ML Old Bridge 10-Mar-1986

Rondinelli v. O.B.

Certification of Edward J. Rondinelli in Opposition to Motion for intervention.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
Docket No. L-082456-85

EDWARD J. RONDINELLI and ALEXANDRIA &ONDINELLI and DALERON ASSOCIATES, a New Jersey Partnership, Plaintiffs,	CIVIL ACTION
vs.	CERTIFICATION OF EDWARD J. RONDINELLI IN OPPOSITION TO MOTION FOR INTERVENTION
TOWNSHIP OF OLD BRIDGE, a Municipal Corporation, Defendant.	

EDWARD J. RONDINELLI, of full age, certifies as follows:

1. I am the principal owner of various parcels of land located on and off Laurence Harbor Road, in the Township of Old Bridge, Middlesex County, New Jersey, for which I have expended jj very large sums of money, for a good faith development that will befit the unique character, location of the lands and the economic uses thereof.

2. The parcels to which I acquired title as of November 30, 1984, consist of 140 acres, more or less, of vacant land and were

the former site of the Oshwald Brick Works, which has been closed for approximately twenty years.

3. At the time that I purchased the property, the zoning as defined in the Land Development Ordinance in the Township of Old Bridge, permitted residential construction on approximately thirty-five acres of land in a zone designated R-7 and the balance of the property was zoned for commercial development with a minimum lot size of five acres (SD-5).

4. In the preparation for developing the property, I prepared various plans and schemes of development and finally selected a General Development Plan for the property and prepared same in accordance with the Township of Old Bridge's Land Development Ordinance. The said General Development Plan is a conceptual plan for the purposes of developing a tract of property over a period of time which is developed as a Planned Development.

5. Based upon the number of acres owned by me, I met the qualifying criteria for a Planned Development I Zone. The balance of the qualifying criteria for a Planned Development were met by obtaining variances for the requirement that a mix residential dwelling be provided and that a mix residential densities be submitted to provide open space and residential acres, and other open space requirements as required by the Ordinance.

6. In accordance with the application procedures of the Township of Old Bridge and, inasmuch as a use variance would be required to change the use from the then current R-7 and SD-5 Zone, in March of 1985 I filed the application together with the

requisite fees with the Board of Adjustment seeking both the use variance and the approval of the General Development Plan in accordance with the Township requirements. Said application was deemed complete by the appropriate municipal authorities and the matter proceeded to hearings before the Board of Adjustment.

7. In addition to the variances mentioned above, I sought variances to waive the staging requirements inasmuch as I have a controlling interest in a piece of property nearby to the lands in question on which I had also received final Planning Board approval for construction of a commercial office facility and the purpose of waiving the staging requirement was to utilize said commercial facility as fulfillment of the staging requirements. I also sought a variance to increase the net dwelling unit densities per acre to an extent permitted in the Planned Development II Zone. The basic element of difference between the Planned Development I Zone and the Planned Development II Zone is that the Planned Development II Zone requires a minimum of 300 acres and there is a mandatory provision that at least 10 percent of the land be devoted for commercial purposes.

8. In April of 1985, I appeared before the Board of Adjustment with counsel and expert witnesses and the Board of Adjustment, after hearing expert testimony and the presentation made by me, granted a use variance to permit my lands to be treated as a Planned Development, as defined in the Township of Old Bridge Land Development Ordinance. A copy of the Resolution of Approval, dated April 17, 1985, is attached hereto as Exhibit "A"

9. The said approval of the Board of Adjustment granting the use variance has not been appealed by either the Township Council or any interested party, as defined in the Municipal Land Use Law (N.J.S. 40-55D), or by any one else claiming now to have an interest, to wit, the applicant for Intervention, The Civic League of Greater New Brunswick.

10. Subsequent to the granting of the use variance by the Board of Adjustment, the Township Council, upon recommendation of the Planning Board, amended its zoning map to re-zone my lands to a Planned Development I Zone, which became effective upon the expiration of twenty days after publication of the action by the Township Council. The effect of the zone change was similar in all aspects as to the relief I sought in obtaining a use variance for the Planned Development.

11. The zoning change was accomplished under proper authority and no appeals have been taken by any interested or other party seeking to challenge the zoning change.

12. The use variance and the ordinance change permitted me to construct three dwelling units per acre, based upon the gross project area (as defined in the ordinances) of 140 acres for a total of 420 units. The three unit per acre calculation is based upon units by right and units by election of certain density benefits as outlined in said ordinance.

13. A similar provision for calculating the gross project density is found under the Planned Development II Zone with the calculation always being based by dividing the total dwelling

units by the gross project area to get the gross projecft density.

14. I thereafter proceeded with an application for the balance of the variances and for the approval of the General Plan Development and in September, 1985, the Board of Adjustment granted said approval with the variances requested by me. Said approval was granted on September 5, 1985 and a copy of the Resolution is attached hereto as Exhibit "B".

15. The economic feasibility of pursuing a plan of development was carefully studied, which included normal and usual costs, special conditions of the nature and character of the lands, and the assumptions and offset of the risks in the construction of commercial or office structures on a speculative basis, without prior leases or other assurances.

