ML2 - Cranbury 12/19/83

Complaint in lieu of prerogative writ for declaratory + injunctive relief + monetary damages for Π

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. L P.W.

(Mount Laurel)
Assigned to the Honorable
Eugene D. Serpentelli, J.S.C.
by Order of the New Jersey
Supreme Court

LAWRENCE ZIRINSKY,

Plaintiff,

v.

THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, a Municipal Corporation, and THE PLANNING BOARD OF THE TOWNSHIP OF CRANBURY,

Defandants.

Civil Action

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

Plaintiff, Lawrence Zirinsky, residing at 375 Park Avenue, New York, New York, 10022, by way of Complaint against the Defendant, Township Committee of the Township of Cranbury (hereinafter referred to as the "Township") and the Planning Board of the Township of Cranbury (hereinafter referred to as the "Planning Board"), says:

FIRST COUNT

1. The Plaintiff is a contract optionee to contiguous parcels of land (hereinafter referred to as the "tract") containing approximately 1,800 acres located in the westerly portion of the Township of Cranbury, County of Middlesex and State of New Jersey, namely Block 22, Lots 3, 4, 6, and 7; Block 23, Lots 2, 8, 12, 13, 70, 99, 100, 102, 104 and 108; Block 24, Lot 4; and Block 25, Lots 8, 19 and 31, on the current Cranbury Township Tax and Assessment Map.

2. The Defendant, Township is a municipal corporation located in Middlesex County, which is charged with the obligation of adopting a Land Use Ordinance governing inter alia the use of the land in the Township.

3. The Defendant, Planning Board is a public body which is charged with the responsibility of adopting a Master Plan and recommending a Land Use Ordinance to the Township, as well as the obligation to consider applications for sub-division and site plan approval and/or review.

4. In 1976, the Superior Court, Chancery Division, invalidated the then zoning ordinance of Cranbury, since that ordinance precluded Cranbury from assuming its fair share of low and moderate income housing within its housing region, Urban League of New Brunswick, et al v. Mayor and Council of Carteret, et al, 142 N.J. Super 11 (Ch. Div. 1976).

5. Plaintiff began to assemble the contiguous tract of approximately 1800 acres in 1982, after ascertaining that such lands were ideally situated in the Central Growth Corridor of the

State Development Guide Plan (hereinafter referred to as the "SDGP") promulgated by the New Jersey Department of Community Affairs.

6. The Plaintiff's tract lies directly to the west of the Village of Cranbury and is readily accessible to Route 130 and the New Jersey Turnpike. It is essentially flat, highly developable land with few, if any, environmental constraints. The tract is surrounded by portions of the Townships of East Windsor to the south and Plainsboro to the west, which are undergoing intensive industrial and residential development.

7. The easterly portion of the Plaintiff's tract has been designated by the SDGP as a growth area, while the remainder of the tract is designated as a limited growth area, indicating a state policy that these lands are suitable for high or moderate density development.

8. Despite the decision by the Chancery Division declaring Cranbury's Zoning Ordinance to be exclusionary, and despite the SDPG designation of the Plaintiff's optioned land as suitable for development, the Planning Board recommended to the Township that it adopt a new Land Use Plan (hereinafter "Land Use Plan") as part of the Municipality's Master Plan, on September 5, 1982, designating all of such lands as "Agricultural".

9. On January 20, 1983, the New Jersey Supreme Court issued its decision in Southern Burlington County NAACP, et al v. Tp. of Mt. Laurel, et al, 92 N.J. 158 (1983)(hereinafter referred to as "Mount Laurel II").

10. In Mount Laurel II, the Supreme Court explicitly affirmed the holding of the Chancery Division in Urban League of Greater New Brunswick, et al. v. Carteret, et al., that Cranbury's Zoning Ordinance was exclusionary, in violation of New Jersey's Constitution.

11. In Mount Laurel II, the Supreme Court also held that municipalities which were in a growth area as designated by the SDGP, had an affirmative obligation to provide for a realistic opportunity for low and moderate income housing within their housing region.

