

ML - Randolph Mountain  
Industrial Complex v. Randolph Twp

7/17/85

Complaint in lieu of prerogative writ ~~plus~~  
~~attachment~~ Randolph town  
Resolution

P 12

ML000953L

LAW UNIT  
FILING FEE \$75.00

ML000953L

JUL 26 1985

SEVEN  
SUPERIOR COURT  
OF NEW JERSEY

SUPERIOR COURT OF N.J.  
PAID

JUL 23 3 34 PM '85

L-059128-85 *PW*

CLERK  
JOHN M. MAYSON  
*0-1*

MORRIS COUNTY CLERK

JUL 31 9 26 AM '85

RECEIVED

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Attorneys for Plaintiff  
Randolph Mountain  
Industrial Complex

RANDOLPH MOUNTAIN INDUSTRIAL  
COMPLEX, a New Jersey  
Partnership,

Plaintiff,

v.

THE BOARD OF ADJUSTMENT OF  
THE TOWNSHIP OF RANDOLPH  
and THE TOWNSHIP OF RANDOLPH,  
a municipal corporation of  
the County of Morris, State of  
New Jersey,

Defendants.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION: MORRIS COUNTY

: DOCKET NO. L-

: Civil Action

: COMPLAINT IN LIEU OF  
: PREROGATIVE WRIT

*P.W. 14 55 21*

Plaintiff, Randolph Township Industrial Complex, a New Jersey  
Partnership, by way of Complaint against the defendants, says:

FIRST COUNT

1. Plaintiff is the owner of a parcel of land situate in the  
defendant Township of Randolph and known as Block 199, Lots 4, 5, 6,  
7 & 9 as set forth on the Tax Maps of the Township of Randolph.

2. Plaintiff's property as aforesaid is located in an R-2  
(1/2 acre single-family detached) residential zone district and an  
I-1 industrial zone district.

3. On or about May 8, 1985 the plaintiff filed an application with the defendant Board of Adjustment requesting to erect economically integrated (Mt. Laurel) housing on the property aforesaid. Said application inadvertently failed to list all of the lots which were the subject of the application and by letter dated June 27, 1985, the application was amended to correct said error.

4. On May 23, June 6 and July 11, 1985, a hearing was held upon the application at which time the Board considered introductory statements and testimony.

5. On July 11, 1985, the defendant Board of Adjustment adopted a resolution, a copy of which is annexed hereto as Schedule A, by which the Board denied the application upon the grounds that it lacked the jurisdiction to consider the same.

6. The aforesaid resolution of denial was arbitrary, capricious and unreasonable, contrary to the overwhelming weight of the evidence, and unlawful.

WHEREFORE, the plaintiff demands judgment against the defendant The Board of Adjustment of the Township of Randolph:

A. Setting aside, as contrary to law, the resolution adopted on July 11, 1985 and granting plaintiff's application for a use variance subject to the compliance of all other relative municipal, county and state laws and regulations;

B. In the alternative, remanding the proceedings to the defendant The Board of Adjustment of the Township of Randolph for such action as the Court may deem appropriate;

C. For such other relief as the Court may deem appropriate in the circumstances;

D. For costs of suit.

SECOND COUNT

1. Plaintiff repeats all of the allegations of the First Count as if set forth at length herein.

2. Plaintiff's property is not suited for nor can it feasibly be developed for the limited purposes permitted in the R-2 and I-1 zones.

3. By reason of the foregoing, the plaintiff is deprived of the use of its property.

4. The effect of the zoning ordinance in placing plaintiff's property in the zones as aforesaid is confiscatory, and the ordinance doing so is arbitrate, capricious, unreasonable and unconstitutional as to plaintiff's property and should be set aside.

WHEREFORE, plaintiff demands judgment against the defendant, Township of Randolph:

A. Setting aside the R-2 and I-1 zoning classifications of the zoning ordinance as it applies to the plaintiff's property;

B. Directing the defendant Township of Randolph to rezone plaintiff's property consistent with such directions and conditions as the Court may deem appropriate and warranted;

C. For such other relief as the Court may deem appropriate in the circumstances;

D. For costs of suit.

THIRD COUNT

1. Plaintiff repeats all of the allegations of the First and Second Counts as if set forth at length herein.

2. This is an action brought pursuant to South Burlington County NAACP vs. Mt. Laurel Township, 92 N.J. 158 (1983) (Mt. Laurel II) by plaintiff which is the owner of a 65± acre parcel of land known as Block 199, Lots 4, 5, 6, 7 & 9 as set forth in the tax maps of the Township of Randolph.

3. The defendant, Township of Randolph, has elected to exercise, at all times relevant hereto, those powers derived from the Constitution of the State of New Jersey and delegated to it by the legislature relating to control over the use of land in a Township by various governmental officials and agencies authorized by law to administer those ordinances adopted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

4. Pursuant to the afore-mentioned delegated powers, the Township has adopted a Master Plan and Land Use Ordinances and pursuant thereto has imposed constraints on the use of land and has exercised complete regulatory control as to the existing and permitted uses of all of the lands within the borders of the Township of Randolph.

