

ML- Cinnaminson

7/8/75

(Camden National Realty v. Cinnaminson)

Partial Transcript of Proceedings (Judge's Decision)

Pgs. 19

MM000021S

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BURLINGTON COUNTY  
DOCKET NO. L-37016-73

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CAMDEN NATIONAL REALTY, :

vs. : PARTIAL TRANSCRIPT

TOWNSHIP OF CINNAMINSON, : OF PROCEEDINGS

MAYOR AND TOWNSHIP COMMITTEE : (JUDGE'S DECISION)

OF TOWNSHIP OF CINNAMINSON, :

ZONING BOARD OF ADJUSTMENT OF :

TOWNSHIP OF CINNAMINSON, and :

C. ROSS FORD, ZONING OFFICER :

AND CINNAMINSON SEWERAGE :

AUTHORITY,

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Tuesday, July 8, 1975  
Mount Holly, New Jersey

B E F O R E:

HONORABLE PAUL R. KRAMER, J.S.C.

A P P E A R A N C E S:

SAPUTELLI & SAPUTELLI, ESQS.,  
BY: GREGORY D. SAPUTELLI, ESQ.,  
Attorney for Plaintiff

WALTER L. SMITH, JR., ESQ.,  
Attorney for Zoning Board of Adjustment and  
C. Ross Ford, Zoning Officer

FARRELL, EYNON & MUNYON, ESQS.,  
BY: GEORGE FARRELL, III, ESQ.,  
Attorney for Township Committee of Township  
of Cinnaminson

Reported by:  
BONNIE NEMECZ, C.S.R.  
Official Court Reporter.

THE COURT: Well, it's been a very fine academic experience, the four days of expert testimony. Supplementing the 300 pages of transcript before the Zoning Board were all necessary, they were very informative; and furthermore, without flattering counsel in any way the briefs were excellent and I think that everyone, the developer, the municipality, the Zoning Board left no stone unturned. All right. I will announce my findings of fact, my conclusions of law from the bench at this time.

I will deal first with the denial of the variance count because I consider it, relatively speaking, much more simple than the difficult constitutional question.

I must respectfully affirm the findings of the Zoning Board of Adjustment. This Court will not substitute its judgment for the judgment of the Zoning Board when there was sufficient evidence in the record to support the denial of the variance. I quite agree with Mr. Saputelli that he had experts arguing to the contrary on items we've talked about, but on the other hand, there was sufficient credible evidence which if believed by the Zoning Board warranted the denial

1 of the variance.

2 I find that the traffic from this  
3 subject property for the proposed project will  
4 increase substantially in view of the fact that  
5 there would be a great density or proposed to  
6 build -- there is proposed 100 units on a ten-  
7 acre tract.

8 I find secondly, that the proximity  
9 to the school, the public school did create  
10 some limit of danger to the infant children  
11 using that school.

12 I find that as it presently exists,  
13 the topography and the drainage of the subject  
14 property is ill-suited for the proposed project.  
15 You have running by this section of the property,  
16 this stream or ditch, whatever you choose to  
17 call it, which drains a watershed of more than  
18 200 acres. There are critical flooding problems  
19 there now. The citizens came in with their  
20 photographs showing their lawns under water.  
21 Now, it may be that the municipality didn't  
22 alleviate the situation, but when they put in  
23 the piping, having a certain diameter. It may  
24 further be that there was an inverse pitch at  
25 one point; but nevertheless, the only thing that

1. could eradicate this, but not only to correct  
2 the pitch, but to increase the diameter  
3 substantially at a cost of well in excess of  
4 \$100,000.

5 I find that the open space on the  
6 property is rather limited and that will  
7 exsiccate or abate the drainage problem. I find  
8 that the higher density use would put an  
9 additional burden on an already fully committed  
10 sewer system. I find this sewer system was  
11 built, constructed some seven years before with  
12 a proposed fifteen-year life. I find that after  
13 only six or seven years they are pumping 1.8  
14 million gallons per day as against a maximum of  
15 2 million with valid commitment already made  
16 exceeding that amount.

17 I find that there is no economic  
18 hardship on the applicant. He knew of the  
19 zoning situation when he came in; and for those  
20 reasons alone, I think there was substantial  
21 basis for the denial of the variance.

22 I leave open the question for the  
23 moment as to whether there is a special reason  
24 by virtue of a need.

25 All right. I turn now to a much more

1 difficult constitutional question. I find that  
2 the Township of Cinnaminson is a municipality  
3 of some 4800 acres. I find that it is bordered,  
4 generally speaking, on the north by the Delaware  
5 River; that it is bordered on the west by the  
6 Pennsauken Creek. That flowing north and south  
7 in its easterly region is the Pamposten Creek.  
8 So there is substantial flood plain area in the  
9 municipality on which building cannot be  
10 accomplished. I said some 4800 acres -- I think  
11 the precise acreage is 4840.

12 The plaintiff proposes to build on a  
13 ten-acre tract, a 100-unit condominium complex  
14 in a zone, zoned for residential single-family  
15 dwellings, requiring one-quarter acre lot; and  
16 for the reason, of course, had to apply for a  
17 variance.

