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Cranbury

21-Jan-1985

Garfield Co. v. Cranbury

Complaint in Lieu of Prerogative
Writ by Plaintiff-intervenors, Silbert,
Adolf and Silberstein

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO. 055956-83
(MOUNT LAUREL)

-----X
GARFIELD & COMPANY, a New
Jersey Partnership,

Plaintiff,

vs.

Civil Action

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY, a municipal
corporation, and the members
thereof; PLANNING BOARD OF
THE TOWNSHIP OF CRANBURY,
and the members thereof,

Defendants,

vs.

S. RICHARD SILBERT, NORMAN
ADOLF AND JANET F. SILBER-
STEIN,

Plaintiffs-
Intervenors.

-----X

Plaintiffs-Intervenors, S. Richard Silbert, Norman
Adolf and Janet F. Silberstein, hereinafter collectively referred
to as "Silbert" and having an address c/o S. Richard Silbert,

10 S. Middle Neck Road, Great Neck, New York, by way of Complaint, says:

FIRST COUNT

1. Plaintiffs-intervenors are the owners of 49.482 acres of land located on Station Road in the Township of Cranbury, Middlesex County, New Jersey and shown on the Cranbury Township ("Township") Tax Maps as Block 7, Lot 13 (the "Premises").

2. The defendants Mayor and Township Committee ("Committee") have the responsibility under law of developing and amending land use ordinances in the Township of Cranbury.

3. The defendant Planning Board ("Planning Board") has the responsibility under law to formulate Cranbury's Master Plan, recommend land use ordinances and changes therein to the Township Committee, and to review development applications.

4. Plaintiffs-intervenors' Premises are ideally suited for high density residential development.

5. Among other things, the Premises are well-drained and level, have good access to Route 130 and the New Jersey Turnpike, and are close to commercial and employment centers.

6. The Premises are in a growth area under the State Development Guide Plan ("SDGP"),

7. The Premises are in a Planned Development-High Density (PD-HD) Zone under the Township's Zoning Ordinance now in effect.

8. The permitted base density in the PD-HD Zone is 0.5 dwelling units per acre.

9. With transfer development credits, the maximum density in the PD-HD Zone increases to 4 dwelling units per acre.

10. With density bonus and transfer development credit, such maximum density increases to 5 dwelling units per acre.

11. The transfer development credits, density bonuses, and other provisions in the PD-HD zoning requirements have a cost generating effect which renders infeasible the construction of low and moderate income housing.

12. The Township's Zoning Ordinance fails to provide a realistic opportunity for construction of low and moderate income housing in the Township.

13. Plaintiffs-intervenors are willing to construct low and moderate income housing on the Premises.

14. By Order entered subsequent to his letter opinion of July 27, 1984, the Honorable Eugene Serpentelli set the Township's fair share of the regional need for low and moderate income housing for 1980 to 1990 as 816 housing units.

15. In the same Order, Judge Serpentelli held the Township's land use regulations to be not in compliance with the constitutional obligation set forth in Mount Laurel II, to wit, such regulations do not provide a realistic opportunity for

satisfaction of the Township's fair share of the regional need for low and moderate income housing.

16. In the same Order, Judge Serpentelli ordered the defendant Township to revise its Zoning Ordinance to comply with Mount Laurel II, meet its fair share obligation, eliminate cost generating features which impede construction of lower income housing, and incorporate necessary affirmative devices.

17. In the same Order, Judge Serpentelli reserved the issue of the right to a builder's remedy pending completion of the revision process.

18. During the revision process, plaintiffs-intervenors submitted a written proposal to the Cranbury Township Committee and Planning Board providing for 72 lower income multi-family units and 288 market rate units. Such written proposal was also presented orally at the Planning Board/Township Committee meeting of September 25, 1984.

19. Plaintiffs-intervenors participated actively in the revision process -- in addition to the proposal described above, they submitted written comments on a site suitability evaluation, on the concept of transfer development credits, and on a Proposed Mount Laurel II Compliance Program for Cranbury Township ("Compliance Program").

20. Plaintiffs-intervenors' representatives attended each of the approximately 14 meetings held during the revision process.

21. Plaintiffs-intervenors' Premises have been included in the Compliance Program as a site for Mount Laurel II housing and have been designated as Site 3F in Figure 12 and Table 5.

22. The Compliance Program contains two alternative plans for a phased rezoning of plaintiff-intervenor's Premises to permit high density residential development enabling construction of Mount Laurel II units at a density of 7 units per acre. Under Plan A (Table 7) said Premises are not to be rezoned until the year 2002. Plan B (Table 8) provides for such rezoning in 1996.

23. Plaintiffs-intervenors' Premises are to retain the present zoning of 0.5 dwelling units per acre until the rezoning has been implemented.

24. Pursuant to the Order implementing the July 27, 1984 decision of this Court, 816 lower income units were to be provided to satisfy Cranbury's fair share for the decade of 1980 to 1990, whereas under either of the phasing plans of the Compliance Program substantially far fewer units will be provided during that period.

25. Both of the phasing plans in the Compliance Program are invalid as violative of the Constitution of New Jersey, the decision in Mount Laurel II, and the prior Order of the Court.

WHEREFORE, plaintiffs-intervenors demand judgment:

1. Permitting plaintiffs-intervenors to intervene in

this action against the defendants.

2. Declaring the Mount Laurel II Compliance Program for Cranbury Township valid except for provisions regarding staging and except for the unnecessary cost generating provisions described in Count II hereof.

3. Granting plaintiffs-intervenors a rezoning of their lands and all other necessary local approvals including, but not limited to, site plan, subdivision and building permit approvals so that they can construct a housing development of approximately 360 units including approximately 72 low and moderate income dwelling units.

4. Granting such other relief as may be just, together with costs of suit.

SECOND COUNT

1. Plaintiffs-intervenors incorporate by reference all of the allegations of the First Count and make them a part hereof as if they were set forth at length.

2. The Compliance Program contains cost generating and other provisions which inhibit the construction of Mount Laurel II housing, including, but not limited to, the following: (a) two housing types required with maximum of 75 percent of any one type (§§150-30(D)(1) and (2)); (b) 50 percent maximum impervious coverage (§150-30(F)); (c) bike paths (§150-30(K)(3)); (d) minimum of 20 percent common open space (§150-30(L); and (e) no

construction within 200 feet of stream center line even though the Ordinance also bans construction within 100 year flood plain (§150-58(B)).

3. Such cost generating features are invalid as violative of the New Jersey Constitution, Mount Laurel II, and the prior Order of this Court.

WHEREFORE, plaintiffs-intervenors demand judgment:

1. Permitting plaintiffs-intervenors to intervene in this action against the defendants.

2. Declaring the Mount Laurel II Compliance Program for Cranbury Township valid except for the provisions regarding staging and except for the cost generating features previously described.

3. Granting plaintiffs-intervenors a rezoning of their lands and all other necessary local approvals including, but not limited to, site plan, subdivision and building permit approvals so that they can construct a housing development of approximately 360 units including approximately 72 low and moderate income dwelling units.

4. Granting such other relief as may be just, together with costs of suit.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiffs-Intervenors/
S. Richard Silbert, Norman Adolf and
Janet F. Silberstein

By: 

STEPHEN E. BARCAN, ESQ.

DATED: January 21, 1985