

RULS-AD-1984-370

9/14/84

- letter to judge by Dr attorney's re: observation on Dobbs' right to suitable remedy - w/ appended Belmonte ordinance

Pgs. 1a

GEORGE M. RAYMOND, A.I.C.P., A.I.A.
NATHANIEL J. PARISH, P.E., A.I.C.P.
SAMUEL W. PINE, A.I.C.P.
MICHAEL WEINER, A.I.C.P.

BERNARD J. BULLER, P.E., A.I.C.P.
EDWARD J. RYBCZYK

ROBERT GENESLAW, A.I.C.P.
RICHARD HARRALL
GERALD C. LEMAZ, A.I.C.P., A.I.A.
EDITH LANDAU LITT, A.I.C.P.
PHILIP W. MICHALOWSKI, A.I.C.P.
JOHN JOSEPH SACCARDI
STUART I. TURNER, A.I.C.P.

DAVID B. SCHIFF, A.I.C.P.
NOEL SHAW, JR.
CSABA TEGLAS, A.I.C.P., C.I.P.

*DT-18 lued
886-11/51*

RULS - AD - 1984 - 370

September 14, 1984

The Honorable Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

My Dear Judge Serpentelli:

Set forth below are a few observations regarding the August 31, 1984 Memorandum of Law in Support of Leonard Dobbs' Right to a Builder's Remedy filed with the Court by Winne, Banta, Rizzi, Hetherington & Basralian. I thought that my special perspective as Master may be of assistance to its consideration by the Court. Regardless of the terminology used in this communication, I wish to assure Your Honor that I am not in any way attempting a legal analysis of the issues before the Court.

A. Dobbs' Right to a Builder's Remedy

1. Was Dobbs Instrumental in Demonstrating That The Zoning Ordinance of Bedminster Township Fails to Comply With Mount Laurel II?

In Orgo Farms, Your Honor established as a condition of entitlement to a builder's remedy the developer's demonstrating, through litigation, "that the zoning ordinance fails to comply with Mount Laurel II."

At the time when Dobbs was permitted by the Court to participate in the judicial process underway in Allan Deane, the invalidity of Bedminster Township's ordinance under Mount Laurel II had been stipulated. A revised ordinance was introduced on September 19, 1983. In substance, that ordinance attempted to incorporate those regulatory elements which were not mandated under Mount Laurel I but became mandatory under Mount Laurel II. A reading of that ordinance (Appendix A) will show that Dobbs' presence in the proceedings made no contribution to the Township's understanding of its obligation under Mount Laurel II.

In substance the ordinance incorporated in the Township's latest version of its compliance report (dated September 5, 1984) differs only marginally from that introduced on September 19, 1983. In detail, the differences are ascribable primarily to the learning process which unfolded around the specifics of the proposal submitted by the Hills Development Corporation in the Summer of 1983. Most of the comments which are reflected in the latest version of the ordinance originated with the Public Advocate's Office and its consultant, Alan Mallach.

The nature of the process--knowledgeable persons getting together around the table--of necessity resulted in consideration being given to all comments offered, regardless of source. It is entirely possible that comments offered by Peter O'Connor, Esq., (who, of Dobbs' attorneys, had the greatest expertise in the housing field) may have influenced the precise wording used in documents submitted to the Court. From my perspective, however, the emergence of a satisfactory outcome was a foreordained conclusion at the time Dobbs and his representatives joined in the discussion.

I should also note that Dobbs' comments regarding affordability issues dealt with proposals put on the table by Hills rather than Bedminster. I can confidently assert that, absent Dobbs, the presence of the Public Advocate and my own understanding of the practical imperatives under Mount Laurel II would have produced results which, if not identical, would have closely approximated those which have already been approved by Your Honor.

2. Was Dobbs Instrumental in Substantially Modifying Bedminster's Proposed Zoning Map (i.e. the Sites Offered as Part of its Compliance Package)?

