

ML - Morris County Fair Housing Council
v. Boonton

Dec. 11, 1980

- Parsippany-Troy Hills

- Trial Brief on Behalf of Defendant - Township of Parsippany -
~~of~~ Troy Hills

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ML000046B

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR	:	
HOUSING COUNCIL, et al.,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	Civil Action
	:	
BOONTON TOWNSHIP, et al.,	:	
	:	
Defendants	:	

TRIAL BRIEF ON BEHALF OF DEFENDANT - TOWNSHIP
OF PARSIPPANY-TROY HILLS

SEARS, PENDLETON & LATZER
Attorneys for Defendant - Township
of Parsippany-Troy Hills
57 Old Bloomfield Avenue
Mountain Lakes, New Jersey 07046

On The Brief:

BERTRAM J. LATZER, ESQUIRE

Legal Assistant:

EILEEN T. CARBERY

STATEMENT OF FACTS

The total land area of the Township of Parsippany-Troy Hills is 24.3 square miles or 15,552 acres. As of September 1979, potentially 1,000 acres remained undeveloped within residential zones. In the commercial, office and industrial zones there were about 450 vacant acres. This undeveloped residential acreage totals approximately 5.5% of the land area of the Township. Total vacant land represents about 9%.⁽¹⁾

Development of the remaining vacant residential areas is limited by environmental factors, topography and/or lack of basic services. The 51 undeveloped acres in the R-R zone are characterized by steep topography, no sewer service, and limited access. The remaining 100 acres in the R-1 zone are classified as flood plain by the New Jersey Department of Environmental Protection. Of the 500 vacant acres in the R-2M zone, approximately 25% are designated as flood hazard areas by the DEP, and in any event are about to be proposed for development. The 201 acres in the R-3 zone are made up of various small parcels; 50% of the area is steeply sloped and has no sewer service. The 129 acre RCM tract is zoned 50-75% residen-

⁽¹⁾ This does not include the RCW zone, a wildlife preservation area, substantially owned by Wildlife Preserves, Inc.

tial, of which 100% may be townhouses, and up to 10% single-family.

The Township of Parsippany-Troy Hills experienced enormous population growth during the 1960's. In 1950 the total population was 15,000 persons and by 1970 the population had increased to a total of 55,000 persons. Preliminary 1980 census figures of 49,832 persons show that the Township is no longer in the throes of development. In addition to population, the municipality has experienced widespread commercial and industrial development. The bulk of the commercial development occurred more than 20 years ago and the majority of industrial and office development has occurred since 1965.

The Zoning Ordinance of Parsippany-Troy Hills contains 8 residential categories which provide for a variety of residential housing types on a wide range of lot sizes and/or density of development. It is estimated that 55% of the total Township population resides in the R-4 zones - single-family homes on 6,000 square foot lots.

The preliminary 1980 census lists the total housing units of the Township at 17,730 units. Of these, about 8,000 are rental units. 85% of the total population of the Township resides in either garden apartments or single-family homes on lots of 6,000 square feet, more or less.

The Township has made housing more affordable by the April 1972 adoption of a rent levelling ordinance, as well as the approval of two major senior citizen housing projects of 450 units.

Additional efforts to aid in the improvement of the housing stock of the lower and middle income areas of the Township include designation of the Lake Hiawatha and Lake Parsippany neighborhoods as Neighborhood Strategy Areas in the Township's HUD - Community Development Block Grant program. Approximately 30% of its annual entitlement grant has been allocated to improvement of a total of 325 units. 150 households have received certification for Section 8 rental housing assistance, a majority of all Section 8 certificates made by the Morris County Housing Authority.

I. THE TOWNSHIP OF PARSIPPANY-TROY HILLS IS NOT A DEVELOPING COMMUNITY.

As noted in many defendants' Briefs, the zoning imperatives of Mt. Laurel (So. Burl. Ct. N.A.A.C.P. vs. Township of Mt. Laurel, 67 N.J. 151 (1975)) apply only to developing communities. A developing municipality is one with sizable amounts of vacant developable land which remains in the path of future residential, commercial and industrial growth.

The Township of Parsippany-Troy Hills is rapidly approaching full development of land. Less than 5.5% of the total land area of the Township remains undeveloped within residential zones. If these 1,000 acres were totally developed in accordance with zoning regulations, that is, with no allowance for environmental factors or lack of infrastructure, approximately 1,600 units could be built in the Township.

