

ML - Cranbury

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Garfield vs. Cranbury

Complaint in Lieu of Prerogative Writ

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SUPERIOR COURT
MIDDLESEX COUNTY
NEW JERSEY

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Vr. L. ...

L-055S5E-B3

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Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

DOCKET NO. L- P.W.

CIVIL ACTION

GARFIELD & COMPANY, a
New Jersey Partnership,

Plaintiff,

vs.

COMPLAINT IN LIEU OF
PREROGATIVE WRIT

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF CRANBURY,
a municipal corporation, and the members thereof;
PLANNING BOARD OF THE TOWNSHIP OF

CRANBURY, and the members thereof,

Defendants.

Plaintiff Garfield & Company ("Garfield"), a New Jersey Partnership, with offices at 306 Carter Road, R.D. 2, Princeton, New Jersey 08540, by way of complaint states:

COUNT I

1. Plaintiff is the owner of 220 acres $\frac{7}{8}$ of land located on Half Acre Road in the Township of Cranbury, Middlesex County, New Jersey.
2. Defendant Mayor and the members of the Township Committee of the Township of Cranbury ("Committee") are sued individually and in their official capacity as a governing body of a municipal corporation located in Middlesex County which is

charged with the responsibility and obligation of developing and amending zoning and related ordinances governing the use of land in the Township of Cranbury.

3. Defendant Planning Board of the Township of Cranbury and Its members, vt are sued individually and in their official capacity, ("Planning Board" constitute a public body which has a statutory responsibility of examining and formulating a Master Plan for Cranbury and the Township and for reviewing development applications. The Planning Board is also responsible for recommending changes in the zoning ordinance **to the defendant Council. In this capacity, the Planning Board reviewed and recommended approval of the zoning ordinance challenge* herein prior to its adoption by the defendant Council.**

A. Plaintiff land is ideally suited for high density development.

5. It is level and well drained and has excellent access to both the New Jersey Turnpike and Route 130.

6. It is also close to the Rossmoor and Clearbrook residential complexes and **close to several major industrial facilities.**

7. **Plaintiff's land is in a growth zone designated in the State Development Guide Plan.**

8. The Cranbury Master Plan also designates plaintiff's land for high density development and for extension of sewer service.

9. Plaintiff is ready, willing and able to build a housing development consisting of approximately 2000 units and including a significant number of low and moderate income dwelling units in a proportion of approximately .152 to .202 of total units constructed.

10. On July 25, 1983, defendant Council, by a vote of three to nothing adopted an ordinance whose short title is "The Land Development Ordinance of Cranbury Township" (hereinafter "Ordinance").

11. Section 4 of the Ordinance provides that it shall take effect immediately upon passage and publication and **the filing of a copy thereof with the Middlesex County Planning Board as provided by law.**

12. The Ordinance, purportedly enacted pursuant to N.J.S.A. 40:55D-1, the Municipal Land Use Law ("MLUL")» placed plaintiff's property, previously zoned for high intensity industrial development, in a Planned Development-High Density (PD-HD) zone, thus indicating that the defendants still believe high density uses **are still appropriate on plaintiff's property.**

13. The Ordinance also purports to designate the PD-HD Zone are the one in which Cranbury will satisfy its obligation to construct low and moderate income housing.

14. However, while the PD-HD provision purports to permit construction of planned developments incorporating a variety of housing types, including low and moderate income housing, it subjects such developments to onerous conditions that render infeasible the construction of housing including low and moderate income units.

15. The maximum theoretically permitted density is four (4) units per acre or with the density bonus provided by 150-30B(11) five (5) units per acre. This density is insufficient to render feasible the construction of low and moderate income housing as proposed by plaintiff.

16. Further, only one unit per two (2) acres can be built as of right. Construction at higher densities requires purchase of transfer of development credits.

17. Specifically three and one-half transfer development credits must be purchased for each acre to be developed in order to obtain the maximum permitted density:

150-30B (3) Gross density and transfer of development credits:
The permitted base density shall be 0.5 dwelling units per

acre. Additional density increases at the rate of one (1) dwelling unit per acre for each development credit transferred from the agricultural zone shall be permitted. However* the maximum gross density of the development shall not exceed four (4) dwelling units per acre.

