

ML - Morris County Fair Housing Council v.

Boonton

- Randolph

June 6, 1984

Pretrial Memorandum of Defendant Township of Randolph

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ML 000660A

Attorney(s): EDWARD J. BUZAK, ESQ.
Office Address & Tel. No.: 150 River Road, Suite A-4, Montville, New Jersey 07045
(201) 335-0600
Attorney(s) for Defendant, Township of Randolph

Plaintiff

MORRIS COUNTY FAIR HOUSING
COUNCIL, et al,

vs.

Defendant

BOONTON TOWNSHIP, et al.

MOUNT LAUREL CASE
SUPERIOR COURT OF NEW
JERSEY: LAW DIVISION
MORRIS COUNTY/MIDDLESEX
COUNTY

*Docket No.*L-6001-78 P.W.

CIVIL ACTION
PRETRIAL MEMORANDUM OF
DEFENDANT TOWNSHIP OF
RANDOLPH

1. **NATURE OF ACTION:** Complaint in lieu of prerogative writs filed by Morris County Fair Housing Council, Morris County branch of the National Association for the Advancement of Colored People and Stanley C. Van Ness, Public Advocate of the State of New Jersey against, initially, twenty-seven(27) Morris County municipalities alleging that the land use plans and ordinances of the 27 municipalities were unconstitutional, illegal and void, and requesting an injunction against the defendants from engaging in unconstitutional land use practices. The complaint further requested an affirmative injunction ordering the defendants to review and amend their land use plans and ordinances to comply with the constitutional mandates and, furthermore, for an affirmative injunction ordering the defendants to issue building permits for housing developments proposed in developable areas which developments would be built at minimum standards consistent with the protection of public health, safety, and welfare. As a result of the issuance of the Supreme Court opinion in South Burlington N.A.A.C.P., et al vs. Township of Mount Laurel 92 N.J.158(1983), this case has proceeded as a Mount Laurel II type action.

2. ADMISSIONS AND STIPULATIONS: Defendant Township of Randolph admits that it is a municipal corporation of the State of New Jersey and derives its municipal powers under the statutes of the State as well as the Township Charter. Defendant admits to be located within the County of Morris. Defendant admits that it has the power and ability to adopt land use ordinances in accordance with the provisions of N.J.S.A.40:55D-1, et seq. Defendant further admits that a portion of the municipality has been designated as being within the "growth area" as designed under the State Development Guide Plan (SDGP). Pursuant to the terms of Mount Laurel II, the Township admits that it has the obligation to provide a realistic opportunity for the construction of low and moderate income housing for its indigenous poor. Moreover, as a result of the holdings of Mount Laurel II, the Township admits that it has the obligation to provide a realistic opportunity for the construction of the Township's fair share of the region's present and prospective needs of low and moderate income housing.

3-4. FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto).

5. DAMAGE AND INJURY CLAIMS: None.

6. AMENDMENTS: None.

7. ISSUES AND EVIDENCE PROBLEMS: The foregoing legal issues are those limited to the portion of the trial involving region, regional need, and allocation of that regional need. There is no attempt to list the legal issues which relate to whether defendant satisfies the obligations imposed upon it. (1) Which factors or variables should be taken into account in determining an appropriate region for which the fair share of the defendant Township should be calculated; (2) Whether the area included within the region should have the characteristic of an interdependent residential housing market; (3) Whether the area included within the region should be based upon a commuter pattern; (4) Whether the area included in the region should have the capacity to "solve" the housing problem; (5) Whether the area included within the region should be determined as being that area from which the defendant Township of Randolph would otherwise draw its residents absent alleged exclusionary zoning and land use practices; (6) Whether the availability of jobs within the area to be included within the region is a relevant and important factor; (7) Whether there should be available data for progressing from this region to the other issues; (7) Whether there shall be utilized different regions for different purposes, i.e., whether there should be a present needs housing region as well as a prospective needs housing region; (8) Whether it is essential that older urban areas be included as part of any region of which the defendant is a part; (9) Whether the growth of population and employment opportunities are appropriate factors to utilize in the determination of a region; (10) Whether the variables which must be selected in determining a commuter region are valid, i.e., the thirty-minute commute and the concept of inclusion of an entire county if the thirty-minute commute penetrates the county; (11) Which factors should be utilized to determine indigenous need of defendant; (12) Whether overcrowding is an appropriate factor to be utilized in determining dilapidated housing; (13) Whether complete kitchen facilities is an appropriate factor to be utilized in determining dilapidated housing; (14) Whether