Plaintiffs have defined potentially developable land as "vacant land upon which safe, decent, and sanitary improvements may occur",⁽²⁾ and claim that Parsippany-Troy Hills has "substantial quantities" of vacant land. Plaintiffs claim to have relied on DCA figures to support their estimate that sufficient land did exist within the

⁽²⁾ DCA defined vacant developable land as vacant land less land with greater than 12% slope, wetlands, qualified farmlands and public lands. (1978 Report, p. 16)

Township to accommodate their fair share allocation. (3)
Incredibly, Plaintiffs also claim to have substantiated
the DCA estimate by site inspections and viewing of
aerial photographs. (PTH - 1a)

Yet, the housing allocations of Plaintiffs were not
only based on outdated data concerning vacant land within
the Township, (4) but also assumed that all vacant land was
suitable for residential development.

As will be discussed below, it is the Township of
Parsippany-Troy Hills' claim that it has provided and
continues to provide for a variety of housing opportunity,
and that its remaining lands should now be directed toward
achieving a more balanced community.

(3) The DCA housing allocation for the Township of Parsippany-Troy Hills is 5,007 units.

(4) The Housing Allocation plan was based on a finding of 4,642 vacant acres in the Township. See "A Revised State-wide Housing Allocation Report for New Jersey, 1978" at D-17.

II. PARSIPPANY-TROY HILLS HAS PROVIDED MORE THAN ITS FAIR SHARE OF LEAST COST HOUSING.

As the Supreme Court stated in Oakwood at Madison, Inc. vs. Township of Madison, 72 N.J. 481, 543 (1977), a municipal zoning ordinance must realistically permit the opportunity to provide a fair and reasonable share of the region's need for housing for the "lower income" population.

Parsippany-Troy Hills provides for an array of housing types on small and medium size lots as well as a substantial number of rental housing units which are moderate cost units. In fact, the Township housing resources are atypical of suburban communities in the area, since approximately 85% of the total population resides in either garden apartments or single-family homes on lots of 6,000 square feet or less.

Plaintiff's expert, Alan Mallach, has emphasized the importance of achieving a balanced community. (PTH-7a) Yet to require additional low or "least cost" housing as demanded by the Public Advocate, will only contribute to the present housing imbalance and frustrate the Township's attempt to increase the number of middle and upper middle income families. It should be noted, however, that even these efforts are non-exclusionary as the largest areas of remaining residential land are zoned for townhouses,

small single-family lots in a clustered pattern, and multi-family senior citizen subsidized housing.

The Township of Parsippany-Troy Hills maintains that it has already provided a housing resource for low and moderate income households for a substantial portion of the region. This position is fully documented in Township Master Plan studies. Zoning for the remaining developable zones has been consistent with the objectives of the Master Plan listed below:

To provide a reasonable balance of housing and job opportunities.

To provide and/or maintain a variety of housing types suited to the needs of varied age and income groups now residents or future residents of the Township.

III. CONCLUSION

An Application of the tests espoused by the Supreme Court to determine whether a municipality is a "developing municipality" requires a finding that the Township of Parsippany-Troy Hills is not a developing municipality.

Should the Court rule contrary to the Township of Parsippany-Troy Hills' position on developing municipality a judgment dismissing Plaintiffs' action should nevertheless be entered because reasonable provision has been made in the Township Zoning Ordinance for its fair share of least cost housing units. The reasonableness of Parsippany-Troy Hills' zoning regulations should be measured against existing housing stock and the concept of a balanced zoning plan.

Respectfully submitted,

SEARS, PENDLETON & LATZER
Attorneys for Defendant - Township
of Parsippany-Troy Hills

BY: 
BERTRAM J. LATZER

DATED: December 11, 1980

PENDLETON & LATZER

57 OLD BLOOMFIELD AVENUE
POST OFFICE BOX 325
MOUNTAIN LAKES, N. J. 07046
(201) 334-1011

ATTORNEYS FOR Defendant,
PARSIPPANY-TROY HILLS TOWNSHIP

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY

Plaintiff , MORRIS COUNTY FAIR HOUSING
COUNCIL, ET ALS.,

vs.

Defendant s, BOONTON TOWNSHIP, ET ALS.

Docket No. L 6001-78 P.W.