18. According to 150-16A(11) of the Ordinance a developer must purchase at least two (2) acres of land in the agricultural (A-100) zone in order to obtain a single development credit. In addition, each such two (2) acre lot must meet the sub-division standards for such lots which means that it must be capable of being supplied with septic systems, be serviced by hypothetical roads, etc. Accordingly, a given tract of land in the agricultural zone can accommodate only that number of two (2) acre parcels which could be developed if the area were being sub-divided into two (2) acre lots.

19. As a result of these requirements, a developer must purchase more than seven (7) acres of development rights in the agricultural zone (3-h credits at a rate of least two (2) acres per credit) in order to achieve the maximum density of four (A) units per acre in the PD-HD zone.

20. Since, these development rights, even if available for purchase, will cost thousands of dollars per acre, the transfer of development credits scheme will significantly increase the cost of construction in the PD-HD zone.

21. Many of the other requirements set forth in the PD-HD provisions or incorporated therein by reference will also have a cost generating effect which will render infeasible the construction of low and moderate income housing as desired by plaintiff. These include

(a) the net density (total area less open space and collector streets) limitations on single-family detached housing to 4 units per acre, single family semidetached housing to 5 units per acre, townhouses to 8 units per acre and multiple-family and garden apartment developments to 10 units per acre 150-30B(4).

- (b) The limitation on building height to 35 feet, 150-30B(7),
- (c) the limitations on impervious coverage to forty (AOZ) percent of area, 150-30B(6),
- (d) the sub-division and site plan design standards in Article 16, including, but not limited to, the strict limitations on the number of units in multi-family structures to six units. Ordinance 150- 78(A)-(F).

22. The density bonus provision, 150-30B(11), provides an insufficient incentive to **mitigate** the **impact** of these **exclusionary provisions** since, inter alia, it only allows construction at five rather than four units per acre, and only after the transfer of development credit and other costly requirements have been satisfied.

23. Thus the Ordinance fails to provide a realistic opportunity for the construction of any low and moderate income housing in Cranbury, **either to meet present or prospective regional needs or Cranbury's present local need for such housing.**

24. Defendants have an obligation to provide realistic opportunity for construction of a fair share of the region's present and prospective region for housing, since a substantial portion of Cranbury; including the PD-HD zone and plaintiff's property therein, is located in a growth area as defined in the State Development Guide Plan.

25. Cranbury also has an obligation to meet the present housing needs of its indigenous poor.

26. In failing to provide realistically for low or moderate income housing, the Ordinance, passed by defendant Council after approval by defendant Planning Board, violates the Constitution of the State of New Jersey.

WHEREFORE, plaintiff demands judgment:

1. Declaring the Zoning Ordinance unconstitutional and enjoining further enforcement thereof;
2. Appointing a Master to supervise the revision of the Zoning Ordinance of the Township of Cranbury;
3. Granting plaintiff a rezoning of its land and all other necessary local approvals including but not limited to site plan, subdivision and building permit approvals so that it can construct a housing development of approximately 2000 units including low and moderate income dwelling units; and
4. Granting plaintiff costs of court and such other and further relief as this Court deems fitting and proper.

COUNT II

1. Paragraphs 1 through 26 of Count I are realleged as if fully set forth herein.
- 2.- According to the Master Plan, the A-100 agricultural sending zone in which development credits must be purchased has about 3,500 acres.
3. Since plaintiff owns approximately 220 acres, it must purchase a theoretical minimum of 1,540 acres of development rights, or nearly one-half (h) the total in the agricultural zone, in order to develop at four (4) or five (5) units per acre.
4. In reality, plaintiff will probably have to purchase at least an additional 500 acres of rights in order to accommodate non-developable lands, hypothetical roadways and other requirements of the hypothetical sub-division which must be approved before development credits can be obtained.
5. In seeking these credits» plaintiff would be competing with the owners of the balance of the lands in the PD-HD zone and also with the owners of property in

the Planned Development-Medium Density Zone (PD-MD) established by Article VIII of the Zoning Ordinance which also allows for purchase of credits.

