

ML Old Bridge ~~8/10/86~~ 1986
(Rondinelli)

Pretrial Memo on behalf of Plaintiffs
Rondinelli and ~~Dave~~ Daleron
Associates.

pgs = 13

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EDWARD J. RONDINELLI and)
ALEXANDRIA RONDINELLI)
and DALERON ASSOCIATES,)
a New Jersey Partnership,)

Plaintiffs,)

vs.)

TOWNSHIP OF OLD BRIDGE, a)
Municipal Corporation, and)
the CIVIC LEAGUE OF GREATER)
NEW BRUNSWICK,)

Defendants.)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY!
DOCKET NO. L-082456-85

CIVIL ACTION
PRETRIAL MEMORANDUM

The following is a Pretrial Memorandum on behalf of Plaintiff, Edward J. Rondinelli and Alexandria Rondinelli and Daleron Associates, a New Jersey Partnership.

1. The action is in lieu of Perogative Writ and Declaratory Judgement seeking to set aside a change in the zoning ordinance by the Township of Old Bridge which Plaintiff believes to have been improperly enacted. Plaintiff also seeks to set aside the zoning ordinance as being arbitrary, unreasonable, capricious and discriminatory in its effect upon lands and property owned by the Plaintiff. A third party complaint was filed by the Defendant, Urban League upon intervention seeking to compel the Plaintiff to provide 40 units of Mt. Laurel housing in accordance with a certain settlement agreement between parties other than the Plaintiff which further modified the zoning ordinance of the Defendant, Township of Old Bridge, to include a 10 percent mandatory set aside for Mt. Laurel housing.

2. The parties agreed to the terms of the zoning ordinance and the modifications of the zoning ordinance which are the subject matter of this action. The parties have also agreed to the Order and Judgement of Repose by the Honorable Eugene D. Serpentelli in a certain matter entitled Urban League of Greater New Brunswick, et al. versus The Mayor and Council of the Borough of Carteret, et al.

3. The factual and legal contentions of the Plaintiff are attached hereto,

M. The factual and legal contentions of the Defendant.
(See Defendant's pretrial memorandum.)

5. No money damages are being granted in this action.

6. NONE

7. Specifications of Issues:

- a. Whether the amendment to the zoning ordinance was properly adopted by the Township Council.
- b. Whether the Ordinance change is arbitrary, unreasonable, capricious and discriminatory in its effects upon Plaintiff.
- c. What effect, if any, does the Order and Judgement of Repose by the Honorable Eugene D. Serpentelli have upon the Plaintiff.

- d. Is the inclusion of the Plaintiff's land in the Mt. Laurel settlement a denial of due process of law.**
- e. Are the approvals granted to the Plaintiff by the Board of Adjustment of the Township of Old Bridge final and binding upon the Township as set forth in the zoning ordinances of the Township of Old Bridge and in the Municipal Land Use Law (N.J.S.A. 40:55D).**
- f. Is the Urban League's action premature inasmuch as the Plaintiff has not filed for final site plan approvals for the townhouse phase of the General Development Plan approved by the Board of Adjustment of the Township of Old Bridge.**
- g. Is the action of the Defendant, Urban League, barred by the Doctrine of Estoppel and Laches.**
- h. Is the action of the Urban League barred by the Statute of Limitations.**

- i. Has the Urban League waived its rights by failing to object to the approvals granted the to Plaintiff during the various public hearings and not appealing within 15 days as provided for by law.**

- j. What effect does the recent action by the Fair Housing Council have upon the action by the Defendant, Urban League, wherein the 1,668 units of Mt. Laurel housing for Old Bridge has been reduced by approximately 1,260 units.**

- k. Is the Urban League a proper party to this Action.**

- 1. What is the legal effect of an Use Variance that has been acted upon by the Plaintiffs.**

8. None

9. The following is a list of exhibits to be marked in evidence:

- a. **Land development Ordinance of the Township of Old Bridge.**
- b. **Transcript of Hearing wherein zoning ordinances modifications were introduced and then approved.**
- c. **Modification to zoning Ordinances**
- d. **Order and Judgement of Repeal of the Honorable Eugene D. Serpentelli.**
- e. **Resolution granting approval to the Plaintiff for its Planned Development Use Variance.**

10. Not Applicable

11. As the Court may direct.

12. Not applicable.

13. That this matter be stayed until a determination is made in September wherein the Defendant, Township of Old Eridge will appear before the Honorable Eugene *D Serpentelli for either a novation of the Order entered in the Mt. Laurel litigation or some other modification to said Order in

accordance to the findings of the Fair Housing Council.

14. Either Alan Karcher of the law firm Karcher, McDonnell & Rainone or Milton M. Breitman of the law firm Levy, Schlesinger & Breitman, P.A. shall be designated as trial counsel for the Plaintiff in this matter.

15. Three to five hours.

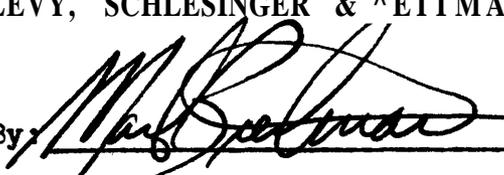
16. Not applicable.

17. Counsel has conferred on August , 1986 and have agreed on the items contained in the plaintiff's pretrial memorandum.

