

Holmdel

1984

12/12

letter to Judge in response letter brief in opposition
Attn: Pre-trial Order

pgs. 4

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December 12, 1984

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

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

Dear Judge Serpentelli:

We received Mr. Bisgaier's letter of December 11, 1984 today with respect to the motion for reconsideration. We submitted the motion under R. 1:6-2 on the papers and do not request oral argument.

The first four paragraphs of the letter of December 11th read as if counsel were referring to some other case. The statement that the "compliance stage of this case is over" is simply outrageous.

Attached for the Court's convenience is a copy of the actual pre-trial order which, in paragraph 18, states:

"The second phase of the trial, at a date set by the court, shall relate to the compliance of Ordinance 84-7 and any other ordinances adopted on 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 pltf is not entitled to a builder's remedy."

A review of the legal issues set forth in the Pre-Trial Order reveals that the first phase of the trial concerns only issue 7a and no others. There is absolutely no basis whatsoever for the plaintiff's counsel to assert that the compliance stage of this is "over."

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Never in my twelve years of practice in this State have I seen such an outrageous argument presented to the Court in view of the absolutely clear and unmistakable language of the Pre-Trial Order.

The Court properly ruled at the Pre-Trial that this matter would proceed in an orderly fashion; that is, trials on the issues of fair share, compliance and builder's remedy in sequence. As set forth in our lett -memorandum of November 30, any other procedure employed by the Court would disrupt that order. Accordingly, our motion should be granted.

Respectfully,

S. THOMAS GAGLIANO,
Township Attorney


By: Ronald L. Reisner

RLR/pm
Enclosure

cc: Carl S. Bisgaier, Esq.
J. Peter Sokol, Esq.
Douglas K. Wolfson, Esq.

PRETRIAL ORDER

Pretried by Judge STEPHEN J. ELLI

on (date) 9/20/84

Reporter C. WOLCAST

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. Plt 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 allocation)
 - 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 assessed;
 - e. If the answer to d. is no, how should the fair share be allocated 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 for 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. Disgaler;
b. New Brunswick-Hampton, Douglas ~~xxxxxxx~~ K. Wolfson and Jeffrey R. Surenian;
c. Palmer Assocs. - J. Peter Sokol;
d. Twp of Holmdel - Ronald Reisher, 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. ~~xxxxxxx~~ 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 of 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.