ML - Tewksbury 9/5/85

certification on cross-motion for denial of Δ's motion for transfer

- Robert Tublitz + Robert E. Rivell
  - ↳ professional planner engaged by Π
  - ↳ Π in above action

p II

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Attorney for Plaintiff

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

ROBERT TUBLITZ and ROBERT E. RIVELL, both being of full age do hereby certify to the following facts, aware of the punishment provided by law for any willful misstatement of fact:

1. Robert Tublitz does hereby certify that he is professional planner engaged by the Plaintiff in the above entitled matter and is aware of the facts to which he hereby certifies.

2. Robert E. Rivell states that he is the Plaintiff in the above entitled action, and is authorized to certify not only for himself but for his wife Barbara Rivell.

3. The adjournment of the trial date as requested by the Defendant, has resulted in the Plaintiff suffering a manifest injustice.

4. The Defendant approached the Plaintiff about June 15, 1985, one month after the scheduled order was issued by

the Court, in an attempt to settle the matter. The Defendant requested the Plaintiff to postpone the trial date which was set for July 23, 1985 due to the difficulty of the Defendant to negotiate at the same time while being required to prepare Briefs, and for trial.

5. An informal agreement was reached wherein both parties would attempt to settle and bargain in good faith, that a series of meetings will be agreed upon, and adhered to, and that all information expressed, obtained, and exchanged by either side would be confidential and non-evidential, in consideration that the trial be postponed with the consent of the Court (See Gebhardt & Kiefer letter of July 9, 1985, and Thomas J. Beetel's letter to the Court dated July 22, 1985).

6. A series of meetings were held, notwithstanding many discussions prior to and during the meetings. The first was held July 1, 1985 with the Township Committee at the Tewksbury Town Hall, and the second was held at the office of Gebhardt & Kiefer, Esqs., attorney for the Defendant, in Clinton, New Jersey, on July 3, 1985 wherein an informal agreement was reached to be privileged non-evidential.

7. Additional meetings were held July 15, 1985 at the Saw Mill School in Tewksbury Township with members of the Township committee, and experts of both parties, namely; Mr. Olenick, P.E., Mr. Robert Tublitz, P.P., Mr. Robert Hordon, PhD. for the Plaintiff. Another meeting was held on July

23, 1985 at the same place, wherein Mr. Robert Tublitz, P.P. and Thomas J. Beetel, Esq., were present for the Plaintiff. After the meeting of July 23, 1985, it became apparent to the Plaintiff that little or no substantive progress was developing. (See Thomas J. Beetel's letter to the Court dated August 1, 1985).

8. Notwithstanding, both parties continued to discuss the matter, privately, in concert with others, in many locations; the last being August 28, 1985, at the office of Gebhardt & Kiefer, Esqs., with Mr. Robert Tublitz, P.P. and Thomas J. Beetel, Esq., and Mr. Deiterly, attorney for the Defendant, two members of the Tewksbury Township Committee, and Mr. William Queale, Jr., P.R. present. A reasonable offer to settle was tendered by the Plaintiff, and a request to study same was proposed by the Defendant, no indication was given by the Defendant of it's plan to ask for a transfer to the housing counsel.

9. As per the Court's letter dated July 23, 1985, wherein the Court required a status letter be filed by both parties no later than August 30, 1985, said letter was sent, (See Thomas J. Beetel's letter to the Court dated August 30, 1985). Almost concurrently I was served on August 30, 1985, after business hours with a Motion requesting this matter be transferred to the Housing Council pursuant to the recently adopted Fail Housing Act.

10. The Defendant relies on the fact since there has been no trial to date. They are entitled to said request,

nothing could be farther from the facts, for the following reasons:

a) The Complaint was filed with the Court by covering letter dated June 18, 1984.

b) A status conference was held by the Court on July 27, 1984.

c) An Order on status conference dated August 30, 1984 was issued by the Court.

d) Adherence to said "Order" by the Plaintiff.

e) A status conference was held by the Court, May 14, 1985.

f) A "Scheduling Order" issued by the Court, dated May 15, 1985.

g) Adherence to said "Order" by the Plaintiff.

11. By way of the above, this case is now pending for one year and some two and one-half months with all the attendant costs, expenses and efforts by the Plaintiff. Said Plaintiff, notwithstanding the property in question has expended 4107,480.00± towards the prosecution of this case and an additional $136,735.00± in taxes. Interest and the loss in utilization of said property. Since the postponement of the trial date, due to an attempt to settle this matter at the request of the Defendant, the Plaintiff has expended an additional $29,600.00± towards experts, reports, meetings and additional interest and taxes, In addition, the Plaintiff has an outstanding mortgage which due and payable on September 14, 1985 in the amount of

$650,000.00 which could cause financial damage upon the Plaintiff. The Defendant is well aware of this fact. (See R. Rivell's deposition, dated February 14, 1985, page 84, Exhibit D-9).