6. There is no established market for development credits since the provision of the Zoning Ordinance creating them had never previously existed in Cranbury.

7. Given this lack of any established market for transfer credits, and the high proportion of total potentially available credits which plaintiff must purchase, there is no realistic possibility for development of plaintiff's property at the theoretical maximum densities of four (4) **or** five (5) units **per** acre.

8. As a result, the realistic **densities** at which plaintiff will be able to develop its land are far lower than the four (A) units per acre or five (5) units per acre theoretically permitted by the Zoning Ordinance.

9. In this respect the Ordinance fails to provide a realistic opportunity for the construction **of any low and moderate income** housing.

10. The transfer of **development credit provisions of the Ordinance are not** severable from the balance of the **Ordinance**.

WHEREFORE, plaintiff demands judgment:

1. Declaring the Zoning Ordinance unconstitutional and enjoining further enforcement thereof;

2. Appointing a Master to supervise the revision of the Zoning Ordinance of the Township of Cranbury;

3. Granting plaintiff a rezoning of its land and all other necessary local approvals including but not limited to site plan, subdivision and building permit approvals so that it can construct a housing development of approximately 2000 units including low and moderate income dwelling units; and

4. Granting plaintiff costs of court and such other and further relief as this Court deems fitting and proper.

COUNT III

1. Paragraphs 1 through 26 of Count I, and paragraphs 1 through 10 of Count II are realleged as if fully set forth herein.

2. As is recognized by the Ordinance, the predecessor Ordinance, and the Master Plan recognize, plaintiff's property is suitable for high density development.

3. Development of plaintiff's property will have little or no impact on the carrying on farming in the Agricultural zone.

4. There is no lawful justification for requiring plaintiff to purchase huge amounts of farmland development rights in the agricultural zone before its land can be developed at the high density which It is well capable of supporting.

5. There is no lawful justification for limiting residential development of plaintiff's property to one (1) dwelling unit for every two (2) acres unless such farmland development rights are purchased.

6. The restrictions on the development of plaintiff's land, as described in this and prior Counts herein are arbitrary, capricious and without foundation.

7. These restrictions deprive plaintiff any reasonable use of its land.

8. Accordingly, defendants have under color of law deprived plaintiff of due process of law in violation of the Fourteenth Amendment of the United States Constitution, 42 U.S.C., §1983 and Article I of the New Jersey Constitution of 1947.

WHEREFORE, plaintiff demands judgment:

1. Declaring the Zoning Ordinance unconstitutional and enjoining further enforcement thereof;

2. Appointing a Master to supervise the revision of the Zoning Ordinance of the Township of Cranbury;

3. Granting plaintiff a rezoning of its land and all necessary local approvals including but not limited to site plan, subdivision and building permit

approvals so that it can construct a housing development of approximately 2000 units including low and moderate Income dwelling units;

4. Awarding damages pursuant to 42 U.S.C., §1983 and reasonable attorneys' fees pursuant to 42 U.S.C., §1988; and

5. Granting plaintiff costs of court and such other and further relief as this Court deems fitting and proper.

COUNT IV

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, and paragraphs 1 through 8 of Count III are realleged as if fully set forth herein.

2. The purpose and effect of the transfer of development credit provisions of the Ordinance is to place on plaintiff the financial burden of carrying-out a public project, namely, the preservation of agricultural uses in Cranbury Township.

3. The imposition of such a burden on plaintiff constitutes a taking of property for public purposes without payment of compensation therefor, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, 42 U.S.C., §1983 and Article I of the New Jersey Constitution of 1947.

4. The value of plaintiff's property has been drastically reduced by the aforesaid Ordinance provisions.

WHEREFORE, plaintiff demands judgment:

1. Ordering defendants to pay damages for the inverse condemnation of its land.

2. Reasonable attorneys' fees pursuant to 42 U.S.C., § 1988; and

3. Costs of court and such other relief as this Court deems fitting and proper.

COUNT V

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, paragraphs 1 through 8 of Count III, and paragraphs 1 through 4 of Count IV are realleged as if fully set forth herein.