12. Despite the decision by the Supreme Court in Mount Laurel II, the Planning Board did not modify the Land Use Plan so as to provide for a realistic opportunity for low and moderate income housing in either the growth or limited growth areas designated by the SDGP, or anywhere else in the Township.

13. On March 22, 1983, the Plaintiff, then trading as East Shore Associates, Inc., a New Jersey Corporation, requested the Planning Board to consider his plan to develop the lands that he had acquired up to that point in time. The Plaintiff intended to gain approval of a planned unit development (hereinafter "PUD") which would provide for a substantial amount of low and moderate income housing, consistent with the mandate of Mount Laurel II, as well as other uses, such as research and office development. In doing so, the Plaintiff asked the Planning Board to consider changes in the recently adopted Land Use Plan.

14. On April 4, 1983, the Plaintiff was advised by the Planning Board that it would consider his request for a

discussion regarding his proposed development at its May 19, 1983 meeting.

15. Despite the April 4th letter, however, the Planning Board then advised the Plaintiff on April 29th, that it would not be considering any changes in the recently adopted Land Use or Master Plan and therefore, the Planning Board saw "no purpose for a discussion at this point in time".

16. When the Plaintiff persisted in seeking a discussion concerning his planned development, the Planning Board rejected further requests for a meeting in letters of May 9th and June 27th 1983, stating that the Cranbury Township Committee was then in the process of considering adoption of the Land Use Plan proposed by the Planning Board, in the form of a new Land Use Ordinance.

17. On July 25, 1983, the Township adopted the Land Development Ordinance (hereinafter referred to as the "Ordinance") recommended by the Planning Board. Notice of Adoption of this Ordinance was published on August 5, 1983.

18. a. As recommended by the Planning Board, the Ordinance placed all but one parcel of the Plaintiff's tract in a new "A-100 Agricultural Zone". The one parcel which was not zoned as "A-100," Block 25, Lot 8, was zoned as "R-LI, Residence-Light Impact Zone," and consists of approximately 50 acres. Accordingly, the remaining 1750 acres of the Plaintiff's tract is governed by "A-100" zoning restrictions, set forth in §150-13 of the Ordinance, as follows:

150-13 Permitted Uses. In the A-100 Agricultural Zone, no lot shall be used and no structure shall be erected, altered or occupied for any purpose except the following:

A. Agriculture, agricultural stands primarily for the sale of dairy and agricultural products grown on the same farm, and other farm buildings.

B. Detached single-family dwellings.

C. Public parks and playgrounds.

D. Buildings, structures and uses owned and operated by the Township of Cranbury.

E. Accessory uses and accessory buildings customarily incidental to the above uses and located on the same lot.

b. §150-14 provides that the only conditional uses that may be undertaken in the A-100 Agricultural Zone are home occupations and utility and service structures which minimize interference with the conduct of agriculture.

c. The Area and Bulk Regulations for the A-100 Agricultural Zone are set forth in §150-15, which are as follows:

150-15 Area and Bulk Regulations

A. Agriculture

(1) Lot area: Minimum lot area shall be five (5) acres, provided that such area shall be increased to six (6) acres if a single-family dwelling is located on the lot.

(2) Setback: Any farm building shall be located farther than fifty (50) feet and animal shelter housing live stock, whether principal or accessory, shall be located farther than two hundred (200) feet of any zone boundary or property line.

B. Detached single-family dwellings

(1) Lot area: Minimum lot area shall be six (6) acres.

(2) Frontage: Minimum street frontage shall be four hundred (400) feet.

(3) Lot depth: Minimum lot depth shall be three hundred (300) feet.

(4) Front yard: Minimum front yard shall be fifty (50) feet.

(5) Side yards: Minimum side yard width shall be fifty (50) feet.

(6) Rear Yard: Minimum rear yard depth shall be one hundred (100) feet.

(7) Building height: Maximum building height shall be thirty-five (35) feet, except that agricultural storage structures may have a height determined by the function thereof.

C. Agricultural Stands

(1) Lot area: Minimum lot area shall be five (5) acres.

