

RULS - AD - 1989-190

5/25/84

- transcript of judge's decision on
motion

pgs. 13

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
DOCKET NO. L-28061-71PW and
L-36896-70PW

RULS - AD - 1984 - 190

LYNN CEISWICK,)
Plaintiff,)
vs.)
TWP. OF BEDMINISTER,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
JUDGE'S DECISION

OCEAN COUNTY COURTHOUSE
TOMS RIVER, NEW JERSEY
MAY 25, 1984

B E F O R E:

HONORABLE EUGENE D. SERPENTELLI, J.S.C.

APPEARANCES:

RAYMOND R. TROMBADORE, ESQUIRE,
Attorney for Timber

KENNETH E. MEISER, ESQUIRE
Attorney for Ceiswick

HENRY A. HILL, ESQUIRE,
Attorney for Hills and Deane

JOSEPH L. BASRALIAN, ESQUIRE,
-and-

PETER J. O'CONNOR, ESQUIRE,
DONALD A. KLEIN, ESQUIRE,
Attorneys for Dobbs

ALFRED FERGUSON, ESQUIRE
-and-

DANIEL F. O'CONNELL, ESQUIRE,
ROGER W. THOMAS, ESQUIRE
GARY HALL, ESQUIRE,
Attorneys for Bedminster

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JUL 12 1984
JUDGE SERPENTELLI'S CHAMBERS

Reported by:
GLORIA MATHEY, C.S.R.

1 THE COURT: All right. First let me say
2 that my ruling on the motion continues to be, and
3 what I consider to be, the unique posture of this
4 case. As counsel are aware, the order that has
5 been many times redrafted in this case has, at my
6 request, contained language in the last paragraph,
7 or maybe it's the next to last paragraph, but at
8 the end of the order, which indicates that the
9 order should not in any way be deemed as
10 precedential or as creating any inference that it
11 establishes policy with regard to other Mount
12 Laurel litigation, and what I'm about to say with
13 respect to the ruling on these motions is within
14 the same context.

15 I look at this case as being quite unique
16 and, along with the Urban League litigation that is
17 pending before me, as kind of in a different
18 category itself, and I would second caution that no
19 one infer too much from the order which I am going
20 to enter beyond what I say.

21 I'm going to give the Public Advocate and
22 the Township of Bedminster a period of thirty days
23 to present to the Court a settlement of the entire
24 litigation; that being inclusive of the Township's
25 fair share and a complete compliance package.

1 I would permit the compliance package to be
2 conditioned, and the settlement to be conditioned,
3 on one of two things: First, a ruling by the Court
4 that there is no right of builders remedy in either
5 Timber Properties or Dobbs, or a ruling by the
6 Court that there is a right to condemn as to Dobbs
7 and no right of builders remedy in Timber.

8 The ordinance revision must include adequate
9 over-zoning. It must not provide for phasing by
10 site availability, which I have previously found to
11 be unacceptable notwithstanding the recommendations
12 of the Master, and it must consider the
13 availability of sites most readily developable at
14 this time, including Dobbs and Timber.

15 Now, what I mean by the second condition,
16 that is, that it must not provide for phasing by
17 site availability, is that I deem it improper to
18 provide as a compliance package sites which are not
19 readily available if other sites are readily
20 available and usable for implementation of Mount
21 Laurel purposes.

22 As you'll recall, Mr. Raymond recommended
23 acceptance of a compliance package which included
24 sites that would not be usable for Mount Laurel
25 purposes into the 1990's. If those are the only

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1 sites available in Bedminster, then that's the way
2 it has to be. But it's been represented to this
3 Court that there are other sites much more readily
4 available, and in my view that is a very
5 significant element in the selection of sites. I
6 don't preclude the possibility that there might be
7 one site more available and implemental at this
8 time than another which should be rejected because
9 of some sound planning or environmental purpose,
10 but the municipality would have to have the burden
11 of demonstrating that clearly to me before it could
12 be passed over in preference to a site for which
13 Mount Laurel housing would have to wait much
14 longer.