16. The tone, as expressed by the Zoning Board in its Resolution, Exhibit "B", was serious concern that I or any other developer who might succeed me, would build the residential structures or dwellings and leave the balance of the lands in its unsatisfactory condition and also refuse to build and complete the 100,000 square foot office building on the adjacent site. It was my expectation that my cash flow during the process of construction would be alleviated by the sales of the residential units. Instead, I was deprived of this support by the imposition of the condition that the 100,000 square foot office building had to be completed ~~prior to commencing~~ the residential construction.

In addition, I was required to agree to post a bond of $200,000.00 and to post $500.00 for each residential unit upon

completion (not sale) of each unit, which would be allocated to the reclamation of the clay pit areas.

Further, I was required and agreed to post $25,000.00 for the creation of recreational facilities and to dedicate the Little League field, Genoan playground and Biondi Street right-of-way.

16. I immediately prepared to construct the Little League field and, as soon as the forty-five day period for appeal passed, I commenced the site and excavation work on the office building, on which the steel is now continuing to be erected. The play-field will be completed very soon, when weather conditions allow. I, of course, have not, based upon the restrictions, commenced the erection of any of the dwellings.

17. It is apparent that all during the periods of my applications to the Township of Old Bridge and its agendies, the Civic League, formerly Urban League of New Brunswick, in its action against the Mayor and Council of the Borough of Carteret, No. C.4122-73, in the Superior Court, in the action in L-009837-84 P.W. and L-036734-84 P.W., was fully familiar with the actions and events concerning zoning in Old Bridge. It is also obvious that the Township and its attorneys were aware of all sides of the litigation and zoning proceeding.

18. It is inconceivable to me and unconscionable that all during this period of time, there was <u>never</u> a mention, suggestion, or any disclosure and, certainly, never a communication to me, that notwithstanding my special conditions and agreement to give

up substantial rights, which are presently irretrievably, that the residential part of my development of 400 units, would be subject to Mount Laurel low cost or moderate cost units and I was not given due process to assert my special or unique circumstances.

19. I am not only besieged by the extreme burden that would be interjected by a wrongful application of Mount Laurel II, but by extreme costs and imposition of requirements for sewerage and water facilities, not now available in Old Bridge, and also enormous costs of legal and expert fees, for specialist^ in these fields.

I estimate that the loss on the building of forty units which the settlement agreement imposed on me, unilaterally, arbitrarily and without any right of input by me, or on my behalf, would be $20,000.00 to $25,000.00 per unit, which totals a loss in the range of one million dollars. The personal risk to me, with the potential townhouse profit drastically diminished, is a deprivation.

20. The loss cannot be absorbed, nor the risk brought into reasonable reign, by a distribution to the remaining 360 units. Mount Laurel, with the existing number, is an overburderi, which is a retroactive deprivation of my fair and equitable rights.

21. For the record, the first time we were aware, or heard of the application of Mount Laurel to our project, wasljhen we were served with a Consent Order, approved by Judge Eugene D. Serpentelli, A.J.S.C., dated January 24, 1986, on February 21,

1986, approximately six months after we received our approvals.

22. This action was taken after it was learned that the Planning Board and Township were discussing changes in zoning law to re-define the gross project density, by using only the lands dedicated for residential use rather than the gross project area, as previously existing, in a secretive and discriminatory manner, to affect Class I and not Class II Development Zones, for the purpose of my protection of other lands in and for which I had taken options to purchase, which was adjacent to the subject property.

23. It is also our contention that the passage of the ordinance was invalid and null and void.

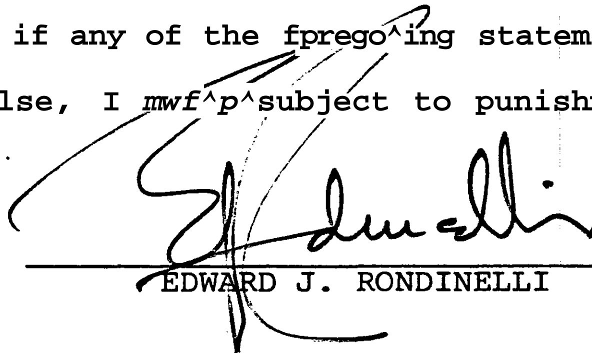
24. There is nothing in this pending action, or of any lands or transactions, that the Civic League could claim an interest, and the attempt of intervention is to appeal action previously validly taken and approved, way beyond the time for appeal.

25. The Counterclaim proposed to be asserted is an attempt to intervene in the municipal proceedings of the Board of Adjustment, which concluded by the Resolutions of April 17th and September 5, 1985, from which no appeal was taken as stated above and after a time when I have expended and made commitments of substantial amounts.

26. The success of and attempt to impose a settlement agreement on an approval previously granted beyond the time of appeal by a collateral action, in which I was not made a party and not told of its pendency, would be a substantial injustice. We have

so notified Hon. Eugene D. Serpentelli by a letter sent to him by my attorney, dated February, 1986, a copy of which is attached as Exhibit "C". Such question is unrelated to the action in this pending case.

I hereby certify that the foregoing statements mad© by me are true. I am aware that if any of the fprego^ing statements made by me are wilfully false, I mwf^p^subject to punishment.



EDWARD J. RONDINELLI

Dated: March 10th 1986.