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Real Estate Equities v. Holmdel Twp

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(1985)

Acknowledgment of Ct's request for letters
memoranda from counsel

4 pgs

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January 2, 1985

Honorable Eugene D. Serpentelli
Judge of the Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

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

Dear Judge Serpentelli:

We acknowledge receipt of the Court's letter of December 26, 1984 in the above-referenced matter. We also received the Master's Report on December 26, 1984.

We note the Court's request for letter memoranda from counsel.

Our initial review of the Master's Report raises several issues, not the least of which are some very fundamental errors affecting the Master's conclusions. For example, in Table 1 to Appendix A, the report calculates the identical mileage from the Parkway exit to both the Ocean County border and the Union County border at 21.5 miles, a figure which is obviously incorrect. The time stated to Ocean County is 25.8 minutes, while the time to Union County is 22.2 minutes. Obviously, some of these figures are erroneous. More importantly, the mileage is calculated from Exit 116, an exit which at the present time is not open to vehicles. That proposed exit is contemplated through the existing roadways of the Garden State Arts Center. The opening of such an exit will create severe traffic hazards within Holmdel Township which is now utilizing every available means to prevent the proposed exit.

Another example is the 58.3% figure stated on page 14 of the Master's findings with respect to present need reallocated. No exact basis for that figure is stated and, as we understand it, the purpose of further inquiry to Dr. Burchell is directed to a more precise inquiry regarding the consensus method's use

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of the 82% figure derived from the Tri-State Study. It became obvious from all of the testimony before the Court that the Tri-State percentage required further scrutiny, yet no basis is provided in the report for the Master's conclusions.

These are but two examples of areas that require further investigation from the Master's Report. Upon complete review by our experts, surely there will be others.

We are not certain exactly how the Court intends to proceed from this point with respect to the Master's findings, but we believe the proper course is to have the Master inform the Court, under oath and subject to cross-examination, of his findings with respect to fair share. See Mt. Laurel II, 92 N.J. at 284 (copy attached).

It may also be appropriate for the Court to receive Dr. Burchell's testimony with respect to present need, as well as the consensus methodology, either as the Court's witness or as Holmdel's witness. Dr. Burchell, on December 10, 1984, issued an extensive report concerning the consensus method which was not available at the time of the testimony in October. If the Court and counsel have not yet obtained a copy of that report, we would be able to supply same.

Therefore, we would respectfully request that the Court set a hearing date to receive the testimony of the Master and Dr. Burchell, and we are filing a motion to request such relief at this time.

Please accept this letter in lieu of a more formal brief in support of our motion and also in response to the Court's request of December 26, 1984.

Respectfully,

S. Thomas Gagliano
Township Attorney


By: Ronald L. Reisner

RLR/pm
Enclosure

cc: Carl S. Bisgaier, Esq. (w/encl)
Douglas K. Wolfson, Esq. (w/encl)
J. Peter Sokol, Esq. (w/encl)
Scott Jamison, Esq. (w/encl)

activities, while the use of special masters is a relatively new remedial device.

The special master may also free the court from unwise direct over-involvement in the revision of the zoning ordinance, saving the court's time and eliminating the need for the court to develop even greater expertise in the intricacies of land use regulation. The municipality receives the assistance of an expert in the zoning field to aid in its revision process. Obviously the court must select a planning expert who has had no previous connection with the litigation.

[74, 75] The master will work closely not only with the governing body but with all those connected with the litigation, including plaintiffs, the board of adjustment, planning board and interested developers. He or she will assist all parties in discussing and negotiating the requirements of the new regulations, the use of affirmative devices, and other activities designed to conform to the *Mount Laurel* obligation. The parties will presumably give the master's suggestions great weight, since the revised ordinance will be submitted to the master for his or her review and recommendations prior to its submission to the court. During the course of the revision process, the master will report periodically to the court on the progress of the revision process. At the end of the 90 day period, on notice to all the parties, the revised ordinance will be presented in open court and the master will inform the court under oath, and subject to cross-examination, whether, in his or her opinion, that ordinance conforms with the trial court's judgment. That opinion, however, is not binding on the trial court. The master's powers are limited to rendering opinions, proposing findings, issuing recommendations, and assisting the court in other similar ways as it may direct.⁴⁰ See, e.g., *Fidelity Union Trust Co. v. Ritz Holding Co.*, 126 N.J.Eq. 148 (Ch. 1939). It is the trial court

⁴⁰Given the sensitive nature of the function, the master should not communicate privately with the court.

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ATTORNEYS FOR DEFENDANT
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
Docket No. L-15209-84 PW

REAL ESTATE EQUITIES, INC.,
et al,

Civil Action

Plaintiff,

ORDER FOR HEARING DATE FOR
MASTER'S TESTIMONY AND FOR
ADDITIONAL TESTIMONY

HOLMDEL TOWNSHIP, et al,

Defendants.

This matter having been opened to the Court by Gagliano,
Tucci, Iadanza and Reisner, Esqs., attorneys for defendant, Holmdel
Township, and the Court having considered the Motion and Brief in
support thereof;

IT IS on this day of , 1985, ORDERED that
the Master, Richard T. Coppola, submit his findings on the issue of fair
share to this Court by testimony, subject to cross-examination on the
day of , 1985; and

IT IS FURTHER ORDERED that the testimony of Dr. Robert W. Burchell be presented to the Court on the day of , 1985.

EUGENE SERPENTELLI, J.S.C.

PAPERS CONSIDERED:

Notice of Motion:

Movant's Affidavits:

Movant's Brief:

Answering Affidavits:

Answering Brief:

Cross-Motion:

Movant's Reply:

Other:

Docket No. L-15209-84 PW