

Adler v Holmdel Twp.

21 March 1986

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Motion to assume water supply to
Constant housing.

PI # 5192

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March 21, 1986

Honorable Eugene Serpentelli
Superior Court of New Jersey
Court House Ocean County
CN-2191
Toms River, New Jersey 08753-57

RE: Adler v. Holmdel Township

Dear Judge Serpentelli:

This motion is made pursuant to the Supreme Court decision in Hills Development Company v. Township of Bernards on February 20, 1986 to protect scarce water resources in Holmdel Township pending substantive certification by the Affordable Housing Council. The purpose of the motion is to assure that there will be at least some water supply available for Mount Laurel developers to construct low and moderate income housing.

This Court held a detailed fair share hearing in this matter in the fall of 1984. Holmdel Township called as a witness in that hearing Michael P. Walsh, the executive vice president and general manager of the West Keansburg Water Company. The water company provides water service in northern Holmdel. As the attorney for Holmdel informed the Court, the West Keansburg service area "almost exactly, but not precisely, covers the growth area in Holmdel Township". Transcript October 24, 1984, page 12:10-12.

Walsh concluded in 1984 that West Keansburg had sufficient unreserved water capacity to handle approximately 500 additional single-family detached units. Transcript supra 34:20-23. Walsh testified that Keansburg was close to reaching capacity under its existing diversion permit. Walsh stated that the problem which the water company faced was its inability to get permission from the Department of Environmental Protection to divert additional water from the

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aquifer. The Department concluded that the aquifer in northeast Monmouth County region is overtaxed and cannot support any additional diversion beyond which is presently allowed. Indeed, D.E.P. was threatening to reduce its allocation. Transcript p. 32-12 to 33-12.

As indicated by the attached Acquaviva affidavit, the water situation has deteriorated since Walsh's testimony. Keansburg's position is that it presently has unreserved capacity for only 300 single family detached units. Moreover, it has received a directive from the New Jersey Department of Environmental Protection ordering it to reduce its diversion allocation from the aquifer by 50% as soon as possible, but no later than completion of the Manasquan River project. The Manasquan River project is expected to produce 500,000,000 g.p.d. of water in 1990 or 1991, but according to the terms of the bond issue it will all be used to replace water which is being diverted from the aquifer by Monmouth County water companies. In view of the state's position, Keansburg has no plans as to how or when it will be able to provide a water supply to new customers, once its existing capacity is exhausted. Acquaviva affidavit, paragraph 4-7.

Acquaviva's affidavit concludes that units in Mount Laurel inclusionary developments utilize much less water than conventional single-family developments. See also Transcript 40-12 to 41:9. He concludes that if Keansburg's remaining uncommitted water supply is reserved for Mount Laurel inclusionary developments, there would be sufficient water capacity for 500 to 600 inclusionary units, thus providing at least 100 to 120 low and moderate income units.

West Keansburg requires any applicant for water to have Planning Board approval before coming to it. If business as usual prevails before the Holmdel Township Planning Board, approvals will be given for conventional single family developments. These developments will proceed to use up the remaining scant water capacity, leaving Mount Laurel developers and potential Mount Laurel households with no source of water in the foreseeable future.

The Supreme Court asks the trial court in this type of motion to focus on whether the use of scarce resources "is likely to have a substantial adverse impact on the ability of the municipality to provide lower income housing in the future". Hills, supra at 87. The facts that were established before this Court by Holmdel's own witness, Mr. Walsh, graphically indicate that water limitations will likely produce a substantial adverse impact on low income housing in Holmdel. Acquaviva's affidavit further confirms that if a protective order is not issued, no water will be available.

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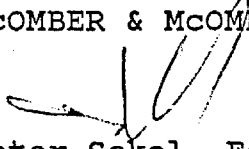
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If all of the water available for development in the growth area in Holmdel is used up before the Affordable Housing Council reaches its decision as to substantive certification for Holmdel, the entire process before the Affordable Housing Council will be meaningless. It seems likely from Walsh's testimony that Holmdel in any event will be unable to meet whatever fair share the Council gives it because of its water shortage. A protective order would mean, however, that there will be water supply to permit the construction of at least 100 to 120 Mount Laurel units in inclusionary developments.

For this reason, the applicants ask this Court to enter an order prohibiting any approval or developments by the Holmdel Planning Board if the applicant will get his source of water from West Keansburg. Such order should exempt Mount Laurel developers providing at least 20% low and moderate income housing, and should expire when Holmdel obtains substantive certification.

Respectfully submitted,

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