

Holmdel

1984

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Letter to Judge re

Plaintiff Response to Defendant's motion to modify
Prior order

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December 11, 1984

HONORABLE EUGENE D. SERPENTELLI, J.S.C.
Ocean County Court House
118 Washington Street
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

This is in reply to the defendant's motion to modify your prior order in the above-referenced matter. At issue is whether the master should now review suitability of the plaintiff's sites and whether the defendant should be required to pay the master for that review now. Defendant's theory seems to be that since its August 1984 ordinance has not been invalidated, it is premature to consider the builder's remedy issues. This position is contrary to the pre-trial order and, if upheld, would significantly prejudice the plaintiffs.

The compliance stage of this case is over but for the rendering of your opinion on fair share. There was no hearing on ordinance validity only because of the defendant's strategy determination not to present the August 1984 ordinance during the compliance phase. It agreed to acknowledge the invalidity of its pre-August ordinance. It determined to withhold review of the August 1984 ordinance until after your fair share determination so as to then evaluate whether it should modify that ordinance before presenting it to you.

We do not now know what ordinance the defendant will present in the remedy stage; regardless, it will be in that stage. The defendant cannot have it both ways. It cannot withhold ordinance review to the remedy stage and also argue that plaintiffs are not now entitled to site suitability consideration. If this strategy had been known to me at the time of the pre-trial, I would have insisted on review of the August 1984 ordinance during the compliance phase.

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Re: Real Estate Equities v. Holmdel Tp.

Once fair share is determined and lack of compliance of the pre-August 1984 ordinance conceded, the compliance phase is over. Plaintiffs then are entitled to site suitability review. The court's order granting review in anticipation of its fair share ruling was based upon these facts and was appropriate. Defendant's motion for reconsideration is out of time, inconsistent with its strategy decision at the pre-trial conference, unfair and unreasonable.

Defendant's objection to the master's report on fair share is also inappropriate. Mount Laurel II clearly anticipates the court utilizing such an expert for this purpose.

Respectfully yours,



CARL S. BISGAIER

CSB:emm
Federal Express

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