(2) Setback: No agricultural stand shall be located nearer than fifty (50) feet from the public right-of-way or any property line.

(3) Building height: Maximum building height shall be one story not exceeding twenty (20) feet.

(4) Building area: Maximum area shall be one thousand (1,000) feet.

(5) Buffer: The Planning Board may require the provision of a transition buffer or fence if it deems it to be needed for the adequate visual separation of the farm stand operation from adjoining properties.

(6) Hours of operation: All agricultural stands' hours of operation shall be limited to daylight hours.

19. Defendant Planning Board incorporated in the Land Use Plan utilization of a land use technique known as Transfer Development Credits (hereinafter "T.D.C.").

20. The Defendant Planning Board recommended and the Defendant Township adopted the T.D.C. as an integral part of the Ordinance.

21. Section 150-7 of the Ordinance provides a definition of T.D.C. as follows:

> Development Credit - An interest in land which represents a right to exchange land for residential purposes in accordance with the provisions of this ordinance.
>
> Transfer Development Credits - Where permitted by this ordinance, the act of using a development credit in order that permission for development may be granted.

22. The operative provisions of the Ordinance which deal with the T.D.C., are set forth in provisions of the A-100 Agricultural Zone, as §150-16, as follows:

> Transfer of Development Credits. The owner of any land in the A-100 Agricultural zone, in lieu of developing such land, may transfer its development potential or credit to the owner of any land in the PD-MD and and PD-HD zones, for development in accordance with the regulations applicable in such zones. Such transfer or development credit shall be subject to the following requirements:
>
> A. To determine the numbers of development credits to which the owner is entitled, such owner shall submit a hypothetical subdivision Sketch Plat which shall include the following information:
>
> (1) Name and address of owner or owners of record and lot and block number of the affected land;
>
> (2) Scale and north arrow;
>
> (3) Date of original preparation and of each subsequent revisions;
>
> (4) Tract boundary line, clearly delineated;

(5) Area of the entire tract and of each proposed lot, to the nearest tenth of an acre;

(6) Provision for approved signatures of the Chairman and Secretary of the Planning Board and the Township Engineer, specifying the number of credits;

(7) Delineation of existing floodways, flood hazard and flood fringe areas of all water courses within or abutting the tract;

(8) Delineation of soil types on the tract as determined by the U.S.Soil conservation services or as otherwise approved by the Township engineer;

(9) Existing contours, referred to a known datum, with intervals of five (5) feet;

(10) A hypothetical circulation plan showing all streets as having a uniform right-of-way of fifty (50) feet;

(11) Hypothetical lot layout, with lots having an area of not less than two (2) acres, in accordance with the subdivision design criteria contained in Article XVI and the reguirements of the R-LD Zone where neither sewers or water is available. The hypothetical layout shall provide sufficient information for a determination by the Board of Health and Township Engineer that all lots shown would be capable of being supplied with the necessery on-site septic system, and that all lots would be useable if developed as shown. In addition to information, supplied by the National Cooperative Soil Survey which was prepared by the U.S. Department of Agriculure, the Township may request additional percolation tests or soil logs in order to reach the required determination.

Upon approval of the Sketch Plat, the owner shall be entitled to a number of development credits certificate equal to the number of approved hypothetical lots.

B. The transfer of the approved number of development credits shall be authorized only upon the filing by the owner of a deed restriction, in a form acceptable, to the Planning Board attorney, running with the land from which the development credits are proposed to be transferred and restricting such land to agricultural use and farm building in perpetuity. Such deed restrictions, which shall be specifically enforceable by the Township, shall be recorded with the Clerk of Middlesex County and proof of such recording shall be presented to the Planning Board as part of the final subdivision or site plan for the development which is proposed to utilize such credits.

C. A copy of the approval of the transfer, together with a copy of the approved Sketch Plat, shall be filed with the Township Clerk who shall keep a map showing all lands from which development credits have been transferred, in whole or in part. In the case of a transfer of less than all the development credits approved for a given parcel, the deed restriction shall cover a corresponding portion of the parcel from which the credits are transferred including a percent from which the credits are transferred including the percent of the road frontage equivalent to the percent of the total land retired through deed restriction. The Township Clerk shall keep a record of the total approved number of credits and the number authorized to be transferred.