12. The Plaintiff only agreed to postpone the trial date, set for July 23, 1985, based upon good faith bargaining, an understanding that a trial would be held by the Court in September, or as the Court deems appropriate, and that they are to have their day in Court, the Court and Defendant by way of a letter acknowledged this understanding.

13. The Defendant does not make this Motion with his hands clean. An understanding being reached, namely a postponement of the trial date at the Defendants request, then to enter Court, stating because no trial has been held, this request for relief flies in the face of justice, fairness and equity, in fact it is injustice. The Plaintiff on August 1, 1985 told this Court, that "our attempts to accommodate so not appear to be fruitful . . . . and a trial date be fixed in September as barely possible". The Plaintiff has prepared his last brief, is ready to be submitted at a date affixed by the Court, as per the same letter.

14. The Plaintiff asks the Court to deny this Motion per "The Fair Housing Act", due to a Manifest Injustice which will be inflicted upon the Plaintiff due to the following:

a) The protracted length of the prosecution of this case with its attendant costs, and the failure of the Plaintiff of being afforded due process.

b. The request of the Defendant to postpone the trial date in order to settle, when even after one month, it was not working out, and so stated by the Plaintiff as of August 1, 1985 by letter.

c) The request to transfer this matter to the Housing Council, due to the fact there has been no trial date, is a function of the Defendant, not the Plaintiff, and certainly not of the Court and is totally unfair.

d) The reliance by the Plaintiff on Court's consent to postponement with the understanding of both parties a trial would be held in September 1985.

e) The unfairness of the Motion, because it would cause additional delay creating a financial burden upon Plaintiff, as to his mortgage expiration, and additional carrying costs.

f) The failure of the Court too decide the constitutionality of the Tewksbury Township Zoning Ordinance per "Mount Laurel II" which is the Keystone of this Litigation, as well as other complaints revelent to this case, thereby denying due process.

15. As to manifest of injustice, The Fair Housing Act, as mentioned earlier in this brief requires the Court to "consider whether or not the transfer would result in a manifest injustice to any party to the litigation".

Manifest Injustice (See Howe v. Strelecki 98 N.J. Super 513 page 521 App Div 1968), "is akin to" fundamental unfairness "and a possible confined to a deprivation of due process", such, is the case in matter.

16. The United States Constitution, Amendment XIV (1968) states "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within it's jurisdiction the protection of the law". It is the agreement of the Plaintiff that this Court has jurisdiction, that we are entitled to due process, not just for us, but by the nature "Mount Laurel II", namely the constitutionality of the Tewksbury Zoning Ordinance which would go unheard if this Court transferred this matter to the Housing Council. It is unfair to the Plaintiff if the Defendant were successful in their Motion due to the fact that the Defendant does not have clean hands in front of this Court, and that its request for equity has been ~~trained~~ TAINTED by it's own doings and the Motion should be denied, and a trial date set.

17. It should be noted that the developments within the Defendant Township within the past year demonstrate that it is a developing, dynamic, non-static community. At the intersection of County Route 523 and Interstate 78, there is being amassed by a joint venture among Paul Ferber, The Mack Corporation, Cox & Sagner and Weaver, of some 154 acres, (and attempting to acquire some 100 plus acres additional land) on which the joint venture will construct Research and

Office facilities, numbering hundreds of thousands of square feet. Presently it is the largest and highest price per acre land in Hunterdon County ($50,000.00 per acre), and if the additional land is acquired, it will become the largest dollar value per acre in the State of New Jersey. Add to this development which is occurring with the Township-defendant's corporation, (authorizing a study to be made for sewer and water to these proposed facilities by Malcolm Pirnie, P.E., within the Limited Growth Area of the State's Development Guide Plan), and an additional 450 acres owned by Merck Company which is contiguous to the Joint Venture lands, there is a joining of the Growth and Limited Growth areas in Tewksbury and Readington Townships. The A.M. Best Company is already located at the intersection and occupies 63 additional acres. These lands are all zoned for Research and Office facilities at present.

There thus emerges a clear picture of the Defendant-Township attempting to encourage massive Research and Office development within its limited growth zone. Simultaneously, studies have shown the wage scale of the workers in this township to be such that they cannot afford to own homes in the Defendant-Township, but can only afford to work there. Consequently, the township is encouraging Commercial Development, and discouraging by its tactics in the present suit, the opportunity for affordable low and moderate income housing by delaying that opportunity, while asking that the Housing Council and unformed Housing Plan to consider what

the Township's duty to provide housing is. After all these years of exclusion, the Township wants to know what it should do. It plays on one hand with industry, and denies on the other the opportunity for affordable housing, and thus continues the sociological tragedy for exclusion, with Plaintiff's lawns located within a mile of said massive developments on the same County Road (523).