18. Not applicable.

19. Not applicable.

LEVY, SCHLESINGER & BREITMAN, P.A.

By: 

MILTON M. BREITMAN

FACTIDAL AND LEGAL CONTENTIONS OF PLAINTIFFS

The Plaintiffs are the owners of approximately 100 acres of land located in the Township of Old Bridge, Middlesex County, New Jersey. The property is vacant land and the former site of the Oshwald Brickworks which has been closed for approximately twenty years. At the time the Plaintiff purchased the property (November 1984), the land was zoned in part as residential development and the balance of the property for commercial development provided a minimum lot size of 5 acres was provided.

The Plaintiff, in its preparation for developing the property, prepared a General Development Plan in accordance with the Land Development Ordinance of the Township of Old Bridge and the Municipal Land Use Law. Based upon the number of acres which the Plaintiff owned, the General Development Plan was designed as Planned Development I and in March of 1985, the Plaintiff applied to the Defendant's Board of Adjustment, seeking both a Use Variance and the approval of the General

Development Plan. Additional variances were sought and on April 17, 1985, the Defendant's Board of Adjustment, after hearing testimony of the Plaintiff and their expert witnesses, granted a Use Variance to permit the lands of the Plaintiff to be treated as a Planned Development as specifically defined in the Township's Land Development Ordinance. The approvals of the Board of Adjustment granting the Use Variances has not been appealed by either the Township Council or any interested party as defined in the Municipal Land Use Law.

Subsequent to the granting of the Use Variances, the Township Council, upon recommendation of its Planning Board, amended its zone map to specifically rezone the lands of the Plaintiff to the Planned Development I Zone which became effective 20 days after the expiration of publication of the action by the Township Council. The zoning change was similar in all aspects as to the relief sought by the Plaintiff in obtaining a Use Variance for the Planned Development. The zoning change was accomplished under proper authority and no appeals have been taken to set aside zoning changes.

The Use Variance and ordinance change permitted the Plaintiff to construct three dwelling units per acre based upon the gross project area which would permit the construction of 420 units. The three units per acre was based upon units by right with density bonuses should the Plaintiff elect to provide such things as energy conservation and commercial development. The calculations of units is also found in the Planned Development II zone which calculation is made by dividing the total dwelling units by the gross project area to obtain the in gross project density. The determination of a Planned Development I zone vs. a Planned Development II zone is made based upon the number of acres involved in the development. A minimum of 300 acres is required to be considered a Planned Development II zone.

The Plaintiff proceeded with its application for the approval of the General Development Plan and in September 1985 the Board of Adjustment granted said approval which approval has never been appealed.

Unbeknown to the Plaintiff, the Planning Board and Township Council were discussing a change in the zoning ordinances which would have a substantial effect on the number of dwelling units permitted in a Planned Development. This change was made only in the Planned Development I zone and would effect other lands

and premises owned or optioned by the Plaintiff in the Township of Old Bridge. When the Plaintiff became aware of this pending change, he attended a meeting of the Township Council on August 19, 1985 and objected to its final approval. Plaintiff, by its counsel, strenuously argued that the change in the zoning ordinance was arbitrary in its planning and totally unreasonable in consideration of the wording of the balance of the Ordinance. The zoning change tends to discriminate against property owners only in a Planned Development I zone by not permitting the owner to fully develop the lands as envisioned by a General Development Plan. Despite arguments by Plaintiff and its counsel and after hearing the public on the various issues raised, the Council voted 4 votes for approval, 2 for denial and 1 for abstention. In accordance with the Municipal Land Use Law, an affirmative vote of a majority of five is required for passage and since five affirmative votes were not obtained the ordinance change was defeated. Immediately subsequent to the vote and without a new introduction of the ordinance, another vote was taken by the Board. It is Plaintiff's position that since no new testimony was presented and no submission of a new zoning change was submitted, that the new vote by the Council was not in accordance with applicable rules and was void.

Plaintiff further contends that even if the ordinance was properly approved the ordinance should be revoked since same is arbitrary, unreasonable and capricious and discriminatory in its effects upon the Plaintiff

As to the action filed by the Defendant, Urban League, it is Plaintiff's contention that since it was not party to that action, it is a denial of due process to include the lands and premises of the Plaintiff in such a settlement. At all relevant periods of time while Plaintiff was pursuing its Use Variance and Approval of the General Development Plan, the Defendant, Urban League never once appeared and raised any objection to the approvals being sought by the Plaintiff. All hearings were properly notified and advertised in accordance with the Municipal Land Use Law and due to the Immense size of Plaintiff's project, extensive press coverage was given. Surely, the Defendant, Urban League can not claim lack of notice of the pending applications of the Plaintiff. The Defendant, Urban League has also failed to appeal during the 45 day period and it is Plaintiff's contention that it is estopped from bringing this action at this time by said limitation. The Plaintiff also contends, as will be more specifically set forth in our brief that the granting of the Use Variance renders any change in the zoning ordinances inapplicable since the Plaintiff has substantially proceeded based on the approvals granted (an

expenditure/liability of almost \$10,000,000.00 had been incurred by Plaintiffs prior to the Mt. Laurel settlement). Plaintiff also received approval for extended vesting which is binding upon the Defendant Township and the Plaintiff as developer and any change in zoning is to have no affect upon the lands included within the General Development Plan.

(35: PRETRIAL: 8/08/86)