23. The R-LI, Residence-Light Impact Zone, restricts housing to detached single-family dwellings on minimum lots of three (3) acres.

24. By placing approximately 1750 acres of the Plaintiff's tract within the A-100 Agricultrual Zone and the remaining 50 acres in the R-LI, Residence-Light Impact Zone, the Defendants are violating the mandate of the Supreme Court in Mount Laurel II, that Cranbury provide within those areas designated for growth by the SDGP, a reasonable opportunity for the construction of low and moderate income housing within Cranbury[1]s housing region.

25. The Land Use Plan and the Ordinance are not only exclusionary as they relate to the Plainiff's land, but are exclusionary as they relate to the entire Township as well. Some of the more blatant exclusionary features of the Ordinance (with references to specific sections of the Ordinance as appropriate) are as follows:

A. The entire Western portion of the Township, including 96% of the Plaintiff's tract, comprising 3,650 of the 8,460 acres in the Municipality, (43%) is zoned as A-100, permitting only detached single-family dwellings on a minimum lot area of six (6) acres..

B. §§150-17, 19: The largest "residential" zone, the "R-LI, Residence-Light Impact Zone", including the remainder of the Plaintiff's tract, comprising 1,120 acres or 13% of the Municipality land area restricts housing to detached single-family dwellings on minimum lots of three (3) acres.

C. §§150-20, 22: The next largest residential zone the "R-LD, Residence-Low Density Zone", comprising 380 acres or .04% of the Municipality's land area, permits the construction of only single family detached dwellings on minimum lots of two (2) acres.

D. §§150-23, 25: The smallest residential zone, the "V-MD, Village-Medium Density Zone", again restricts residences to single family dwellings, but provides for a minimum lot size of 15,000 square feet. However, that zone is located in the Village of Cranbury, and all but 10 acres is developed.

E. §150-26 to 28: The "PD-MD, Planned Development-Medium Density Zone", south of the Village of Cranbury, §§150-29 to 31: "PD-HD, Planned Development-High Density Zone", located just east of Cranbury Village (hereinafter "Planned Development Zones"). The only permitted residential use in either zone is detached single-family dwellings. Planned developments, including multi-family housing, may only be approved on a conditional use basis. Further, neither of these two zones permit any non-residential useages, as contemplated by N.J.S.A. 40:55D-6; which useages could be utilized to encourage a developer to offset the costs of low and moderate income housing, with internal subsidies.

F. In addition to allowing multi-family housing only on a conditional use basis, the Planned Development zones limit gross density to two units per acre, without the use of transfer development credits.

G. The TDCs may be utilized in the. Planned Development Zones in the following manner: A developer must acquire land in the A-100 zone and may transfer the equivalent of one dwelling unit per 2 acres in that zone to the PD-MD zone or the PD-HD zone. However, the density in the PD-MD zone is limited to 3 dwelling units per acre and in the PD-HD zone to 4 units per acre even with the full use of the transfered credits. These increases in density are de-minimis given the tremendous cost to the developer purchasing A-100 zoned land to obtain the credits and the need to deed restrict the A-100 land to agricultural use in perpetuity in order to utilize the credits.

H. Height restrictions in all of the residential zones are 35 feet.

I. Lot Depth, front, side and rear yard requirements in all of the residential zones are far in excess of minimum standards of health and safety and therefore constitute cost exactions.

J. §150-58 to 86: The design standards for sub-divisions and site plans contain a myriad of cost exactions which far exceed minimum standards of health and safety, including, but not limited to, landscaping, curbing and sidewalk requirements, required parking spaces, and vehicular circulation requirements which are cost generating impediments to the provision of lower cost housing.

26. Despite the mandate of Chancery Division and the Supreme Court in Urban League of New Brunswick et. al. v. Mayor and Council of Carteret, et. al., and Mr. Laurel II that the defendants eliminate exclusionary barriers in their land use plans and ordinances, they have in fact perpetuated and tightened such barriers.

