

ML - Rivell v. Tewksbury

Sept. 4, 1985

Cross Motion for ~~Part~~ Partial Summary Judgment and
for Denial of Defendant's Motion for Transfer

pgs. 7

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Thomas J. Beetel, P.A.
 # 20 Main Street
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 201-788-1921
 Attorney for Plaintiffs

Plaintiff	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION, HUNTERDON/
ROBERT E. RIVELL et al	: MIDDLESEX COUNTY
	: MOUNT LAUREL
	: DOCKET NO. L-040993-84 PW
	:
vs.	: CIVIL ACTION
TOWNSHIP OF TEWKSBURY,	:
a municipal corporation,	: CROSS MOTION FOR PARTIAL
located in Hunterdon County	: SUMMARY JUDGMENT AND FOR
New Jersey	: DENIAL OF DEFENDANT'S MOTION
	: FOR TRANSFER.


TO: Richard Dieterly, Esq.
 c/o Gebhardt & Keifer, Attorneys
 21 Main Street, Clinton, N.J. 08809
 Attorneys for Defendant.

PLEASE TAKE NOTICE that on September 13, 1985, at 9:00 in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorney for the plaintiffs, Robert E. Rivell, et al. will apply to the Superior Court, Law Division, Hunterdon County/Middlesex County, at the Court House in New Brunswick, N.J. for following Orders.

1. For the Granting of a Partial Summary Judgment Motion on the Constitutionality of the Defendant's Ordinances;
2. For Denial of the Defendant's Motion for Transfer of the within matter to the Council on Affordable Housing.

In Support of this Cross Motion the undersigned will rely upon Certifications and the Brief annexed hereto.

Plaintiff joins in the request for oral argument.



THOMAS J. BEETEL, attorney for
Plaintiff.

DATED: SEPTEMBER 4, 1985.

CERTIFICATION

I hereby certify that the original of the within Notice of Cross Motion has been filed with the Superior Court Clerk, and a copy of the said Cross Motion has been filed with the Hunterdon County Clerk and the Middlesex County Clerk and a copy has been served upon the attorneys for the defendant, as well as a copy being forwarded directly to the Honorable Stephen Skillman, J.S.C. at the Middlesex County Court House, New Brunswick, N.J., 08900.



THOMAS J. BEETEL

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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,	: CIVIL ACTION
a municipal corporation,	:
located in Hunterdon County	: 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.

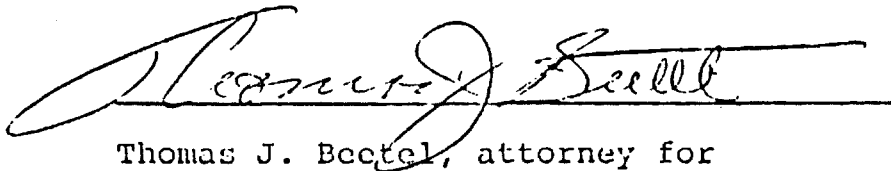
7. Adding to the above injustices, is the fact that a trial date had been set in this matter, to wit, July 23, 1985, which defendant requested be adjourned to explore the possibilities of a resolution of the matter. This was after depositions of Robert Hordon, Hydrologist, Robert Tublitz, planner, Bruce 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.

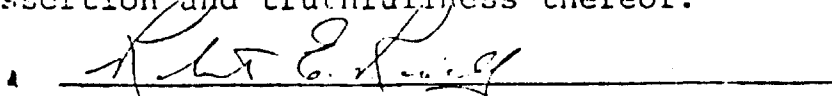
I have read the above statements, and they are true to the best of knowledge, information and belief.



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 truthfulness thereof.



Robert E. Rivell



Robert Tublitz.