

ML - Cranbury

9 - Nov - 83

Complaint in Lieu of Prerogative Writs for Declaratory  
and injunctive Relief and monetary Damages

Pg 20

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STATE OF NEW JERSEY

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RECORDED AND INDEXED

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CRANBURY LAND COMPANY, a New Jersey  
Limited Partnership,

Plaintiff,

vs.

CRANBURY TOWNSHIP, a municipal  
corporation of the State of New  
Jersey, located in Middlesex  
County, New Jersey,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
: MIDDLESEX COUNTY/OCEAN COUNTY  
DOCKET NO. L-070841- Bpw

:(Mount Laurel)

Civil Action

: COMPLAINT IN LIEU OF  
: PREROGATIVE WRITS FOR  
DECLARATORY AND INJUNCTIVE  
: RELIEF AND MONETARY DAMAGES

Plaintiff, by way of its complaint against the  
defendant, states that:

FIRST COUNT

STATEMENT OF THE CASE

1. Plaintiff brings this complaint in lieu of  
prerogative writs seeking declaratory and injunctive relief and  
monetary damages pursuant to the Constitution and laws of the

United States and of the State of New Jersey. In essence, this is an action brought pursuant to Southern Burlington County N.A.A.C.P. v. Tp. of Mt. Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") by plaintiff, a land owner seeking to produce affordable housing in Cranbury Township.

For over a decade the land use controls imposed by Cranbury Township have been under legal attack for their exclusion of housing affordable to low and moderate income households. Over seven years ago the ordinances were declared invalid by the trial court in "Urban League of New Brunswick v. Mayor and Council of Carteret, 142 N.J. Super. 11 (Ch. Div. 1976). The court specifically noted that Cranbury's static growth was attributable to its restrictive zoning and criticized its failure to provide housing opportunities for lower income households and present and future employees. It pointedly recommended, as a remedial measure, high density multi-family housing with mandatory percentages of lower income units. That decision was upheld, in relevant part, on January 20, 1983 in Mount Laurel II.

Despite this history of legal challenge, and judicial rebuke and the nature and magnitude of the needs involved, the Cranbury's land use scheme remains one of the most exclusionary in Middlesex County. It is patently offensive to the Constitution and laws of this State and in wanton disregard of pertinent judicial mandates. Cranbury has constrained residential growth to luxury, single-family dwellings while encouraging the development of commercial, industrial and office/research ratables. Zoning

for multi-family uses is designed to preclude their affordability by lower income persons, are at significantly lower densities than judicially recommended and do not include recommended mandatory percentages- Intervening Court decisions have thus been completely disregarded and no effective, affirmative action has been undertaken to provide a realistic opportunity for the provision of housing for lower income persons in response to either regional needs or those needs generated within the defendant municipality itself. Furthermore, Cranbury has also chosen to knowingly zone plaintiff's lands in a confiscatory manner. Plaintiff seeks an order declaring Cranbury's land use ordinances unconstitutional and unlawful, providing them a builder's remedy, assessing damages and costs and appointing a master.

PLAINTIFF

2. The plaintiff is the CRANBURY LAND COMPANY, (hereinafter referred to as "the plaintiff") a New Jersey Limited Partnership with offices at 45 Route 206, Somerville, New Jersey. It is the title owner of approximately one hundred and forty (140) acres of land located in Cranbury Township and designated as Block 8, Lots 21 and 22 of the Tax Map of Cranbury Township.

DEFENDANT

3. The defendant, CRANBURY TOWNSHIP (hereinafter sometimes referred to as "the defendant", "Cranbury Township", or "the Township") is a municipal corporation chartered under the Constitution and laws of the State of New Jersey to exercise, on behalf of the State and for the general welfare of its citizenry, the delegated powers of local government over approximately 13 square miles situated on the southern border of Middlesex County, New Jersey.

