ML-Tewksbury 9/4/85

Certification on cross motion for partial Summary judgment and for denial of Δ's motion for transfer

*by Thomas J. Deetel, atty for Π

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Attorney for Plaintiffs

Plaintiff	:SUPERIOR COURT OF NEW JERSEY :LAW DIVISION, HUNTERDON/
ROBERT E. RIVELL, et al	:MIDDLESEX COUNTY :MOUNT LAUREL :DOCKET NO.L-040993-PW
vs.	:
TOWNSHIP OF TEWKSBURY, a municipal corporation, located in Hunterdon County	:CIVIL ACTION : : CERTIFICATION ON CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR DENIAL OF DEFENDANT'S MOTION FOR TRANSFER.

Thomas J. Beetel, being of full age, does hereby certify to the following facts, aware of the punishment provided by law for any willful misstatement of fact.

1. I am the attorney for the plaintiffs in the above entitled matter.

2. Suit in this matter was instituted on June 18, 1984.

3. An Ordinance was passed by the defendant, Township, on or about the 10 day of July, 1984. This Ordinance was passed shortly after the Plaintiff announced he was about to institute suit, and was passed without any studies having been made with regard to the lands in question, where defendant would have placed its so called "low and moderate income housing". This statement is based upon the deposition of one Gerhardt Fuchs' deposition of February 12, 1985,

said Gerhard Fuchs having been the defendant's Planning Board Chairman at the time. This ordinance would purport to allow townshouses at 3 units per acre or 5 apartments per acre with a 20% set-aside for low and moderate income housing. I have been advised on good authority that this was merely an attempt to have "something on the books" in anticipation of the Plaintiffs' suit for Mt. Laurel relief.

4. Since the Suit was started, it has been ascertained that the lands so designated under the "rushed through" ordinance have been investigated by the plaintiff's agents in preparation for trial. The lands were found to have severe environmental constraints, such as high water tables, etc. but even more importantly were found to be unavailable for developments. This statement is based upon the statements of Dale Blazure, a realtor, hired by plaintiff to investigate the lands subject to the ordinance, and his personal investigation, supplied to the defendant in the form of his reports. Additionally, the passage of the Ordinance in the manner in which was introduced is highly suspect, and may not be in conformity with the manner in which Ordinances are required to be passed pursuant to New Jersey Law. This item is still the subject of investigation, and should be explored at the trial of this matter.

5. The Ordinance, even assuming its validity, is thus an attempt to "have something on the books" adopted without the necessary studies required of a Planning Board, before forwarding its study and recommendations to the Municipal

Government, as required by the N.J. Land Use Law,without revision of the Master Plan,as also required, and before determining if the lands were available for such development. Thus, the allegation by the Plaintiff, that the Ordinance in question (4-84) was nothing more than "camouflage zoning". (See brief attached at page 2).

6. Coupled with the "suspect" Ordinance is the fact that Defendant's expert appraiser, Mr.Michael Morris, has admitted in depositions that the land in Tewksbury Township is the most expensive in all of Hunterdon County,and perhaps the State of New Jersey, leads inevitably to the conclusion that the defendant in realty is continuing its exclusionary zoning practices of 3 and 5 Acre Zoning, and has not assumed its fair share burden, as required by the New Jersey Supreme Court, and the cases it has decided in this area.

7. Adding to the above injustices,is the fact that a trail date had been set in this matter, to wit, July 23, 1985, which defendant requested be adjourned to explore the possibilities of a resolution of the matter. This was after depositions of Robert Hordon, Hydrologist, Robert Tublitz, planner, Bruce Clay, comptroller, William Steinfield, economic advisor to plaintiff, Plaintiff's testimony, Harry Oldstein, developer, Robert Queale, defendant's planner, Gerhardt Fuchs, Planning Board Chairman, numerous reports and interrogatories having been provided and filed, as well as status conferences with the Court, there being held out

to Plaintiff that the matter could be resolved. Plaintiff and his representatives then engaged in over 2 months of negotiations, explaining the viability of his project, and providing additional data concerning same, and held meetings with the defendant's representatives up until August 28, 1985, but received instead of a solution, a Motion to transfer the matter to the Housing Council on August 30, 1985, complete with brief, which had to be underway for a considerable time before the final meeting, demonstrating the tactics of defendant, and facially a lack of "good faith".

8. All during these discussions, it became more and more apparent that defendant realized its Ordinances were defective, either constitutionally, procedurally or practically, in that the fair share was not being met, the passage of the ordinance was at least suspect, and in violation of its Master Plan, and practically the lands which defendant had selected were not available and environmentally constrained. Therefore, based on these facts and the applicable law, it is submitted and review of the facts and circumstances are such that same are susceptible to only one conclusion, that is the apparent tactics of delay on behalf of the defendant, the "lack of good faith", the attempt to have the Council decide its " fair share" rather than a "Master" to be appointed by the Court, To transfer the matter would be a reward for all of those tactics.

9. When the Ordinance, the facts related above, the applicable law, the reports of Plaintiff's planner are reviewed, and same are incorporated by reference into this Certification, due to time constraints, and the defendant's tactics of filing same over the Labor Day week-end, with the apparent hope that Plaintiff would not be able to reply in time, it will become apparent that defendant wishes only to avoid the Trial of this matter by whatever means it can find, and avoid the Court's determination of its actions and ordinances. To do so would be a "manifest injustice" within the meaning of the very Legislation that defendant grounds its claim for relief.

I have read the above statements, and they are true to the best of knowledge, information and belief.

Thomas J. Beetel, attorney for Plaintiffs.

Dated: September 4, 1985.

I have read the above statements made by Mr. Beetel, and join in the assertion and truthfullness thereof.

Robert E. Rivell

Robert Tublitz.