A comparison of the sites approved by Hon. B. Thomas Leahy, J.S.C. in October, 1980 with those offered in the Township's current compliance package now before the Court will show the following:

Table I

COMPLIANCE PACKAGE SITES

<u>Sites in</u> <u>1984 Package</u>	<u>Also in</u> <u>1980 Package</u>
A	Yes
B	No
C	Yes
D	Yes
E	Yes
F	Yes
G	Yes
H	Yes
I	Yes
J)	Yes, but in different
K)	form
M	No

Before discussing the few differences in detail it is important to establish that the basic motivation for all changes was inherent in the Mount Laurel II mandate that a realistic opportunity be provided for the construction of a specific fair share number of units. In August 1983, the Township prepared a Housing Element (Part III of its Master Plan) which offered the previously approved sites with an estimated capacity of 4,415 units (883 Mount Laurel assuming a 20% set-aside in Planned Residential Developments and 35% in Multi-family Zones).

The amount of land required to satisfy the Township's obligation thus became a function of its newly established fair share. The Township's estimate of its obligation over the succeeding months, with which I generally concurred, was generally in the 800-900 range. Dobbs' opinion, supplied in November, 1983, in the form of a report by Ernest Erber prepared for Peter O'Connor, that Bedminster's fair share amounted to 2,008 units, was not in any way determinative of the final outcome.

Immediately upon being re-appointed as Master in this case I proceeded to evaluate the Township's response in the light of the legal requirements of Mount Laurel II. Shortly after I embarked on this task I received the

Dobbs analysis of the sites proposed by the Township. As detailed in my January 10, 1984 report to Your Honor, I agreed with some of Dobbs' evaluations and disagreed with others. I should make clear, however, that the fact that I provided my own analysis in the form of a comparative evaluation of data supplied by two sources (Bedminster and Dobbs) in no way signifies that my conclusions would have been very different, if at all, had I reviewed Bedminster's submission without the benefit of the analysis supplied by Dobbs.

Reverting to the comparison set forth in Table 1, above, Site B, (the "top of the hill site," with a 180-unit Mt. Laurel capacity) was added to compensate for the reduction in aggregate site capacity due to my findings plus the withdrawal from consideration of certain previously offered sites by the Township. This particular site was also selected because of the associated contribution by Hills to the needed funding of the non-profit corporation charged with the responsibility of administering the Mount Laurel program.

Sites J and K constituted a single site which, in 1980, had been offered for a possible 20% set-aside planned residential development at a density of 8 units per acre. It is currently being offered as the site for an imaginatively combined office/residential development which would make possible a senior citizen development as well as provide a developer contribution to the funding of the Bedminster Sewage Treatment Plant expansion which is needed to make possible housing development in the Bedminster Village area.

Site M was added as an alternative site for a senior citizen development.

In summary, Dobbs' participation in the process did not affect either the selection of compliance sites or the permitted density thereon. The only way in which his presence in the proceedings could have that effect would be if he secured approval of his site.

3. Conclusion

Should Your Honor accept Bedminster's proposed compliance package, I believe that it would be correct to say that no specifically identifiable part thereof

of any significance can be attributed to Dobbs' presence on the scene.

B. The Issue of Site Sewerability

Dr. Hordon's August 31, 1984 report adds nothing to my understanding of the probability that the sites proposed by the Township can be sewerred in time to permit their development within the six year period of the projection of the need they are intended to satisfy.

It is not my understanding that Mount Laurel II implies a race between the Township and others in terms of the precise date when the respective sites are likely to be developed. If the Township's sites do in fact provide a realistic opportunity for the satisfaction of its fair share within the projection period, the fact that other sites might be available for development one or two years sooner seems to me to be irrelevant.

In Dobbs' case, it should also be noted that the comparative delay in availability of the Township's sites is due to its desire to tie all developments into a properly designed and sized public sewer system. This is most important since, in towns on the fringe of urbanization or in rural towns it can be accepted as self-evident that sites relying on private treatment plants will always be available sooner than those which will require any major expansion of the available sewer capacity. The granting of approvals for sites on the basis of how soon they could be developed rather than on the basis of their availability within the period of the projection could thus fatally undermine local planning and zoning.