FACTUAL ALLEGATIONS

4. At all times relevant hereto, the defendant has elected to exercise those powers, derived from the Constitution of the State of New Jersey and delegated to it by the Legislature, relating to the control over the use of land contained within the Township through its Township Committee, Planning Board and/or Zoning Board of Adjustment and such other local public agencies, officials, employees, and agents authorized by law to effectuate said delegat-ed functions.

5. Pursuant to those delegated powers, the Township adopted a Master Plan and Zoning Ordinance in 1983.

6. The Township, pursuant to its delegated powers, has imposed constraints over the use of land within its borders which include, but are not limited to, ordinances relating to Zoning (designating exclusive land use classifications for areas of the Township and which, collectively, encompass all of the lands governed by the defendant), Site Plan Review, Land Subdivision, and the creation of a Planning Board and a Zoning Board of Adjustment.

7. As a direct result of those actions taken pursuant to its delegated land use functions and more specifically set forth above, with the exception of non-conforming uses which may have predated said actions, the defendant has exercised complete regulatory control as the existing and permitted uses of the land over which it governs.

8. The standards for residential development in all of the residential zones are more exclusionary than those land use controls invalidated by the New Jersey Supreme Court both in Southern Burlington Co. • N. A. A. C. P. V. Tp. of Mt. Laurel, 67 N.J. 151 (1975) (Mount Laurel I) and in Mount Laurel II.

9. The most extensive permitted land uses are for agriculture^ residential development at densities greater than half-acre lots and non-residential uses. The permitted residential uses are all at densities which preclude the development of affordable housing for low and/or moderate income persons. These zones include:

a. Agriculture: the zone designated "A-100", including vast areas of the Township, permits, as of right, agricultural uses on five (5) acre lots with an additional acre required for a detached, single-family dwelling or a detached, single-family dwelling on a minimum lot of six (6) acres;

b. Residential:

1) The "R-LI" zone permits, as of right, detached, single-family dwellings on three (3) acre lots or clustered on one (1) acre lots but at a gross density of one (1) unit per three (3) acres;

2) the "R-LD" zone permits, as of right, detached, single-family dwellings on two (2) acre lots or, with public water and sewer, on lots of a minimum 40,000 square feet (approximately one (1) acre);

3) the "V-MD" and "C-V" zones, virtually all developed, permit, as of right., detached, single-family dwellings on lots of a minimum 15,000 square feet;

4) the "PD-MD" zone permits, as of right, detached, single-family dwellings on lots of a minimum of two (2) acres; and

5) the "PD-HD" zone permits, as of right, single-family, detached dwellings on lots of a minimum of two (2) acres;

c. Non-residential: other zones permit extensive commercial, industrial, and office-research uses.

10. The zoning provisions for all residential uses permitted as of right also include standards as to frontage, front, side and rear yards and/or lot width which exceed the minimum necessary for the protection of health and safety and unduly constrain the provision of affordable housing for low and/or moderate income households.

11. Mobile homes and/or mobile home parks are not a permitted or conditional use in any zone.

12. Conditional residential uses are provided for in the V-MD, PD-MD and PD-HD zones.

a. the V-MD zone permits two-family conversions as a conditional use;

b. the PD-MD and PD-HD zones permit planned developments as a conditional use.

13. The standards for the conversion to two-family dwellings in the V-MD zone, as to lot size, dwelling size, parking and access all; exceed those minimally necessary for the protection of health and safety and unduly constrain the provision of affordable housing for low and/or moderate income households.