2. The transfer of development credit provisions of the Ordinance regulate the use of land.

3. Regulation of land use in New Jersey is governed by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

4. **All municipal attempts to regulate land use must find authorization in that statute.**

5. The statute does not mention, let alone authorize, any municipality to enact a transfer development credit scheme."

6. The Township is thus without authority to enact the transfer development credit provisions.

7. **In enacting these invalid provisions defendants have unlawfully deprived plaintiff of the use of its property under color of law in violation of the Due Process clause of the United States and New Jersey Constitutions and 42 U.S.C., §1983.**

WHEREFORE, plaintiff demands judgment:

1. **Declaring the transfer development provisions of the Zoning Ordinance to be invalid as ultra vires and enjoining their enforcement;**

2. Awarding plaintiff damages pursuant to 42 U.S.C., §1983, and counsel fees pursuant to 42 U.S.C., §1988; and

3. Costs of court and such other and further relief as the Court deems fitting and proper.

COUNT VI

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count paragraphs 1 through 8 of Count III, paragraphs 1 through 4 of Count IV paragraphs 1 through 7 of Count V are realleged as if fully set forth herein.

2. The transfer development credit provisions of the Ordinance require the owner of the land in the agricultural zone file a deed restriction which si be recorded with the Clerk of Middlesex County. Ordinance 150-16B. The Ordinj also makes such restriction specifically enforceable.

3. In addition, under the Ordinance, the Township Clerk is required to l a map showing land from which credits have been transferred and a record of total approved number of credits. Ordinance 150-16D.

4. After transferral and recording of the credits, pursuant to Towns approval, the owner of the land loses all right to use it except for agricultu purposes.

5. The creation of such restrictions on property rights inherent ownership is a function of the State Legislature.

6. The creation and designation of forms of legal instruments to be recoz and mapped is also a function of the Legislature.

7. The Legislature has not authorized municipalities to create new forms property rights which divorce the right to use the land from the ownership of land.

8. Neither has the Legislature authorized county clerks to rec instruments containing such transfers or municipal clerks to develop official n depicting them.

9. Therefore the enactment of ordinance provisions for the trans development credits, the filing of instruments with respect to same and keeping

an official map as to them are ultra vires any regulatory power granted to a municipality by the Legislature.

10. In addition, the exercise of such authority has been pre-empted by the legislative enactment of statutes, detailed in scope, which are inconsistent with the right of the municipality to develop such new forms of property rights and provide for their transfer, recording and mapping.

11. In enacting this invalid scheme defendants have unlawfully deprived plaintiff of the use of its property under color of law on violation of the Due Process clause of the United States and New Jersey Constitutions and 42 U.S.C., §1983.

WHEREFORE, plaintiff demands judgment:

1. Declaring the transfer development provisions of the Zoning Ordinance to be invalid as ultra vires and enjoining their enforcement;
2. Awarding plaintiff damages pursuant to 42 U.S.C., §1983 and counsel fees pursuant to 42 U.S.C., §1988; **and**
3. Costs of court and such other and further relief as the Court deems fitting and proper.

COUNT VII

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, paragraphs 1 through 8 of Count III, paragraphs 1 through 4 of Count IV, paragraphs 1 through 7 of Count V and paragraphs 1 through 11 of Count VI are realleged as if fully set forth herein.

2. In enacting the Ordinance, defendants have combined and conspired to restrain trade and commerce in the development of property for residential uses.

3. Such conduct of the defendants violates the New Jersey Antitrust Act,

N.J.S.A. 56:9-1, et seq.

WHEREFORE, plaintiff demands judgment:

1. Awarding it damages, treble damages and reasonable attorneys' fees;
2. Declaring the Ordinance invalid and enjoining its enforcement; and
3. For costs of court and for such other and further relief as this Court

deems fitting and proper.

WARREN, GOLDBERG, BERMAN & LUBITZ
A Professional Corporation
Attorneys for Plaintiff

By



Leonard Berman

Dated: September 7, 1983
Princeton, New Jersey