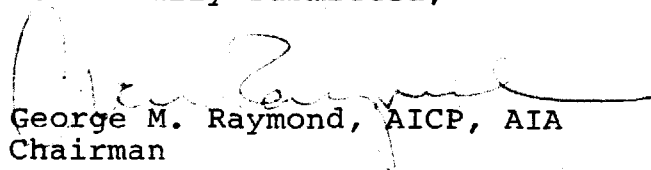
C. Conclusion

There can be no question that Dobbs did in fact challenge the Township's August 1983 proposed compliance package, but so did the Public Advocate and so did I. It is my understanding that my role is to assist the Court by

Hon. Eugene D. Serpentelli, J.S.C.
September 14, 1984
Page 6

evaluating such proposals and by reshaping them should they be inadequate. This was done over the many months since my appointment. Very little, if any, of the specifics of the final outcome is due to the presence and participation of Dobbs, his legal counsel and his consultants.

Respectfully submitted,



George M. Raymond, AICP, AIA
Chairman

GMR:kfv

cc: All parties

APPENDIX A

AN ORDINANCE TO AMEND AND SUPPLEMENT
AN ORDINANCE ENTITLED "THE LAND
DEVELOPMENT ORDINANCE OF THE TOWNSHIP
OF BEDMINSTER".

BE IT ORDAINED by the Township Committee of the Township
of Bedminster in the County of Somerset, as follows:

1. An ordinance entitled "The Land Development Ordinance of the Township of Bedminster" adopted October 6, 1980, as heretofore amended and supplemented, be and the same is hereby further amended and supplemented as follows:

A. Section 13-606.4j of the ordinance to which this ordinance is amendatory be and the same hereby is amended and supplemented to read as follows:

"j. Low and moderate income housing requirements.

"At least 20 percent of the total number of residential dwellings within a planned unit development shall be subsidized or otherwise made affordable to low and moderate income households as discussed and defined in the "Mt. Laurel II" Supreme Court Decision (So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (1983)). It shall be the responsibility of the applicant to propose, as a part of its application for development, the scheme to be used in order to insure that the required number of affordable dwelling units are rented or sold only to low and moderate income households and that the units will continue to be occupied by said households over time. Every affordable unit shall be rented or sold at a cost not exceeding 25% of the earning limits calculated for low income households and moderate income households. For purposes of this ordinance, "low income households" are those earning less than 50% of the median income figure published for Somerset County and "moderate income households" are those earning between 50% and 80% of said published median income figure.

"1. At least 25 percent of the required 20 percent shall be subsidized senior citizen housing units in accordance with subsection 13-601.2 of this chapter. The applicant shall diligently apply to the Federal Department of Housing and Urban Development and the New Jersey Housing Finance Agency for subsidies; if no subsidies are available, this fact shall be certified to the Planning Board and the required percentage of low and moderate income housing in the planned unit development shall be provided in accordance with subsections 13-606.4j.2. and 13-606.4j.3. hereinbelow. The height, parking and other provisions specified for subsidized senior citizen housing units in subsection 13-601.2 of this chapter shall not be applied to any other housing within the planned unit development.

"2. At least 35 percent of the required 20 percent shall be rental units subsidized in accordance with available subsidy programs authorized and regulated by the Federal Department of Housing and Urban Development or the New Jersey Housing Finance Agency. If no subsidy programs are available, this fact shall be certified to the Planning Board, and the rental units shall be restricted in size to be no larger than 15 percent greater in area than the minimum net habitable floor area as specified in this chapter. In any case, 50% of said rental units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 5 percent of the units shall have four (4) bedrooms and not less than an additional 20 percent of the units shall have three (3) bedrooms.

"3. At least 20 percent of the required 20 percent, and such additional units as may be required to achieve the low and moderate income housing requirements within the planned unit development, shall be dwellings for sale. 50% of said sale

units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 5 percent of the units shall have four (4) bedrooms and not less than an additional 20 percent shall have three (3) bedrooms."

