Mount Laurel II General

Year unknown

Memorandum from Payne re: summary of certain Township Resolution

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Interdepartmental Communication

MEMORANDUM

To:

From: John Payne

Enclosed, as I promised , are copies of our settlements in the Urban League case. I cannot vouch that in every one the absolutely final language changes are included, but they all absolutely reflect the general shape of the agreement. Herein some background and comments about each one.

The original case involved seven municipal defendants when it came back from the Supreme Court -- East Brunswick, Cranbury, Monroe, Plainsboro, South Brunswick, Piscataway and South Plainfield. As we got going on it during the fall, we discovered that two additional towns -- North Brunswick and Old Bridge -- had neither appealed Judge Furman's original order nor obtained an order of compliance from him. Accordingly, we moved to bring them back into the case and Judge Serpentelli agreed. Because of the delay in naming them, however, he decided to try that portion of the case separately; thus, we had a trial date of March 19 on the basic seven, and July 2 for North Brunswick and Old Bridge. The March 19 trial did not actually begin until early May (Warren Township held us up) and was fully tried by Cranbury, Monroe and Piscataway, since none of them settled. Both North Brunswick and Old Bridge settled in advance of trial, early in July.

East Brunswick settled first. The town was anxious to do so and was very cooperative; the settlement was presented to the court on the first day of trial. The key to this settlement is that it covers all of the large buildable sites left in East Brunswick in the growth zone; all have identified builders prepared to proceed on a set-aside basis. We agreed to the town's format of a 5% set-aside plus density bonusses, but with a backup requirement that the mandatory set aside be increased if low/mod housing targets were not achieved voluntarily. The contingent MMH zone was a last minute crisis, stemming from the fact that the original MMH zone is owned by the Archdiocis of Metuchen, which kept changing its mind about whether it was willing to sell for development.

South Brunswick has a lot of land. The problem here was finding politically acceptable sites, and those identified

as we negotiated.
changed a lot/ This is probably the most conventional settlement, and the biggest risk for us is that some of the sites do not have specific developers identified. On the other hand, we got a fair share number that was closer to what our expert's was than in East Brunswick. Note the use of some Farm Home subsidies for part of the fair share. Note also the "intermediate moderate" category of affordability, which was intended to assure that housing would not cluster at the high end of the moderate income category.

South Plainfield had a large fair share and no hope of meeting it because it had almost no vacant land. Thus, like East Brunswick, this was a "build-out" settlement. A significant feature is the township's contribution of land and infrastructure from a municipally-owned site to help reduce costs. For political reasons, South Plainfield was unable to settle voluntarily. Hence, we negotiated a stipulation of fact, that covered both fair share and site-specific remedies, and then the Urban League moved for summary judgment on the basis of the stipulation (we did insist, however, that the Township Committee fully understand that the "stipulation" was in effect a settlement). As a result, the judge "ordered" compliance rather than South Plainfield voluntarily agreeing to it.

Plainsboro. Plainsboro has had enormous growth in recent years, through a 5,000+ unit planned development called Princeton Meadowns. As a result, the town wanted to avoid any further building if possible, and the settlement provides that almost all of the fair share would be accomplished by "retrofitting" -- converting existing units into units whose affordability is controled. This has the advantage of speed - conversion can begin immediately. It also achieves the fair share without overbuilding, a matter of serious concern when you start to add up the number of market-rate units that must be build and sold profitably to attain the desired number of low and moderate income units. The principal risk in this settlement is that some displacement will occur in the condo conversion process, which may generate political heat. Post-settlement, we have continued to work on minimizing this, however.

North Brunswick involved settlement with a builder as well as the Urban League, and the major stumbling block was balancing residential and commercial development on the developer's site. Because this settlement was struck on the eve of trial, it has a number of "agree to agree" features that were not necessary in the earlier deals.

Old Bridge produced the fascinating footnote that Oakwood at Madison has never been built (although it may as a result of our settlement). The major factor here was that Olympia and York, the largest developer on the continent, owns

approximately one quarter of Old Bridge and has proposed a planned development of some 12,000 units, to be built over the next twenty years. A second developer joined the litigation with a 6,000 unit proposal. The settlement here is very sketchy -- just enough to avoid the trial date -- and we are now in the process of meeting with the town and the two developers to hammer out a site specific deal. It presents an interesting problem of trying to accomodate the six-year time frame of Mount Laurel repose to very long term development scenarios.

Just to round things out, here is the status of each of the remaining three towns:

Monroe discussed settlement but was unable to proceed seriously because of intractable political opposition to doing so. Monroe has lots of land and is chockablock with retirement communities. Judge Serpentelli has now ruled them in non-compliance and referred the case to a master.

Cranbury has also been found in non-compliance and referred to a master. Cranbury litigated the case vigorously but probably would have settled, but for the fact that four builder-plaintiffs were consolidated, with a total building capacity well in excess of any likely fair share. In the remedial proceedings before the master this fall, the major issue (which will probably have to be appealed) will be apportioning remedies amongst the builders entitled to a builder's remedy. Cranbury also had a TDR ordinance that was due to be tried as part of this case, but that has been deferred because of the pending Centex case in the Supreme Court.

Piscataway fought us vigorously all the way and made no serious effort to settle. Because of I-287, it has had explosive office-park development in recent years, and this sent its fair share very high (almost 4,000 units). It has insufficient vacant land to meet this obligation, and the judge has held off on establishing a fair share number while his expert reports on how much land is useable. We expect that decision early in the fall. Piscataway is also notable because we succeeded in enjoing their planning board from approving any development applications on vacant and useable land until the conclusion of the litigation, to prevent vesting of non-residential rights in private developers. That was an interesting argument.

I hope these documents will be useful. Please let me know if I can answer any further questions about any of them.

jmp