14. The provisions for the approval of planned developments in both the PD-MD and PD-HD zones contain standards which exceed those minimally necessary for the protection of health and safety and unduly constrain the provision of affordable housing for low and/or moderate income households. Such standards include, but are not limited to:

- a. minimum of twenty-five (25) acre tract;
- b. "base" density of one-half (0.5) dwelling unit; per acre;
- c. maximum gross density of three (3) units per acre with transferred development credits in the PD-MD zone and four (4) units per acre with transferred development credits in the PD-HD zone;
- d. unduly low net residential densities and limitations as to the number of units in a townhouse (four (4) in a row; six (6) in a structure) and in garden apartments (six (6));
- e. required housing type mix;
- f. maximum building height of thirty-five (35) feet;
- g. required single-family, detached units on one (1) acre lots in the PD-MD zone fronting on Station Road;
- h. unfettered discretion without objective standards in the Planning Board for planned development approvals as to requisite findings, alienation or assignability,

"consistency" of architectural style and "avoidance of boredom of visually -repeated elements"; and

i. mandated fifteen percent (15%) of tract in active recreation.

15. All development is subject to Subdivision and Site Plan provisions, too numerous to mention, containing standards which exceed those minimally necessary for the protection of health and safety and unduly constrain the provision of affordable housing for low and/or moderate income households. Such standards exceed those set forth for residential development in the Minimum Property Standards published by the United States Department of Housing and Urban Development.

16. While the zoning ordinance contains provisions for clustering and transfer of development credits, neither provision is directed at the production of housing affordable to low and/or moderate income households.

17. The only provision in the zoning ordinance directly relating to the production of housing affordable to low and/or moderate income households is found in the PD-HD zone which provides for a "density bonus" up to a maximum of one (1) dwelling unit per acre above the permitted density (calculated on the base density of 0.5 (one-half) dwelling unit: per acre up to four (4) units per acre with transferred development credits). The provision requires PD-HD developers with proposed densities of

greater than four (4) dwellings per acre to include at least fifteen percent (15%) of the total units as affordable to low and/or moderate income households. The ordinance provision is unduly exclusionary for numerous reasons including but not limited to:

a. not a single zoning, subdivision or site plan requirement is waived with regard to a development containing housing affordable to low and/or moderate income households, in whole or in part;

b. a totally subsidized development would be required to be built at densities which are too low to be economically feasible;

c. a totally subsidized development must compete for the same limited land with conventional development proposals which would yield greater profits; making the construction of a totally subsidized development not a realistic possibility;

d. the density bonus for lower income units does not provide for additional conventional units; that is, only a one-for-one bonus is available. In light of the fact that such units can only be sold or rented at a loss, absent adequate state and federal subsidies (which are not now available), there is absolutely no incentive for a developer to take "advantage" of the "bonus" and no developer will; and

e. the number of lower income units which would be built under the ordinance, given land availability, is far short of any reasonable fair share calculation appropriate for the Township.

18. As a result of the defendant's restrictive residential land use policies and controls, residential development in the Township has been minimal. Although it increased in total dwelling units between 1970 and 1980 from 694 units to 739 units, its population actually dropped from 2253 to 1927 persons; a drop of fourteen percent (14%). Building permit activity, for residential uses since 1978, has been minimal and limited to single-family detached residential dwellings at a rate of approximately sixteen (16); per year. However insignificant, this is far greater than the last ten year period (1972-1982) which showed an average of a little over nine (9) permits per year; again exclusively for single-family detached dwellings.

19. Thus, Cranbury is developing at the slowest rate of the four (.4) municipalities located in southern Middlesex County and at a pace far behind the county as a whole and that of all adjoining municipalities.

20. Residential development has been artificially constrained by improper regulatory controls as evidenced by the fact that in the same ten (10) year period (1972-1982) covered employment increased by almost one thousand (1,000) jobs from 2,774 in 1972 to 3,716 in 1982.

21. The Township job growth of over thirty-three percent (33%) between 1972 and 1982 outstripped the pace of county job growth for the same period.

22. Furthermore, the residential development which did occur was for expensive single-family homes on large lots thus further exacerbating the jobs - housing imbalance previously noted by the Superior Court.

23. Thus, there presently exists in Cranbury a desperate need for a wide variety and choice of housing for low, moderate and middle income households; particularly as the Township has become a focus of regional growth pressures.

