmdel Township
Docket No. L-15209-84 PW
Our File No. T2139
Your File No.

Dear Judge Serpentelli:

We enclose the following:

- | | |
|--|---|
| <input type="checkbox"/> Complaint/Answer | <input type="checkbox"/> Interrogatories |
| <input type="checkbox"/> Summons | <input type="checkbox"/> Answers to Interrogatories |
| <input type="checkbox"/> Stipulation | <input type="checkbox"/> Statement of Damages |
| <input checked="" type="checkbox"/> Notice of Motion | <input type="checkbox"/> Deed |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Mortgage/Note |
| <input checked="" type="checkbox"/> Brief | <input type="checkbox"/> Return Envelope |
| <input checked="" type="checkbox"/> Order- proposed | <input type="checkbox"/> Check in the sum of \$ |
| <input type="checkbox"/> Other: | |

Would you please:

- | | |
|--|--|
| <input type="checkbox"/> File & return copy | <input type="checkbox"/> Charge our account \$ |
| <input type="checkbox"/> Sign and return | <input type="checkbox"/> Retain for your file |
| <input type="checkbox"/> Record and return | <input type="checkbox"/> Serve upon |
| <input checked="" type="checkbox"/> Other: Please list for disposition for December 14, 1984
in accordance with Rule 1:6-2. | |

Very truly yours,

Gagliano, Tucci, Iadanza and Reisner



By Ronald L. Reisner

RLR:db

Enclosures

- cc: Ocean County Court Clerk - w/enc.
Carl Bisgaier, Esq. - w/enc.
J. Peter Sokol, Esq. - w/enc.
Douglas K. Wolfson, Esq. - w/enc.
Mr. Richard T. Coppola - w/enc.