ML General 3-Aug-1984

Letter to Judge - re: reporting that ~~after~~ Plaintiffs were unable to agree as to the suitability of any of the contested sites contained in Ms. Germani's July 12, 1984 report.

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NCDH
National Committee Against Discrimination in HOUSING
733 15th Street, N.W., Washington, D.C. 20005 • (202) 783-8150

August 3, 1984

Hon. Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Re: Urban League of Greater New Brunswick, et. al. v. Borough of Carteret, et. al.

Dear Judge Serpentelli:

I have conferred with Mr. Paley as requested in your letter of July 26, 1984, but must report that we were unable to agree as to the suitability of any of the disputed sites, other than those to which our planners have already agreed in their respective affidavits filed with the Court. Accordingly, the Urban League plaintiffs submit the following objections and comments in response to Ms. Lerman's report of July 12, 1984 regarding the suitability for residential development of the sites listed in Piscataway Township's Vacant Land Inventory.

Category I

Site 55 - We object to the conclusion implicit in Ms. Lerman's report that 80 to 90 acres of this site are presently available for higher density residential development. As Ms. Lerman notes, this entire site is owned by Rutgers University and therefore is unavailable for construction of Mount Laurel housing. Under state law as it now exists, development of this site, so long as it is not arbitrary or capricious, cannot be restricted by local land use regulations, including, presumably, a zoning provision

requiring a mandatory set aside of lower income housing. See Rutgers, the State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972). If, however, plaintiffs are given some clear indication that the University is willing to sell or lease this property for higher density residential development with a lower income set aside (see, e.g., site 57), we would have no objection to this site being considered as one that is suitable for development of Mount Laurel housing. To date, no such indication has been provided.

Category II

We have no objections to Ms. Lerman's conclusions regarding the sites in this category.

Category III

Site 4 - Ms. Lerman concludes that this site is "not satisfactory" for residential development since it is a "toxic waste site." This conclusion may be the result of a misunderstanding since our notes indicate that site 5, not site 4, is a suspected toxic waste site. With respect to site 4, plaintiffs submit that, with proper buffering from the industrial use to the south, this site is very appropriate for residential development.

Site 14 - Plaintiffs disagree with Ms. Lerman's conclusions regarding this site. First, while access to the site is limited, it is by no means difficult, since there are several existing roads which abut the site^ Second, the pipeline easement mentioned by Ms. Lerman does not present a major problem. As Alan Mallach stated in his trial testimony in this case, the same pipeline easement traverses several tracts on which garden apartments have already been developed at a density of 15 units per acre. Moreover, the pipeline easement crosses the northeastern corner of the tract and therefore, would impact, at most, only 10% of the site. Finally, plaintiffs submit that the 25Q-foot buffer between the development and 1-287 recommended by Ms. Lerman is clearly excessive. With sufficient berms, other plantings and sound barriers, a buffer of 100 feet should be more that adequate. Given the fact that the width of the site is between 500 and 600 feet for most of its length, this leaves more than enough land to accommodate an attractive residential development. In sum, plaintiffs believe that site 14 is suitable for residential development, although possibly at a lower density based on potential traffic and access problems.

Sites 16 & 17 - While these parcels are part of the Rutgers Industrial Park, they are on the fringe of the. park and are sufficiently large to allow them to be segregated

from nearby industrial uses by buffering. In addition, these sites have direct access to Possumtown Road and are across the street from an attractive county park and an adjacent residential area. Accordingly, plaintiffs believe that these sites are potentially suitable for residential developments

Sites 28 & 29 - We agree with Ms. Lerman*s conclusion regarding site 29. With respect to site 28, however, it is not clear how much of the site is affected by the floodplain. If a sufficient portion of the site is located outside of the floodplain, then the site may well be appropriate for a medium density townhouse development.