24. The Township has acknowledged the fact that in recent years its "area has gradually become a part of the outer commuter belt in addition to experiencing the pressures emanating from the ever-spreading employment centers in the New York - Philadelphia corridor."

25. Its location between exits 8 and 8A of the New Jersey Turnpike and the fact that it is intersected by U.S. 130 and several county roads give the Township a significant infrastructure to accommodate growth.

26. Cranbury has provided vast areas for non-residential development "in an effort to capture for the Township some of the development opportunities generated by the changing market"- and to take advantage of its location, infrastructure and the fact that it is "on the cutting edge of intensive urbanization with pressures emanating from all directions".

27. Thus, the defendant has provided for non-residential zones with sufficient vacant, developable areas to accommodate, by its own conservative figures, between 3230 to 9170 new jobs.

28. Present employment has generated a present need for housing for almost 900 lower income households while the projected employment creates a prospective lower income housing need for between 775 and 2200 such units.

29. The Township admits that its present capacity for new units under existing zoning is between 735 to 3155 units depending on the maximum use of transferred development credits. Of these units, virtually none or a miniscule number would be for low, moderate or even middle income households.

30. Thus, the defendant's present land use scheme is designed to perpetuate and further exacerbate a pattern and practice of exclusion and economic polarization previously judicially condemned.

31. The defendant Township is located within a Growth area and Limited Growth area as designated by the State Development Guide Plan.

32. As such, it has a constitutional obligation not only to provide for its indigenous housing needs but for its fair share of regional present and prospective housing needs. It has done neither.

33. Furthermore, despite this constitutional obligation, known to the defendant prior to the adoption of its present Master Plan and Zoning Ordinance, the defendant has not even adopted, determined or otherwise approved:

- a. a number or range representing its indigenous housing needs;
- b. a number or range representing its fair share of its region's present and prospective housing needs;
- c. a region for fair share planning purposes;
- d. an allocation methodology for fair share planning purposes; and
- e. an assessment of present and prospective regional need for fair share planning purposes.

#### LEGAL ALLEGATIONS

34. The defendant's land use plan and ordinances violate the Constitution and laws of the State of New Jersey in that they violate the constitutional mandate as enunciated in Mount Laurel I and II and are inconsistent with the comprehensive planning and zoning mandates of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. • -

SECOND COUNT

35. Plaintiff incorporates herein, as if repeated at length, all of the prior allegations of its complaint.

36. The plaintiff's lands are located partially in areas designated by the State Development Guide Plan for Growth (approximately one hundred (100) acres) and partially in areas designated for Limited Growth (approximately forty (40) acres).

37. These lands are ideally suited for clustered, high density residential dwellings in that they present little or no natural features which would constrain such development. In fact, the existence of a stream on the site encourages site planning techniques such as clustered multi-family or small lot single-family dwellings.

38. Furthermore, the site is ideally located for residential uses and a development which includes a substantial portion of lower income units in that:

a. the site has substantial frontage on two roads; one, Old Trenton Road, a county road (a designated arterial road in the defendant's Master Plan) which directly links the Village of Cranbury with major employment centers in East Windsor;

b. the site is in walking distance (0.2 miles) of major high density residential developments in East Windsor;

c. the site is in walking distance (0.5 miles) of the RCA/Astro facility in East Windsor;

d. the site is approximately one mile to Route 571

in East Windsor and approximately two miles to the McGraw-Hill  
and Mettler. Instrument Co. plants; and

e. the site is less than two miles to the inter-  
section of Route 130 in Cranbury and lands there zoned for non-  
residential uses and less than two and one-half miles to Route 130  
in East Windsor. It is also less than four miles to Exit 8A of the  
New Jersey Turnpike in Cranbury and four and one-half miles to  
(Exit 8 of the New Jersey Turnpike in Bigbtstown....

37. The site is now largely used for agricultural  
purposes and is zoned A-100 which permits agricultural uses on  
five (5) acre lots with a dwelling requiring an additional acre  
for a total of six (6) acres or for single-family detached dwellings  
on six (6) acre lots.