27. Thus the Land Use Plan and Ordinance fail to provide a realistic opportunity for construction of any low and moderate income housing in the Township, either, to meet present or prospective regional needs or the Township's present local need for such housing, in contravention of the Constitution of the State of New Jersey.

WHEREFORE, the Plaintiff demands judgment as follows:

A. Declaring the Land Use Plan of the Township of Cranbury to be violative of the New Jersey Constitution.

B. Declaring the Land Development Ordinance of the Township of Cranbury to be unconstitutional as violating the mandate of Mount Laurel II to provide for a realistic opportunity

for the construction of low and moderate income housing to meet both local and regional housing needs.

C. Enjoining the enforcement of the Land Development Ordinance by the Township.

D. Appointing a Master to supervise the revision of the Land Development Ordinance of the Township of Cranbury so as to assure that the new Ordinance conforms with the mandates of the Court in Mount Laurel II.

E. Granting to the Plaintiff a re-zoning of its land so as to provide for a Planned Unit Development (PUD), consisting of office and research facilities, and medium to high density residential use, including a reasonable amount of low and moderate income housing, which housing will be largely subsidized by such office and research development consistent with the holding of the Court in Mount Laurel II, and the provisions of N.J.S.A. 40:55D-6 to allow for the contemplated PUD.

F. Granting to the Plaintiff all of the necessary local approvals, including but not limited to site plan, subdivision and building permit approvals so as to construct the aforesaid PUD; and

G. Granting to the Plaintiff costs of suit and counsel fees; and

H. For such other relief as this court deems fitting and proper.

SECOND COUNT

1. The Plaintiff repeats the allegations contained in Paragraphs 1 through 27 of the First Count of the Complaint and incorporates the same herein as if set forth at length.

2. Since the V-MD, Village-Medium Density Zone, is all but fully developed, the only substantial developable land in Cranbury, which is now zoned for residential uses, is located in the A-100, R-LI and R-LD districts. However, those districts do not permit the construction of residences other than single family detached dwellings on minimum lot sizes ranging from 6 to 2 acres.

3. The Planned Development zones do not allow for the construction of multi-family housing except on a conditional use basis, and at gross densities of only 2 and 3 residential units per acre.

4. The 2 unit per acre gross density may be increased to 3 units per acre in the PD-MD Zone and 4 dwelling units per acre in the PD-HD Zone, only if a landowner acquires T.D.C.s, as set forth in §150-16 of the Ordinance.

5. The T.D.C. section of the Ordinance compels a developer to acquire a minimum of two acres within the A-100 Zone for every development credit to be transferred. Thus, in order for a developer to reach the maximum of four units per acre on a hypothetical ten-acre tract in the PD-HD Zone, that developer would have to acquire an additional forty acres in the A-100 Zone or "sending district".

6. Once development credits have been utilized by a developer, any acreage in the A-100 zone from which the credits were taken would thereafter be designated solely for agricultural use in perpetuity.

7. The T.D.C. provisions of the Ordinance impose an intolerable financial burden on any prospective residential developer and thereby make it impossible for the Township to meet its burden to provide for a realistic opportunity for the construction of low and moderate income housing as required by the Court in Mount Laurel II.

8. In frustrating the mandates of Mount Laurel II, the T.D.C. provisions of the Ordinance are unconstitutional.

WHEREFORE, the Plaintiff demands judgment as follows:

A. Declaring the Transfer Development Credit provisions within the Land Development Ordinance of the Township of Cranbury to be contrary to the mandate of Mount Laurel II, and therefore in violation of the New Jersey Constitution.

B. Enjoining the enforcement of the transfer development credit provisions of the Land Development Ordinance of the Township of Cranbury.

C. Appointing a Master to supervise the revision of the Land Development Ordinance for the Township of Cranbury so as to eliminate all exclusionary features of that Ordinance, including the T.D.C. provisions, so as to conform with the mandates of the Supreme Court in Mount Laurel II.