15 Now, if the Court finds that either a right
16 to condemn exists or there is no right to builders
17 remedy, a hearing will be held with notice to
18 Dobbs, Timber, and the public, why the settlement
19 should not be approved. At this time I will not
20 indicate the scope of that hearing. I will only do
21 that in the event we reach that point.

22 If the Court finds that there is either no
23 right to condemn and a right to a builders remedy,
24 that is, if Bedminster may not condemn against
25 Dobbs, or there is a right of builders remedy in

1 Dobbs that may not be cut off by condemnation, or
2 that Timber has a right of a builders remedy, then
3 the application for intervention will be
4 reconsidered at that time.

5 Now, if no settlement is presented to the
6 Court within thirty days, I will then consider
7 granting Dobbs' motion to intervene and also
8 consider granting Timber's motion to intervene.

9 I want it to be clear that I am not now
10 deciding the appropriateness of a class action
11 concept or what procedures as it relates to Dobbs
12 or Timber would be appropriate if a settlement is
13 reached. I will decide that if, in fact, a
14 settlement is reached.

15 All right. Any questions as to the order
16 which I'm going to have Mr. Meiser prepare? Hoping
17 through the use of the Public Advocate to cut down
18 on some objections.

19 Yes, Mr. Hill.

20 MR. HILL: Your Honor, one question. There
21 have been references to a down-zoning of Timber.
22 Will the order carry anything either by implication
23 or directly as to the right of any property owner
24 within Bedminster who may be down-zoned as a result
25 of -- from their present zoning as a result of

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actions taken by Bedminster allegedly in
compliance?

THE COURT: No. I think that's premature.
Aside from Timber, assuming that one were to get to
the issue of acceptance of a proposed settlement,
there is going to have to be a general public
notice and there may be others who are down-zoned,
if we can put it in that posture. I don't want to
rule in a vacuum as to the appropriateness of that.

Let me say that - somebody indicated, and I
let it go only because I didn't want to interrupt
that the Supreme Court has given the town carte
blanche to do anything it wants once it meets its
Mount Laurel obligation. I don't think that the
Court intended to repeal by implication existing
case law of the State of New Jersey with respect to
the reasonableness of municipal conduct in its
zoning powers. I concede that it did talk about
the right of a town under proper circumstances to
maintain large-lot zoning. I do not believe that
it has indicated that once Mount Laurel is
satisfied, that anything else it does is okay. And
I can say only to that extent, in terms of
guidance, that a town can't proceed to be totally
arbitrary with respect to the rest of its zoning if

1 it's satisfied its Mount Laurel obligation.

2 Any other -- yes, Mr. Ferguson.

3 MR. FERGUSON: Yes. At what point in time
4 will the Court determine whether there is or is not
5 a builders remedy for the two -- the developers
6 who seek intervention or as to the right of
7 condemnation?

8 THE COURT: All right. I will only address
9 that issue if I get a settlement package in thirty
10 days, and then I will set a date for further
11 proceedings in this matter. It might be that we'll
12 have to have an initial hearing as to what
13 proceedings or how we're going to proceed, and then
14 set specific dates as to the determination of that
15 issue.

16 I expect that the town will move promptly on
17 its condemnation intentions, and if it doesn't do
18 so, I will treat that as an abandonment of the
19 condemnation and just deal with the builders
20 remedy. I will just go ahead with the decision on
21 intervention, and I'm going to bar condemnation at
22 a certain point unless the town moves. I'm not
23 going to set that date now, but I'm telling you up
24 front that if you're serious about it, you've got
25 to move.

1 MR. FERGUSON: The chain has started and we
2 will take each step along the way as soon as we
3 can.

4 THE COURT: You can accomplish that in a
5 thirty-day period. That's why I chose thirty days.
6 The statute sets as a minimum a fourteen-day period
7 for negotiations, requiring a notice and
8 negotiations, and you can accomplish all of that.
9 And it's been represented on the record it's going
10 to be fruitless as to Dobbs, and I believe that
11 before the return date of any further proceedings
12 here, it will either be clear -- it will be clear
13 that condemnation will be fruitless or you would
14 have resolved your lawsuit with Dobbs and the owner
15 of the property, one of the two.