5. Since the inception of municipal control over land use, the defendant Township has engaged in the conscious design, pattern and practice which, by intent and effect, has limited growth of available housing to luxury single-family dwellings and has, at the same time, discouraged and prevented the growth of affordable multi-family housing.

6. At no time has the defendant Township taken action which would provide a realistic opportunity for the creation of housing for lower- or moderate-income persons in response to either regional needs or those generated and existing within the municipality itself.

7. A substantial portion of the defendant Township is located within the growth area described within the State Development Guide Plan, promulgated by the New Jersey Department of Community Affairs. Plaintiff's property is situated within that growth area, convenient to transportation, shopping and utilities.

8. The standards and controls for residential development contained in the defendant Township's Land Use Ordinances are exclusionary.

9. The region in and around the defendant Township has experienced heavy growth during the past several years, although to a great extent, full-growth potential has been deterred due to a court-imposed sewer ban within the service area of the Rockaway Valley Regional Sewer Authority, of which the defendant Township is a part.

10. Upon information and belief, the construction of additional treatment plant capacity by the Rockaway Valley Regional Sewer Authority is underway and due for completion within the foreseeable future.

11. Completion of the aforesaid project will provide significant stimulus for growth in the area, thereby intensifying the need for housing of all types and prices. If the Township of Randolph is to meet its present and future fair share requirement for low- and moderate-income housing, it is urgent that steps be taken forthwith to meet its obligations in that regard.

12. The defendant Township of Randolph's Master Plan and Land Use Ordinance violate the Constitution and laws of the State of New Jersey, Article 1, Section 1, in that they violate the constitutional mandates as enunciated and set forth in the Mt. Laurel I and Mt. Laurel II decisions, are inconsistent with and violative of the Municipal Land Use Law, N.J.S.A. 40A:55D-1 et seq., and otherwise violate the plaintiff's rights under the United States Constitution and 42 USC 1983.

WHEREFORE, plaintiff demands judgment against the defendant Township of Randolph:

1. Declaring the Land Use Ordinances of the Township of Randolph invalid and unconstitutional in their entirety or in relevant part;

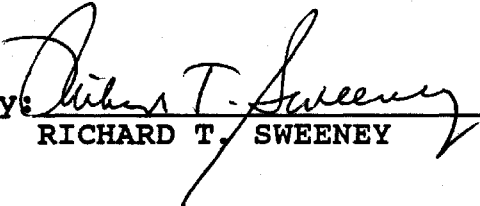
2. Ordering a builder's remedy and appointing a special master to recommend the revision of said ordinances and effectuation of municipal action in compliance with the constitution and laws of the State of New Jersey to supervise the implementation of the builder's remedy in order to insure the prompt production of needed units;

3. Ordering a builder's remedy for plaintiff consistent with its proposal as set forth in Count One to it 558 units of housing of which 22% would be low- and moderate-income housing units intended to satisfy the standards of South Burlington County NAACP vs. Mt. Laurel Township, 92 N.J. 158 (1983) (Mt. Laurel II);

4. For counsel fees and costs;

5. For such other relief as the court deems equitable and just.

SEARS, PENDLETON & SWEENEY  
Attorneys for Plaintiff  
Randolph Township Industrial Complex

By:   
RICHARD T. SWEENEY

Dated: July 17, 1985



NOTICE OF OTHER ACTIONS

I hereby certify that the matter is the subject of another action as is noted below. Based upon the information available to me, I know of no other parties who should be joined in the action, except those in the referenced matter.

Pursuant to an Order entered on March 4, 1985, the plaintiff herein was granted leave to intervene in a certain action entitled Morris County Fair Housing Council, et al., vs. The Township of Boonton, a municipal corporation of the County of Morris, State of New Jersey, et al. Docket No. L-6001-78 P.W. Said action is now pending before the Hon. Stephen Skillman, Judge of the Superior Court sitting at the Middlesex County Courthouse, New Brunswick, New Jersey. Plaintiff, herein, pursuant to motion dated July 2, 1985, returnable at the Court's direction without date, has sought leave to file a Supplemental Complaint in that action. The proposed Supplemental Complaint seeks the same relief as Count Three herein. The motion alternatively seeks to sever the same from that action or to schedule a trial date on the consolidated action. Upon service of the within Complaint, a Motion will be filed to consolidate this action with that matter now pending before Judge Skillman.

SEARS, PENDLETON & SWEENEY  
Attorneys for Plaintiff  
Randolph Mountain Industrial Complex

By: 

RICHARD T. SWEENEY

Dated: July 17, 1985



# TOWNSHIP OF RANDOLPH

MUNICIPAL BUILDING  
MILLBROOK AVENUE • RANDOLPH, N.J. 07869

## MEMORANDUM

July 12, 1985

FROM: Board of Adjustment  
TO: Building Inspector  
SUBJECT: Resolutions #7-85 RANDOLPH MOUNTAIN INDUSTRIAL  
COMPLEX

At a meeting of the Board of Adjustment on July 11, 1985, the attached resolution was adopted.