B. Section 13-606.3i of the ordinance to which this ordinance is amendatory be and the same hereby is amended and supplemented to read as follows:

"i. Low and moderate income housing requirements.

"At least 20 percent of the total number of residential dwellings within a planned residential development shall be subsidized or otherwise made affordable to low and moderate income households as discussed and defined in the "Mt. Laurel II" Supreme Court Decision (So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (1983)). It shall be the responsibility of the applicant to propose, as a part of its application for development, the scheme to be used in order to insure that the required number of affordable dwelling units are rented or sold only to low and moderate income households and that the units will continue to be occupied by said households over time. Every affordable unit shall be rented or sold at a cost not exceeding 25% of the earning limits calculated for low income households and moderate income households. For purposes of this ordinance, "low income households" are those earning less than 50% of the median income figure published for Somerset County and "moderate income households" are those earning between 50% and 80% of said published median income figure.

"1. At least 35 percent of the required 20 percent shall be rental units subsidized in accordance with available subsidy programs authorized and regulated by the Federal Department of Housing and Urban Development or the New Jersey Housing Finance

Agency. If no subsidy programs are available, this fact shall be certified to the Planning Board, and the rental units shall be restricted in size to be no larger than 15 percent greater in area than the minimum net habitable floor area as specified in this chapter. In any case, 50% of said rental units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 5 percent of the units shall have four (4) bedrooms and not less than an additional 20 percent of the units shall have three (3) bedrooms.

"2. At least 20 percent of the required 20 percent, and such additional units as may be required to achieve the low and moderate income housing requirements within the planned residential development, shall be dwellings for sale. 50% of said sale units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 5 percent of the units shall have four (4) bedrooms and not less than an additional 20 percent shall have three (3) bedrooms."

C. The ordinance to which this ordinance is amendatory be and the same hereby is amended and supplemented by adding the following new section:

"13-404.7. Low And Moderate Income Housing Requirements. At least 35 percent of the total number of residential dwellings within an "MF" High Density Multiple Family Development shall be subsidized or otherwise made affordable to low and moderate income households as discussed and defined in the "Mt. Laurel II" Supreme Court Decision (So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 (1983)). It shall be the responsibility of the applicant to propose, as a part of its application for development, the scheme to be used in order to insure that the required number of affordable dwelling units are rented or sold

only to low and moderate income households and that the units will continue to be occupied by said households over time. Every affordable unit shall be rented or sold at a cost not exceeding 25% of the earning limits calculated for low income households and moderate income households. For purposes of this ordinance, "low income households" are those earning less than 50% of the median income figure published for Somerset County and "moderate income households" are those earning between 50% and 80% of said published median income figure.

"a. At least 25 percent of the required 35 percent shall be rental units subsidized in accordance with available subsidy programs authorized and regulated by the Federal Department of Housing and Urban Development or the New Jersey Housing Finance Agency. If no subsidy programs are available, this fact shall be certified to the Planning Board, and the rental units shall be restricted in size to be no larger than 15 percent greater in area than the minimum net habitable floor area as specified in this chapter. In any case, 50% of said rental units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 5 percent of the units shall have four (4) bedrooms and not less than an additional 20 percent of the units shall have three (3) bedrooms.

"b. At least 25 percent of the required 35 percent, and such additional units as may be required to achieve the low and moderate income housing requirements within the "MF" Multiple Family Development, shall be dwellings for sale. 50% of said units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 5 percent of the units shall have four (4) bedrooms and not less than an additional 20 percent shall have three (3) bedrooms."

2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

3. This ordinance shall take effect immediately upon final passage and publication and the filing of a copy thereof with the Somerset County Planning Board as required by law.

Introduced: *1/15/68*

First Passage: *1/22/68*

Published: *1/22/68*

Referred to Planning Board: *1/22/68*

Final Passage:

Margaret C. Francisco
Township Clerk

Paul F. Gavin, Mayor