D. Granting to the Plaintiff costs of suit and counsel fees; and

E. For such other relief as the court deems fitting and proper.

THIRD COUNT

1. The Plaintiff repeats the allegations contained in Paragraphs 1 through 27 of the First Count of the complaint and 1 through 8 of the Second Count of the Complaint, and incorporates the same herein as if set forth at length.

2. The T.D.C. 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-l, *et seg*. (hereinafter "MLUL[11]).

4. All municipal attempts to regulate land use must be authorized by the MLUL.

5. The MLUL 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 T.D.C. provisions of the Ordinance.

7. In enacting these invalid provisions the Defendants have unlawfully deprived Plaintiff of the use of its property under the color of law in violation of the due process clause of the United States and New Jersey Constitutions and Federal statute, 42 U.S.C. 1983.

WHEREFORE, the Plaintiff demands judgment as follows:

A. Declaring the Transfer Development provisions of the Land Development Ordinance of the Township of Cranbury as ultra vires and enjoining their enforcement;

B. Awarding Plaintiff damages and costs of suit and counsel fees;

C. For such other relief as the court deems fitting and property,

FOURTH COUNT

1. The Plaintiff repeats the allegations contained in Paragraphs 1 through 27 of the First Count of the Complaint, Paragraphs 1 through 8 of the Second Count of the Complaint and Paragraphs 1 through 7 of the Third Count of the Complaint and incorporates the same herein as if set forth at length.

2. The Land Use Plan adopted by the Defendant Planning Board and the Ordinance adopted by the Township, places all of the Plaintiff's land in the A-100 Agricultural Zone.

3. The Plaintiff's tract is within the Central Corridor designated within the SDGP and constitutes prime developable land for moderate and high density residential development, as well as office and research development.

4. In limiting the Plaintiff's tract to agricultural use or use for residential improvements on lots with a minimum of six (6) acres, the Defendants have acted arbitrarily, capriciously and unreasonably.

5. Zoning restrictions on the use of an individual's tract must bear a reasonable relationship to both proper public policy and appropriate land use.

6. The severe restrictions placed upon the Plaintiff's tract have no relationship to proper public policy and reasonable land use, and in fact, subvert such policies.

7. Accordingly, the confiscatory features of the Ordinance constitute a "taking" of private property without just

compensation and violate the due process rights of the Plaintiff, as guaranteed in the United States and the New Jersey Constitutions.

8. In rejecting all attempts by the Plaintiff to even discuss his proposed development in the Spring of 1983, the Defendant Planning Board has acted arbitrarily, capriciously and unreasonably.

9. In adopting the Ordinance recommended by the Defendant Planning Board, the Township arbitrarily and capriciously disregarded the Plaintiff's development proposal for his tract.

WHEREFORE, the Plaintiff demands judgment as follows:

A. Declaring that the Defendants have acted arbitrarily, capriciously and unreasonably in zoning the Plaintiff's property as A-100 Agricultural;

B. Declaring such zoning to be confiscatory and a "taking" of the Plaintiff's property without just compensation in derogation of the United States and New Jersey Constitutions and providing the Plaintiff with compensatory damages for such "taking".

C. Declaring that the Defendants have acted arbitrarily, capriciously and unreasonably toward the Plaintiff in rejecting all attempts by him to process his proposal for the development of the tract.

D. Enjoining the enforcement of the Ordinance by the Defendant Township as it applies to the Plaintiff's tract.

E. Appointing a Master to supervise the adoption of an appropriate land development ordinance for the Township of Cranbury so as to provide a builder's remedy to the Plaintiff, in the form of a PUD consisting of Office and Research Facilities and medium to high density residential development, including a reasonable amount of low and moderate income housing;

F. Granting to the Plaintiff all of the necessary local approvals, including, but not limited to site plan, subdivision, variances and building permit approvals so as to construct the aforesaid PUD;

G. Granting to the Plaintiff costs of suit and counsel fees;

H. For such other relief as the court deems fitting and proper.

STERNS, HERBERT & WEINROTH, P.A.
Attorneys for the Plaintiff

By: Michael J. Herbert
Michael J. Herbert

Dated: December 19, 1983