Yours truly,

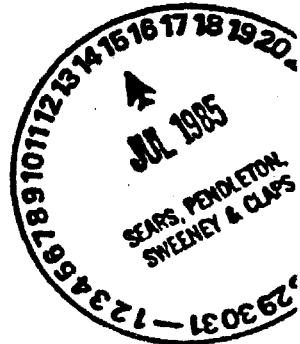
*Marilynne Mazzella*

Marilynne Mazzella  
Secretary

cc: Township Engineer  
Applicant ✓

SCHEDULE A

*gave copy  
to  
RTS*



#7-85

WHEREAS, THE RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX has applied to the Board of Adjustment of the Township of Randolph, Morris County, New Jersey, for permission to construct 500 multiple family units on premises located at The Randolph Mountain Ski Area, bordering on Route 10 near Salem Street and known as Block 199, Lots 4, 5, 6, 7 and 9 on the Township Tax Map, which premises are located in the I-1 and R-2 Zones, and

WHEREAS, the Board, has determined that an initial inquiry should be made with regard to the threshold issue of jurisdiction of the Board to hear the instant matter pursuant to the criteria set forth in Township of Dover v. Board of Adjustment of the Township of Dover, 158 N.J. Super 401 (App. Div. 1978) and Cranmer v. Township of Evesham, 162 N.J. Super 204 (Ch. Div. 1978); and

WHEREAS, the Board after carefully considering the jurisdictional question presented and having heard evidence presented by the applicant, adjoining property owners and the general public, has made the following factual findings and conclusions with respect thereto:

1. This Board took extensive testimony with respect to the applicant's proposal and advised applicant that the Board would assume that all engineering and site plan issues could be resolved by the applicant in a satisfactory way. Applicant was directed to present evidence specifically directed at the issues raised in the Township of Dover v. Board of Adjustment of the Township of Dover case and set forth at pages 412 and 413 therein, i.e., the impact of the requested variance on the character of the district in which it is located, the size of the tract itself; the size of the tract in relationship to the size and character of the district in which it is located and the municipality as a whole; the number of units that would be constructed on the subject parcel; and the nature, degree and extent of the variation from the district regulations which is sought
2. The Board heard testimony of applicant's expert, i.e., Carl Lindebloom, received exhibits from municipal officials and neighboring residents, and heard objectors concerns.

3. The applicant described the parcel as one comprising approximately 65 acres with a planned overall density of slightly more than 10 units per acre. 110 of the proposed units would be for so called "Mt. Laurel" housing units that would be apartments subsidized and used by low and moderate income households and would sell for prices starting at \$40,000 for efficiency units. 290 units are proposed to be apartments and would be sold to moderate income households at market prices. 100 of the proposed units would be townhouses and would sell for prices of approximately \$135,000 per unit.
4. The site contains some significant geographical constraints including Mill Brook, access only to Route 10, wetlands and floodplain. On the eastern portion of the site are extensive and steep slopes.
5. The applicant referred to an Ordinance that has been adopted by the municipality regarding this area and identified as R-6. R-6 development would permit multiple family units in this area, but no units could be constructed over the 600 foot contour. The Ordinance is not in effect because it was presented to the Public Advocate in an effort to settle a "Mt. Laurel" type housing suit. Its effect is subject to its acceptance as a part of a settlement of that suit. Approximately 25 of the 65 acres under consideration are in areas above the 600 foot contour level and this comprises 38 per cent of the site and 88 of the proposed 500 units.
6. Applicant's proposal includes apartment units which would be 3 stories in height whereas the existing Zoning Ordinance does not permit any apartment structure to be over 2 1/2 stories or a total of 35 feet in height.
7. Although this 65 acre site comprises only approximately one per cent of the total land mass of the municipality, this site does comprise approximately 50 per cent of the I-1 Zone and 33 1/3 per cent of the R-2 Zone in this vicinity. The I-1 Zone permits construction on minimum lot sizes of one acre and the R-2 Zone permits construction of single family residential detached dwellings at the rate of 2 per acre. This proposal would permit construction of residential dwelling units with a density of more than 10 units per acre.

8. A portion of the I-1 Zone under consideration has already been developed for industrial purposes. There has been no evidence presented and no reason to believe that the I-1 Zone, as it presently consists, could not and would not be developed for its zoned and approved purpose.
9. There has been no showing that Randolph's obligation to provide its fair share of land and moderate income housing should be fulfilled by constructing the units applicant proposes on this site. Sale prices would be high and the Mayor and Council should resolve this difficult problem through comprehensive plan. It should not be resolved by this Board on a lot by lot basis.
10. The Mayor and Council have already considered and have enacted subject to certain contingencies, a new zone designation for the area under consideration. The Mayor and Council have indicated by that action that a change as substantial as the one that applicant seeks should be accomplished by way of legislation, rather than by administrative process.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Randolph on this 11th day of July, 1985, that the application of the Randolph Mountain Industrial Complex be dismissed on the basis that jurisdiction to rule upon the application does not lie with this Board. The applicant is directed to make application to the Mayor and Council for a zone change if it wishes to pursue plans to develop this area in the manner indicated.