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Teewksbury Twp.

Sep 24/1985

Supplemental letter Brief

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September 24, 1985

The Honorable Stephen Skillman
 Middlesex County Court House
 New Brunswick, NJ 08903

RE: RIVELL V. TEWKSBURY TOWNSHIP
Docket No. L-040993-84 PW
MOUNT LAUREL LITIGATION

Dear Judge Skillman:

I would appreciate if you would consider this as a supplemental letter brief, for due to the long day spent by you and the other attorneys who were present on September 23, 1985, it would have been ungracious to have asked for more time to complete the various points that I felt should have been raised. May I indulge you to consider the following:

I. The Township of Tewksbury adopted its current Master Plan, on February 7, 1979. According to Article 11 of the Municipal Land Use Law, Chapter 291, Laws of N.J. 1975 as amended, namely Periodic Reexamination of Municipal Plans and Regulations. Specifically, R.S. 40:55D-87 Periodic Examination, states the following:

"The governing body shall, at least every 6 years provide for a general reexamination of its Master Plan and development regulations by the Planning Board which shall prepare a report on the findings of such reexamination, a copy of which shall be sent to the County Planning Board and the municipal clerks of each adjoining municipality. The 6 year period shall commence with the adoption or termination of the last general reexamination of such plan and regulations. The first such examination shall be

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completed within 6 years after the effective date of this act.

Such report shall state:

- A. The major problems and objectives relating to land development in the municipality at the time of such adoption, last revision and reexamination, if any.
- B. The extent of which such problems and objectives have been reduced or have increased subsequent to such data.
- C. The extent to which there have been significant in the assumptions, policies and objectives forming the basis for such plan or regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, and changes in State, County and municipal policies and objectives.
- D. The specific changes recommended for such plan or regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulation should be prepared.

If the above assertion is factual, that no periodic reexamination has been accomplished, the Township has forfeited its power to zone under N.J.S.A. C 40:55D-62, due to the fact that there is not a currently adopted Land Use on which the zoning ordinance is predicated upon and therefore it is null and void, thereby allowing the Plaintiff to utilize his property as he deems appropriate.

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Based upon the above, it is apparent that Tewksbury Township did not have a valid Zoning Ordinance in 1984 when it attempted to pass its so-called "Growth Zone Ordinance", entitled 4-84. If it did not have a Zoning Ordinance, it could hardly amend the same, not having amended its Zoning Ordinance properly, nor having amended its Master Plan in connection therewith, the ordinance is invalid, and has left the Township naked as a result of the lack of a Zoning Ordinance.

This becomes entirely apparent when one considers the fact that Tewksbury Township is now in the process of adopting a new Master Plan, copies of which are partly submitted with the Certification of this writer by even date. This new Master Plan is scheduled for a new public hearing in October of 1985. The lack of a Master Plan, would have prevented the amendment to the Zoning Ordinance from ever coming into effect. It is therefore submitted that at the present time, and until a new Master Plan and a Zoning Ordinance implementing same are passed, that the Township of Tewksbury is without such a Zoning Ordinance.

This becomes especially important, in light of the fact that the Township as a prerequisite, is and should be required to have a valid Zoning Ordinance in place before it can make any type of application under the Motions before you on September 23, 1985.

The Township has no standing without a valid Zoning Ordinance in place. Additionally, there were no proofs submitted that the municipality as required in Section 9 of the new law of a "Resolution of Participation". The Township of Tewksbury submitted it's application for a transfer of the present litigation to The Housing Council. Therefore quite aside from the standard of "manifest injustice" there is the procedural requirement that at least Tewksbury Township indicate that it intends to participate.

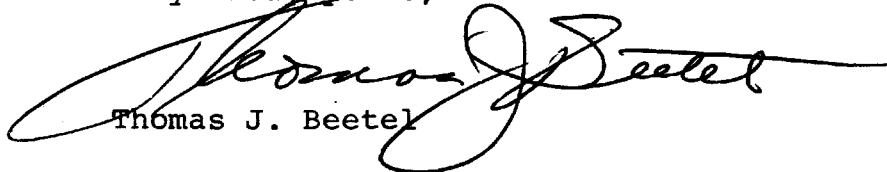
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Lastly, we believe that the quality of efforts as suggested by Mr. Wolfson, that is the amount of work that has been done, the expense incurred, and so forth in bringing the matter to the attention to the Court, should be considered regardless of the fact that adjudication has not taken place in whole or in part in this instance. Tremendous expense, a delay of 18 months to 6 years could eliminate this project entirely, and thus deprive the opportunity for low and moderate income housing for the most expensive land in Hunterdon County.

Thanking you for your additional considerations in this matter and awaiting the results of your reserved decision I remain,

Very truly yours,



Thomas J. Beetel

TJB:mat
Enclosure
cc: Richard Dieterly, Esq.
Robert Rivell
Robert Tublitz