CIVIL ACTION

INTERROGATORIES

TO: STANLEY C. VAN NESS, PUBLIC ADVOCATE,
Department of the Public Advocate,
Division of Public Interest Advocacy
520 East State Street,
Trenton, New Jersey 08625

SIR:

PLEASE TAKE NOTICE that the undersigned demands that the Plaintiff, Stanley C. Van Ness, Public Advocate of the State of New Jersey, give certified answers to the following Interrogatories based upon the knowledge and information available to him and to his agents and attorneys, within the time period allowed by the rules of Court.

PENDLETON AND LATZER
Attorneys for Defendant,
ParsIPPany-Troy Hills Township

DATED: February 9, 1979 1a

BY: *Bertram J. Latzer*
Bertram J. Latzer

1. Set forth the definition of the term "potentially developable land" used in paragraph 5 of the Complaint.

Land which does not presently contain improvements; that is, vacant land upon which safe, decent and sanitary improvements may occur.

2. Set forth all facts as to each municipality within the County in support of the allegation that the defendant municipalities contain "virtually all of the potentially developable land" in Morris County.

The named defendants contain within their borders approximately 90% of the total land area of Morris County. The municipalities in Morris County which are not named defendants all have little or no vacant, developable land.

3. Attach a copy of all reports, studies, calculations or other documents relating to plaintiff's calculation of potentially developable land.

See D.C.A. Housing Allocation Report and supporting documentation. The 1978 D.C.A. report was preceded by one in 1976 which was based on four supporting documents which dealt with region, methodology, present and prospective need. The need figures are also based on an earlier housing needs study done by D.C.A. Recent aerial photos of Morris County were reviewed at the offices of the Morris County Planning Board.

4. Set forth all facts on which plaintiff relies in support of the allegation of paragraph 8 that Parsippany-Troy Hills (hereinafter referred to as P-TH) is a developing municipality.

Plaintiffs relied on the D.C.A. Housing Allocation Study and County Master Plan. Additional data has been supplied in connection with Mary Brooks' report. Plaintiffs experts have also undertake site visits which have been or will be reflected in their report.

As reflected from these sources, defendant has ample vacant developable land, has experienced residential and non-residential growth, and is now anticipating significant further growth.

(a) Identify and attach a copy of all documents supporting the facts set forth above.

Documents are identified above. Those not publicly available have been supplied. Additional data compilations, if any, will be supplied.

(f) Attach a copy of all documents relevant to the facts set forth in the answers above.

D.C.A. and Morris County Planning Board data are generally available.

16. Set forth in detail the definition of "vacant land appropriate for development" used in paragraph 12 of the complaint.

The considerations used regarding available vacant, developable land at the time of filing the complaint and which are in the DCA plan are 12% slope, wetlands, land under farmland assessment and public lands. Plaintiffs believe these are very conservative criteria. Thus, the Morris County Master Plan used 15% slopes (see p.17) and does not include farmland. Plaintiffs have not done an inventory of all such land in each defendant municipality and for purposes of the complaint relied upon the DCA evaluation that sufficient land did exist to accomodate their fair share estimate. Reliance was also placed on County reports relative to land impacted by environmental constraints (see, for example, the County Master Plan land use element) site inspections and aerial photos available at the County Planning Board.

(a) Set forth in detail the "sufficient vacant land appropriate for development" in P-TH and the method by which plaintiff arrived at its answer.

Reliance on official studies, all of which show substantial quantities of vacant land in Parsippany-Troy Hills and site visits by Public Advocate personnel to check the studies.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING COUNCIL, :
MORRIS COUNTY BRANCH OF THE NATIONAL :
ASSOCIATION FOR THE ADVANCEMENT OF :
COLORED PEOPLE and STANLEY C. VAN : DEPOSITION OF:
NESS PUBLIC ADVOCATE OF THE STATE OF : ALAN MALLACH.
NEW JERSEY, :

Plaintiffs, :

-vs- :