38. Adjacent uses bordering the site include a new  
single-family subdivision, scattered residential and agricultural  
uses.

39. The predominant soils are Sassafras and Woodstown  
which are well suited for both agricultural and residential  
development. The same soils extend over most of the Township,  
including approximately 68% of all land, and are located on lands  
zoned for Industry (I), Office Research (OR), Light-Industry (I-LI);  
Commercial Highway (C-H), and Planned Development (PD-HD, PD-MD).

40. The site is large enough to develop in a manner which will preserve areas for future growth, on the lands designated Limited Growth and act as a buffer to adjacent agricultural uses.

41. Even if all of these lands were removed from agricultural uses, it will have no social impact. In the context of Cranbury alone, these lands account for less than 2% of its total land area; less than 3% of its lands zoned for agricultural and related uses; and less than 3% of Sassafras and Woodstown soils.

42. Plaintiff is prepared to develop these land for residential uses and to include a substantial portion of lower income units.

#### LEGAL ALLEGATION

43. The defendant's land use plan and ordinances violate the Constitution and laws of the State of New Jersey in that they violate the constitutional mandate as enunciated in Mount Laurel I and II and are inconsistent with the comprehensive planning and zoning mandates of the 'Municipal Land Use Law, N.J.S.A. 40:550-1, et seq. The zoning of plaintiff's site is arbitrary and capricious. The site is well suited for residential development and a builder's remedy.

THIRD COUNT

44. Plaintiff incorporates herein, as if repeated at length, all of the prior allegations of its complaint.

45. Plaintiff's lands have been zoned into inutility. At present, plaintiff is experiencing virtually no return on its investment given the agricultural use to which the land is now being put. Their only hope of receiving a reasonable return is to develop the lands for higher density residential uses than for which it is now zoned.

46. There is no market for the lands for single-family detached units on six (6) acre lots which would be economically feasible and provide a reasonable return to the plaintiff.

47. Plaintiff's lands are in the area of the Township zoned to permit transferred development credits. The use of this concept is one not explicitly authorized by law and, in fact, has been adjudicated as unlawful in a matter arising out of an adjoining municipality, East Windsor.

48. There is no present market for such credits and, under the procedures set forth in the Zoning Ordinance, plaintiff would have to expend substantial sums in order to even ascertain the number of credits which could be generated by virtue of its lands.

49. Thus, plaintiff's lands have been zoned for uses which are either economically infeasible or which yield virtually no return on investment and are saddled with a transfer of development credit scheme which is of questionable legality, for which no present market exists and which requires extraordinary cost-generating procedures to implement.

#### LEGAL ALLEGATION

50. As such, the zoning of plaintiff's lands has been confiscatory, amounting to an unlawful taking, in violation of the Constitution of the United States and the State of New Jersey and federal law, 42 U.S.C. 1983.

WHEREFORE, plaintiff demands judgment:

1. Declaring the defendant's land use ordinances invalid and unconstitutional in their entirety and/or in relevant part;

2. Appointing a special master to recommend the revision of said ordinances and effectuation of municipal action in compliance with the Constitution and laws of this State and to supervise the implementation of a builder's remedy in order to insure the prompt production of needed units;

3. Ordering the revision of said ordinances and the effectuation of compliance with the Constitution and laws of this State and implementing a builder's remedy;

4. Ordering a builder's remedy for plaintiff consistent with its proposal to provide, as part of its development, a substantial number of units which will be affordable to lower income households;

5. Ordering the defendant to pay damages for plaintiff's losses due to the confiscatory nature of its land use controls;

6. Ordering the defendant to pay counsel fees and costs; and

7. Granting plaintiff such other relief as the court deems just and equitable.

Carl S. Bisgaier  
CARL S. BISGAIER  
Attorney for Plaintiff

Dated: Nov. 9, 1983