18. Conclusion: The basis of this case is one of constitutionality. Has Tewksbury Township through their zoning ordinance, provided a realistic opportunity for low and moderate income people to live in Tewksbury Township? We have presented thorough reports, interrogatories, depositions, a prima facia case as to the unconstitutionality of Tewksbury Township Zoning Ordinance. Furthermore there are other issues before the Court as to existing zoning as applies to the Plaintiff's property, the challenge to the State Development Guide Plan, and the fair share number. The main issue is the validity of the ordinance. Transferring this case would be a manifest injustice to my client, as well as those other interested parties, namely low and moderate income persons who would

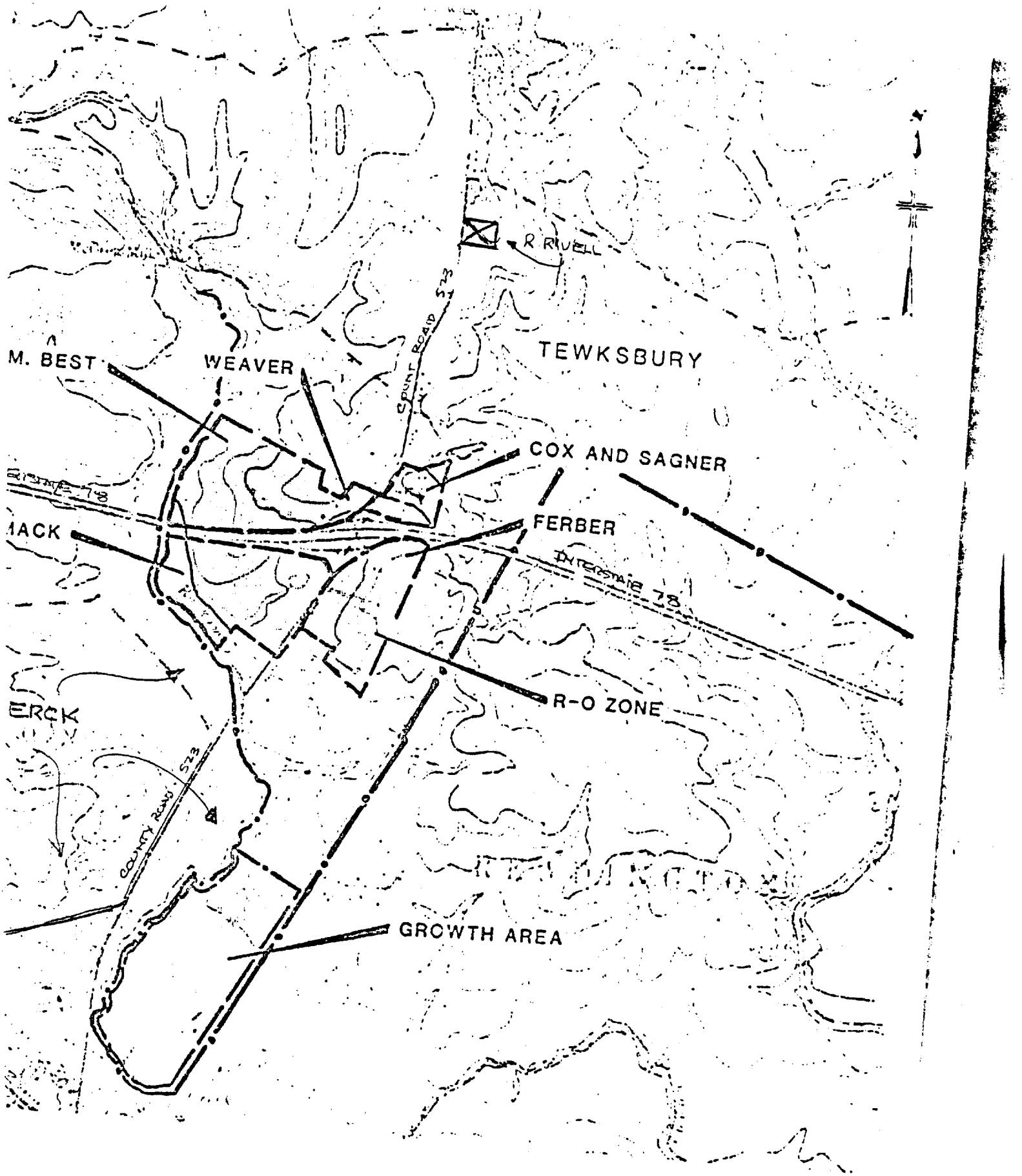
deny equal protection as per the United States Constitution and the New Jersey Constitution, and is contrary to the spirit of "Mount Laurel I" and "Mount Laurel II".

I have read the above and state that it is true to the best of my knowledge and belief.

Robert E. Rivell

Robert Tublitz

Dated: September 5, 1985



LEGEND

- TOWNSHIP BOUNDARY
- STUDY AREA BOUNDARIES

STUDY AREA

SCALE: 1" 2000'