incomplete plumbing facilities is a factor in determining dilapidated housing; (15) Whether inadequate heating facilities is an appropriate factor to be utilized in determining dilapidated housing; (16) Whether those municipalities which do not provide for their indigenous need should be permitted to pass that obligation on to another municipality within the region; (17) Whether a numerical, mathematical approach to these determinations is the appropriate manner in which to implement the terms of Mount Laurel II; (18) Whether certain municipalities should be automatically exempt from an excess need allocation; (19) Whether the Housing Allocation Report of 1978 is an appropriate research and data measuring document; (20) What are the factors to be utilized in determining the prospective needs of the region; (21) Are population and household projections valid indicators of prospective regional need; (22) What are the various factors to be taken into account in allocating the present and prospective needs of the region to the municipality; (23) Whether municipal employment in 1982 is a relevant factor; (24) Whether municipal employment growth between 1972 and 1982 is a relevant factor; (25) Whether the municipal growth area as a percentage of the commuter shed growth area is a relevant factor; (26) Whether vacant developable land within the municipality and its relationship to the region is an appropriate factor to be taken into account in determining a municipality's fair share; (27) Whether the absence of any factor invalidates the calculation; (28) What is the method by which the various allocation factors are to be utilized and under what formula should they be utilized; (29) Whether vacant developable land within the growth area of a municipality is a significant factor in determining a municipality's fair share of the region's needs; (30) Whether the only factor which should be utilized in allocating a portion of the region's needs to the municipality is the ratio between the vacant developable land within the growth area of the municipality to the vacant developable land within the growth area of the region; (31) What environmental and other constraints including lack of infrastructure and lack of other amenities would serve to reduce a municipality's fair share of the region's needs and where would that reduction amount be allocated.

8. **LEGAL ISSUES ABANDONED:** None
9. **EXHIBITS:** (See separate list).
10. **EXPERT WITNESSES:** (See separate list).
11. **BRIEFS:** (As ordered by the court).
12. **ORDER OF OPENING AND CLOSING:** (Usual).
13. **ANY OTHER MATTERS AGREED UPON:** None.
14. **TRIAL COUNSEL:** Edward J. Buzak, Esq.
15. **ESTIMATED LENGTH OF TRIAL:** One (1) month.
16. **WEEKLY CALL OR TRIAL DATE:** July 2, 1984.

17. **ATTORNEYS FOR PARTIES CONFERRED ON:** Various dates, and are attempting to implement a settlement.

18. **IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED,** except for a response to the Supplemental Report of plaintiff recently filed in this action.

19. **PARTIES WHO HAVE NOT BEEN SERVED:** None.

PARTIES WHO HAVE DEFAULTED: None. Note, however, that only ten (10) municipalities remain as defendants in this case under the original complaint, Chatham Township being included under a developer's suit.

EDWARD J. BUZAK, ESQ.

By: 

Edward J. Buzak, Esq., Attorney for
Defendant Township of Randolph

Dated: June 6, 1984

3-4. FACTUAL AND LEGAL CONTENTIONS

Plaintiffs have instituted this action against twenty-seven (27) Morris County municipalities alleging that said municipalities practice exclusionary zoning making their land use practices unconstitutional and illegal. The action was instituted on October 13, 1978. After much pretrial preparation, the matter was stayed by the Supreme Court of New Jersey pending their decision in the Mount Laurel cases which were presently before them. As a result of the issuance of the Mount Laurel II decision in January of 1983, upon motion made by plaintiffs, the stay was lifted and the matter was transferred to be heard before the Honorable Stephen Skillman as the Mount Laurel Judge for northern New Jersey.

As a result of a scheduling order entered by the court on May 30, 1984, the trial in this matter is bifurcated. The court determined that the first segment of the trial will involve the delineation of region, the determination of regional need, and the determination of a methodology for allocating that municipality's fair share of the regional need. This pretrial memorandum is submitted with respect to the first segment of this trial.

Plaintiffs contend that an eight-county region is appropriate for determining a present and prospective need. Said region consists of the Counties of Bergen, Essex, Hudson, Passaic, Union, Middlesex, Morris and Somerset. Peter L. Abeles, plaintiffs' expert, projected the regional households for this eight-county region and then found that 36% of the household growth would be low or moderate income units, arriving at a figure for the region's needs of low and moderate income units of 55,804 units. That number was then increased by applying a vacancy factor such that the total prospective regional need was determined to be 58,036 units - divided into 35,228 low income units and 22,808 moderate income units.

Plaintiffs allocated the prospective need based upon vacant developable land in the region versus vacant developable land in a particular municipality and growth in private employment in the region versus growth of private employment in the municipality between the years 1975 and 1981. Both factors are equally weighted and, for Randolph Township, plaintiff determined that 960 low and moderate income units should be constructed.

Plaintiff then determined the present need within the region utilizing physical deficiencies, market factors, and financial hardships and then allocated to each municipality a figure equal to 6.795% of the municipality's total occupied year-round housing units, crediting that municipality with its existing indigenous replacement need. One-third of that sum was added to the total indigenous need to come up with a figure. For Randolph Township, it was 275 units. Randolph's total share, therefore, was 1,235 units.

Plaintiff then issued a supplemental expert report which made certain other modifications to the figures produced and also credited municipalities with any approved low and moderate income units since 1980. Randolph was credited with 132 units, leaving a balance of 1,103 units to be supplied as Randolph's fair share.