BOONTON TOWNSHIP, CHATHAM TOWNSHIP, :
CHESTER TOWNSHIP, DENVILLE TOWNSHIP, :
EAST HANOVER TOWNSHIP, FLORHAM PARK :
BOROUGH, HANOVER TOWNSHIP, HARDING :
TOWNSHIP, JEFFERSON TOWNSHIP, KINNELON :
BOROUGH, LINCOLN PARK BOROUGH, MADISON :
BOROUGH, MENDHAM BOROUGH, MENDHAM TOWN- :
SHIP, MONTVILLE TOWNSHIP, MORRIS TOWN- :
SHIP, MORRIS PLAINS BOROUGH, MOUNTAIN :
LAKES BOROUGH, MOUNT OLIVE TOWNSHIP, :
PARSIPPANY-TROY HILLS TOWNSHIP, :
PASSAIC TOWNSHIP, PEQUANNOCK TOWNSHIP, :
RANDOLPH TOWNSHIP, RIVERDALE BOROUGH, :
ROCKAWAY TOWNSHIP, ROXBURY TOWNSHIP :
and WASHINGTON TOWNSHIP, :

Defendants. :

B E F O R E:

VICTOR SELVAGGI, JR., a Notary Public
and Certified Shorthand Reporter of the State of New
Jersey, at the MORRIS TOWNSHIP MUNICIPAL BUILDING,
Convent Station, New Jersey, Wednesday, May 30, 1979,
commencing at 3 p.m.

KNARR - RICHARDS, ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

OFFICES IN MORRISTOWN & NEWTON

10 PARK SQUARE
MORRISTOWN, N.J. 07960
539-7150

Box 241, R.D. 5
NEWTON, N.J. 07860
383-2866

1 cannot afford to provide the level of services and
2 facilities that a good living environment should have
3 and I would go further that I think a community in
4 which there is a clear measure of economic segregation
5 is potentially a very troublesome area in terms of
6 potential conflict, frustration, hostility and other
7 things. I think that generally sums it up.

8 Q Addressing the question as a planner,
9 would your answer be the same? My question is being
10 addressed to your planning in terms of a particular
11 community.

12 These answers you are giving me are addressing
13 the problem as a land use planner is what I meant to
14 say. A Well, would I reach the
15 same conclusion?

16 Q Yes. A Yes. I think the
17 conclusions deal with admittedly social and economic
18 kinds of concerns. From a land use standpoint, the
19 goal would be to figure out how to implement something
20 that essentially stemmed from a social or economic
21 perspective.

22 Q I don't mean to narrow my question, but
23 as a planner, a land use planner or one who will be
24 planning the so-called ideal community and you take
25 into consideration the economic and social consequences

1 involved and I understand your answer. Do you find
2 any importance to having the so-called affluent or
3 upper middle income people part of your ideal community?

4 A Yes.

5 Q And could you give me any idea as to
6 what extent and why? Why is it important?

7 A Well, the extent again I would not want to put
8 hard numbers on it. I would see the extent as
9 generally resembling the mix in the society or the
10 region as a whole and the why is I think we have a
11 number of factors. One of course is from a practical
12 standpoint, the affluent population contributes more
13 economically in a pure physical sense to a community
14 than a less affluent population. They live in more
15 expensive dwelling units. They shop more or they spend
16 more for personal consumption which supports a greater
17 volume of commercial activity and so forth. So they
18 are certainly beneficial in that regard. I think they
19 are also beneficial elements from the social mixing of
20 people, different economic levels, educational levels
21 and background within a community.

22 Q And when you say that, you would think
23 that it would represent the mix in the region, could
24 you give me an example of what you mean?

25 A Again, I'm speaking in very general terms rather

1 than a precise mathematical equivalent, but for example,
2 in the region if you look and find out what the median
3 income is, I would guess that at the moment in the
4 sort of general New York-New Jersey metropolitan area,
5 this might be in the order of 18 to \$20,000. You
6 would certainly have say roughly comparable to portions
7 above and below. You would have opportunity for
8 reasonable proportion of really actually low income
9 people perhaps something in the area of 20 or so
10 percent of the population. Again, I'm not suggesting
11 that one should operate on the basis of any kind of a
12 mathematical formula.

13 Q If taking a range, using the metropolitan
14 area median income of 18 to \$20,000, you mention the
15 community should have in the neighborhood of 20
16 percent. Would that represent the percentage of low
17 income people within this region we are talking about?

18 A Roughly, yes.

19 Q When we say low income, what do you mean
20 by that in, I guess, median income?

21 A What I was thinking is typically a family, a
22 family of four who would be earning 50 percent or less
23 of the median in the region and proportionately more
24 or less with a larger or smaller household size.

25 Q What about the great middle or moderate,