Site 30 (287 Associates? - For several reasons, plaintiffs believe that this site remains suitable for residential development. First, as Ms. Lerman notes, "the characteristics of this site would make it satisfactory for residential use as well as light industry..." Indeed, the township planner reached the same conclusion during his deposition in this case. (Deposition of Lester Nebenzahl, March 21, 1984, p. 111). Second, along with sites 31 through 35, it is part of the largest single vacant land area in the township that remains available for residential development. Third, the fact that development of this site for corporate offices might provide a "significant benefit" to the township is no justification for allowing the township to avoid the responsibility for meeting its fair share obligation, unless that obligation can be met elsewhere in the township. Given the size of Piscataway's fair share obligation under the "Urban League" methodology and Ms. Lerman's conclusions regarding the limited amount of vacant land suitable for residential development, it appears unlikely that the township will be able to meet its fair share obligation elsewhere, at least in the absence of more detailed information regarding appropriate densities. Fourth, the arguntent that the township "needs" this site for office development is undercut not only by the fact that the township has enjoyed phenomenal growth in office and industrial ratables, but also by the fact that it still has a substantial number of vacant sites which are both available for industrial use and clearly inappropriate for residential development. See, e.g., sites 18, 19, 20, 21, 22, 23, 24, 25, 26, 27~~, 41, 50,~~ 58, 59, 70, 71, 72, 73 and 74. Many of these parcels contain a number of useable sites. Finally, there is no reason why the line between office and residential development in the central part of the township cannot be drawn between sites 27 and 30, rather than between sites 30 and 31 as Ms. Lerman suggests.

Sites 32, 33 & 34 - Ms. Lerman concludes that these sites are satisfactory for residential use, but adds that "development [may be] limited by presence of power lines." In this regard, plaintiffs submit that the presence of power lines does not create a serious obstacle to development. As Mr. Mallach stated in his trial testimony, the only adverse impact is that housing cannot be built under the lines themselves. Indeed, as Mr. Mallach pointed out, there are innumerable examples, both in Picataway Township and elsewhere, of single and multi-family residences being built right up to a power line right of way.

Site 38 - Ms. Lerman concludes that site 38 is not satisfactory for residential development. This conclusion may be the result of a misunderstanding regarding the precise location of the site. Site 38 is actually comprised of three separate parcels, one rectangular area located north of Ethel Road and two irregularly shaped parcels located south of Ethel Road. In our view, there is no question that the northern-most parcel is appropriate for residential development. That site is zoned for PUD, is owned largely by the township, has no apparent physical constraints, and is surrounded by a residential zone to the north, multi-family developments in Edison to the east, a school to the south and some commercial uses and a vacant lot to the west. We agree with Ms. Lerman, however, that the other two parcels, although zoned for PUD by the township, are not as well situated for residential development. Nevertheless, even these two parcels may be appropriate for residential use, if tied to an adjacent multi-family project in Edison which is apparently being developed by the same developer who owns this portion of site 38.

Site 40 - Ms. Lerman concludes that this site is "partially satisfactory, [but] requires further study." Plaintiffs believe that Ms. Lerman overstates the potential problems with this site. For example, the site is adequately buffered from adjacent light industry to the south and west by a stream along its southern boundary. Moreover, its frontage on Stelton Road presents no apparent obstacle to development. While we agree that this site is quite appropriate for a mobile home park, this does not preclude its use for other types of residential development as well.

Site 42 - Ms. Lerman's report contains no reference to site 42. Plaintiffs suspect that this omission is probably due to oversight or a typographical error. In any event, plaintiffs contend that there is no legitimate reason why this site should not be considered satisfactory for residential development.

Site 79 - Plaintiffs agree with Ms. Lerman that, by itself, this site is not satisfactory for residential development. Nevertheless, if incorporated into site 38, which is adjacent to site 79 on the east, this site could afford greater flexibility in permitting development of a viable and attractive residential project on those sites.

Additional Site

New Site "80" - Recently, while reviewing site plan and subdivision applications pending before the Piscataway Township Planning Board, plaintiffs learned that there is a vacant site for which a 1981 preliminary approval has expired and which therefore should be added to Piscataway Township's Vacant Land Inventory. This site is located off of Lincoln Avenue, east of Hoes Lane, and is designated as Lots 16, 17, 47A and 50, Block 593, Lot 14A, Block 594, and Lot 10A, Block 595. Our initial review of this site indicates that it is suitable for residential development and therefore should be included in Category III.

Thank you for your consideration of these remarks.

Sincerely,

Bruce S. Gelber
General Counsel

BSG:vb

cc: Barbara Williams, Esq.
Philip L. Paley, Esq.
Daniel Bernstein, Esq.
Glenn S. Pantel, Esq.
Lawrence A. Vastola, Esq.
Lawrence Litwin, Esq.
Raymond Trombadore, Esq.
Chris Nelson, Esq.
Alan Mallach
Carla L. Lerman
Lester J. Nebenzahl