16 MR. O'CONNELL: Your Honor, only one point.
17 The ordinance was introduced Monday night; public
18 hearing on June 18th. We can't legally negotiate
19 with anybody to offer them money that isn't yet in
20 place. That will not go into place until the
21 ordinance is adopted on the 18th, published, and
22 twenty days past a bond ordinance. So we have no
23 money.

24 THE COURT: Publication. The publication is
25 just a ministerial act. You publish it the next

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day.

MR. O'CONNELL: But the statute says it is not effective. A bond ordinance is not effective until twenty days after that publication.

THE COURT: Make your offer anyhow, subject to the bond ordinance being unchallenged within that twenty-day period.

MR. O'CONNELL: We will do what ...

THE COURT: Mr. O'Connor, Mr. Meiser.

MR. MEISER: Just one question. I understand that you're really talking about a signed agreement between the Ceiswick plaintiffs and the Township, not merely some rezoning on their part, that's what you mean by a settlement. I just want it for drafting purposes. I want to be clear I understood that.

THE COURT: I'm talking about there being an agreement by the Public Advocate that it's willing to accept a fair-share number; that it accepts the compliance package proposed by the Township, and the Township in turn saying that it accepts the fair-share number and proposes the compliance package.

All right, Mr. O'Connor.

MR. O'CONNOR: Yes. The order that's before

1 you right now, we don't have a copy of, but it's my
2 understanding that is only on the 260, and all the
3 references to the 180 have been deleted?

4 THE COURT: Well, you're right, that it
5 settles the 260. There are references to the 180
6 and you're welcome to see the order. We're going
7 to continue -- I gather we're going to talk about
8 it after we finish this motion, and it essentially
9 says that the 180 will be given if the town gets
10 repose and, I guess by inference, if Dobbs and
11 Timber are out of the picture. In other words, if
12 the town has a Court-approved compliance package
13 satisfactory to the town, the matter could be
14 settled today if you weren't here, and I think
15 that's a fair characterization of the order. I
16 don't hear Mr. Ferguson objecting to that. May be
17 a little bit blunt, but that's what it says.
18 You're welcome to see the order.

19 Anything else?

20 All right. Thank you. And within the
21 thirty-day period we will notify Dobbs -- or,
22 after the thirty-day period we will notify Dobbs
23 and Timber. In the interim, any proposed
24 settlement, written proposed settlement, must be
25 presented to Timber and Dobbs for informational

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purposes only.

MR. TROMBADORE: Thank you, your Honor.

MR. BASRALIAN: Thank you, your Honor.

MR. FERGUSON: Just so there's no misunderstanding, we don't intend to include Mr. Dobbs or Timber in negotiations themselves.

THE COURT: I'm not suggesting you have to.

MR. FERGUSON: There is prior language in the Court order that when we worked with the Master and the parties, we must give notice to and include Dobbs. For purposes of this hearing, I take it that is inoperative.

THE COURT: Yes. I'm saying now is the time to find out whether in fact the town wants to settle its litigation. Let's find out what their posture is specifically and then we'll go from there. And I'm giving you the ability to go ahead and propose your settlement.

MR. HILL: Your Honor, it's our understanding that these negotiations are between Ceiswick and the municipality. Allan Deane need not participate.

THE COURT: Allan Deane cannot participate, any more than the other two may not participate, but Allan Deane will also be informed of any

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proposed settlement.

MR. HILL: That's Allan Deane, Hills, et
cetera.

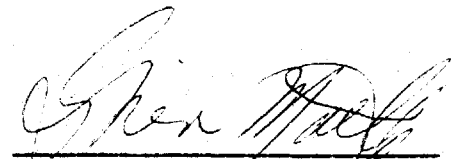
THE COURT: Yes. You used Allan Deane.
Anyone in their corporate representative
capacities.

All right. Thank you.

* * * * *

C E R T I F I C A T E

I, GLORIA MATHEY, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.


GLORIA MATHEY, C.S.R.