

ML

Old Bridge
Rordinelli v. O.B.

1-Nov-1985

Amended Complaint (In Lieu of
Prerogative Writ ad for Declaratory
Judgment).

pgs = 8

ML 000526C

11-12
MAYOR & ADVISORY
DECLARATORY JUDGMENT

LEVY, SCHLESINGER * BREITMAN, P.A.,
Attorneys for Plaintiff
3 ADP Boulevard
Roseland, New Jersey 07068
(201) 992-4*100

SUPERIOR COURT OF N.J.
HLET).

NOV 2 1985

R-1
JOHN M. MAYSON
CLERK

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

Plaintiffs,

vs.

TOWNSHIP OF OLD BRIDGE, A
Municipal Corporation,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO. L-0824S6-85

CIVIL ACTION

AMENDED COMPLAINT

(In-Lieu-of-Prerogative-Writ-and
for Declaratory Judgment)

The Plaintiffs, having their places of business at 771
Brant Avenue, Clark, New Jersey, by way of Complaint against the
Defendant, Township of Old Bridge, says:

FIRST COUNT

NOV 5 1985
M M B
CLERK

1. the Plaintiffs are the
Owners of a tract of land consisting of 140 acres
located on Lawrence Harbor Road /Township of Old Bridge,

2. The property is vacant land and the former site of Wald Brick Works which has been closed for approximately

. At the time that the Plaintiffs purchased the property, the zoning as defined in the Land Development Ordinance in the Township of Old Bridge, permitted residential development on approximately 35 acres of land in a zone designated as SD-5. The property is located in the Township of Old Bridge, New Jersey, and is zoned SD-5, which permits residential development on a minimum lot size of 5 acres (SD-5).

H. The Plaintiffs in its preparation for developing the property, 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 the Plaintiff, Plaintiff met the qualifying criteria for a Planned Development I Zone. The balance of the qualifying criteria for a Planned Development were met by the Plaintiff's 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 in accordance with the Township Ordinance as a use variance would be required to change the use from the then current R-1 SD-5 Zone, the Plaintiff in March of 1985 filed the application together with the requisite fees to 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, the Plaintiff sought variances to waive the staging requirements inasmuch as the Plaintiff has a controlling interest in a piece of property nearby to the lands in question on which he also received Planning Board approval for construction of a commercial office facility and the purpose of waiving the requirement was to utilize said commercial facility as a multi-family residential development. The Plaintiff sought to increase the net dwelling unit densities per acre to an extent permitted by 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 100 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, the Plaintiff 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 the Plaintiff, granted a use variance to permit the lands of the Plaintiff to be treated as * Planned Development as defined in the Township of Old Bridge Land Development Ordinance.

9. The 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).

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 rezone the lands of the Plaintiff to a Planned Development I zone which became effective upon the expiration of 20 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 sought by the Plaintiff 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 party seeking to challenge the zoning change.

12, The use variance and the ordinance change permitted the Plaintiff, to construct three dwelling units per acre based upon the gross project area (as defined in the ordinances) of mo acres for a total of %20 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 project density.

14. The Plaintiff proceeded with its application for the balance of the variances an4 for the approval of the General Pl<ii Development and in September, 1985 the Board of Adjustment granted said approval with the variances requested by the Plaintiff. Said approval was granted on September 5, 1985.

*5. Unbeknown to the Plaintiff, the Planning Board and the Township Council were discussing a change in the zoning law the effect of which would redefine the gross project density by using only the lands dedicated for residential use rather than the gross project area as was existing in the Township Zoning Ordinance at the time of the application. This change was made only in the Class I Development Zone and not in the Class II Development zone.

16. The effect of the zoning change would seek to restrict the Plaintiff to construct only 120 dwelling units on the entire tract rather than the 420 units allowed by the existing zoning ordinance, which is a substantial decrease in residential units. The Plaintiff became aware of this planned zoning change and attended a meeting on August 19, 1985 before the Township Council where the ordinance amendment was read for the second time and was proposed for final approval*

17. The Plaintiff by and through one of its counsel, strenuously objected to the zone change inasmuch as same was discriminatory against the Plaintiff, it was arbitrary in its planning and totally unreasonable in consideration of the wording of the balance of the ordinance. Said zone change tends to discriminate against property owners in the Planned Development I-7m* by not permitting an owner to fully develop the land as envisioned by a General Development Plan.

18. Despite arguments by Plaintiff and counsel and after hearing the public on the various issues raised, the Council put the matter to motion and voted on same. The vote was four for approval, two for denial, one abstention and two absentees. In accordance with the Municipal Land Use Law a zone change required an affirmative vote of a majority of five and inasmuch as five affirmative votes were not obtained the motion was defeated.

thout introduction of any new testimony and

Vice President

counsel indicating

PIS®SSSSiB*^^SS^|| applicable rules

to approve the ordinance change.

Jf?MM^M^MMMW^::^&&^§

without stating reasons,

the lands owned by the Plaintiff and it is the intention of the H, t. t. < ff t. lands under

I options under the Plan Development Zone.

Planning Board and the Township Council and read

1985 was not approved and be effect, and therefore not binding upon Plaintiffs.

h and every allegation of the

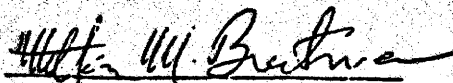
Without admitting the validity or the
the zoning change as set forth in the First

•E^iie^*liifcS^fr^;f^f|>;:~^c;

HEREFORE the Plaintiff demands judgment seeking to
e amendment to the zoning ordinance referred to
:^bove:v:Uln;:-^hf:r;@vent this Court finds that same was properly
passed by the Township Council on August 19, 1985.

LEVY, SCHLESINGER * BREITMAN, P.A.
Attorney for Plaintiffs

By:



MILTON M. BREITMAN

Date: October 28, 1985

<21:EJRAC0MPT)