Defendants contend that the appropriate region is a four-county region known as the Newark Housing Region, consisting of Morris, Union, Somerset and Essex Counties (MUSE). In support of its position, Randolph has submitted a report of P. David Zimmerman which outlines the basis upon which the four-county region was determined to be appropriate and relevant for the purposes of a municipality satisfying its needs. Briefly, the basis for the selection of the four-county region was the consideration of Mr. Zimmerman of the four traditional criteria for determining regions. Mr. Zimmerman identified the four as follows:

1. Sharing of housing needs;
2. Housing market interdependence
3. Data availability; and
4. Regional identification by a governmental agency.

Job location and commuter time are important factors in housing choice considerations. In defining regions, emphasis should be given to the fact that most people who live in a region also work in that region. Mr. Zimmerman contends that 74.5% of the people who reside in Morris County work in the Newark Housing Region. Recognizing that the defining of a housing region is a complex project, Mr. Zimmerman concludes that the Newark Housing Region is a reasonable and supportable one. He concludes in his report:

"The Newark Housing Region is reasonable in that it does circumscribe a geographic area within which housing is competitive, or would be competitive absent restrictive land use controls. The Region satisfies such other criteria as having sending/receiving areas, all parts are reasonably accessible, it has ample data, and has been extensively used by many governmental agencies. Other alternative regions, in the opinion of this report, are not as reasonable and exhibit serious problems pertaining to the theoretical basis and practical necessities of this litigation."

Mr. Zimmerman goes on to determine the present and prospective needs of the four-county region, concluding that the total regional housing need is 18,544 units, of which Morris County should provide 8,599 housing units based upon the percentage of open developable land within the growth area in Morris County as compared to the open developable land within the growth area of the four-county region.

Although Mr. Zimmerman does not go on to allocate the units to particular municipalities, he suggests that a proper allocation would be based upon the open developable land within the growth area of a municipality compared to the open developable land in the growth area of the county as a whole. This factor is important because the Supreme Court has made it clear that growth should be channeled into the growth areas. Not utilizing open developable land within the growth area is a fatal flaw in other allocation methodologies.

As an alternative, the Township has also produced an expert report from its planner, Adrian P. Humbert. Mr. Humbert has suggested a one-county region for several reasons. He opines that the growth area of Randolph Township is centrally located in Morris County making the journey to work at peak traffic hours to the perimeter of the county a 25 to 35-minute drive. Since the 1980 census figures, note that the mean travel time to work for Morris County residents is 25.5 minutes and for Randolph residents is 28.8 minutes, he determines that the county itself represents an accurate commutershed. Moreover, he points out that economic cohesiveness of Morris County as a place to work for most Randolph residents is confirmed in the 1980 census data wherein 68.4% of the residents of Randolph Township work within Morris County. Therefore, more than two-thirds of Randolph's labor force work within the county. Since there is data available on a county level upon which determinations can be made, he finds that utilizing the county as the "region" is appropriate, noting that it is the standard reference unit for future state activities in connection with further refinement and updating of the State Development Guide Plan.

Utilizing data not unlike that of Mr. Abeles from the census, Mr. Humbert determines that the Township has a indigenous poor population of 177 units. Then, utilizing definitions of low and moderate income, as suggested in Mount Laurel II, Mr. Humbert determines the present ratio of low and moderate income families within the region. The allocation of the region's needs to Randolph Township is based upon a comparison of the vacant developable land within Randolph Township in the Rockaway corridor growth area to the vacant developable land within the Rockaway corridor itself. Mr. Humbert finds that the prospective need developed by utilization of this methodology is 682 units. When added to the indigenous poor or 177 units, he arrives at a gross requirement of 859 units for Randolph Township.

The court has appointed an expert, Carla Lerman, who has also produced a report utilizing the "consensus methodology" proffered in the Urban League case. This report produces two different regions, a present need region consisting of eleven counties north of Monmouth County and a prospective need region based upon a 30-minute commutershed, commencing at the geographic center of a municipality and moving outward in all directions at 30 miles per hour on local roads, 40 miles per hour on state and federal highways, and 50 miles per hour on interstates, the Garden State Parkway, and the New Jersey Turnpike. The regional present need is determined in a manner not unlike that of Abeles, Zimmerman, and Humbert. The allocation thereof, however, is made by taking municipal employment in 1982 as a percentage of the region's employment and municipal growth area as a percentage of the regions, averaging those percentages and multiplying that by the pool of excess units. The regional prospective need is determined by a projection of population households by county within the commutershed region and then taking 39.4% of those prospective units as being low and moderate income units. The figure is allocated based upon four factors: employment growth over a ten-year period; municipal employment in 1982; municipal land area in the growth area as a percentage of the commutershed land in the growth area; and, a financial factor comparing median income of the municipality with the median income of the region. There is then a 3% vacancy

factor added, plus a 20% factor to the figure. The Lerman report produces a figure of 248 present need units and 624 prospective need units, for a total of 872 units.

Finally, plaintiffs have produced a supplemental report which modifies the Lerman report to the extent that a building permit factor is added which, for Randolph Township, has the effect of increasing the prospective need to 819 units (from 624 units), for a total of 1,067 units as opposed to 872 units, an increase of 195 units.