18 I find that the costs of the proposed  
19 townhouses would certainly not be less than  
20 \$25,000 per unit; and might be substantially  
21 more than that. I believe that some, at least  
22 one of the defendants experts felt that the  
23 price would be closer to \$31,000. I find that  
24 Cinnaminson is substantially developed. My own  
25 arithmetic is that only 17.8 percent of the

1 municipality is vacant and buildable and I  
2 arrived at that percentage in the following  
3 manner.

4 I find that undisputed the testimony  
5 of Mr. Queale that there is in the Township  
6 1191 acres vacant land, but first we subtract  
7 335 acres which is a flood-prone area, that is  
8 under the flood plain, and it cannot be built  
9 on without complying with a number of statutory  
10 requirements. I find that 111 acres is zoned  
11 of the vacant -- well, let's leave that for the  
12 moment.

13 First, I subtracted the 335 acres,  
14 so that I found that there are in fact 856  
15 buildable acres out of 4800 and some. I then  
16 subtracted 224 acres as being the relatively  
17 small area allowed for future exclusive  
18 industry and future exclusive commercial, for  
19 the simple reason that the experts appeared to  
20 agree, or at least I accepted the testimony of  
21 the defendant expert, that there is presently a  
22 proper balance of industry and population and  
23 residents in view of the population. Some 224  
24 acres out of 400 I find to be entirely reasonable.  
25 So, leaving apart the agriculture area, we have

1 some 856 -- some 632 acres in fact out of 4800;  
2 however, in fairness to the plaintiff I have then  
3 put back into the acreage the 224 industrial,  
4 commercial, and have accepted the figure of 856  
5 that's vacant and buildable. That constitutes  
6 17.8 percent of the vacant buildable land, apart  
7 from the two rather smaller areas permitted for  
8 agriculture.

9 I find that Cinnaminson has more than  
10 met its fair share of the housing crunch in the  
11 last twenty years. As I stated earlier, the  
12 population between 1950 and 1960 did double.  
13 Between 1960 and 1970, it doubled again. In  
14 other words, it quadrupled in a twenty-year  
15 period. I find that during the twenty-year  
16 period, Cinnaminson was in the upper three  
17 municipalities, that is in terms of the number of  
18 building permits issued. One year it was first  
19 in the County. One year it was second in the  
20 County; and one year it was third in the County.  
21 I find that as presently existed, there is a  
22 desirable cross-section of modest-priced properties,  
23 that is low income. Property that could be  
24 afforded by low income. That could be afforded  
25 by high moderate, by high income people. I say



1 that for this specific reason. I find  
2 acceptable the testimony that 25 percent of all  
3 the houses in the Township assessed in 1973,  
4 at a time when there has been a reassessment  
5 or reevaluation program, so as to bring the  
6 assessment somewhere quite close to a fair  
7 market value, that over 25 percent of the houses  
8 in the Township were valued at less than \$20,000;  
9 which is a modest-priced home by anyone's  
10 standards in this day and age.

11 I find further that more than -- whose  
12 testimony was that, gentlemen, so I can find it  
13 real quickly?

14 MR. FARRELL: I think it was Mr.  
15 Queale's, your Honor.

16 THE COURT: Yes. I find that 43 percent  
17 of all housing units in the County have a value  
18 of less than \$30,000. Which generally speaking  
19 is a modest-priced house.

20 I find finally, that 20.5 percent of  
21 all the population in Cinnaminson earn less than  
22 \$10,000 per year. So, this dispels immediately  
23 any concept of a wealthy Riverside community.  
24 They have a very good spectrum of housing values.  
25 They have their share of low income people. I

1 find that of the population, some 5.4 percent  
2 of the population belong to a minority group.  
3 This is somewhat less than Burlington County's  
4 general population ratio of 8 percent, but it's  
5 a substantial amount. So, I find, therefore,  
6 gentlemen, despite what initially strikes one  
7 with some force, that is here is a municipality  
8 with no provision for apartments, that is  
9 multi-housing, that Cinnaminson, if any  
10 municipality in the County has done so, has met  
11 its fair share of the housing need.

12 I find as the experts have testified,  
13 that there is a good balance between the number  
14 of jobs and between -- there is a good balance  
15 between the area zoned for residences and the  
16 area zoned for industry. I find that the amount  
17 of industry bears a good proportion to the amount  
18 of jobs, job holders in the municipality, which  
19 has also been testified by experts.

20 I find that somehow, somehow, despite  
21 not having a provision for apartments, here is  
22 a Township that has done more than most  
23 municipalities in providing for housing and  
24 wound up with a nicely balanced cross-section  
25 of low-income housing, moderate-income housing,

high-income housing.

Now, let's turn to the issue of need. Need in the region, need in the municipality. Gentlemen, at best, that came out somewhat garbled. Now, if one can argue that well, the plaintiff's expert testified unequivocally that according to certain Federal regulations there was in the region, that is the twenty-mile radius of Camden, a need for 43,000 units. We then turn to the question, if we accept that of what is the need for, what is Cinnaminson's fair share? I find totally unacceptable, although plaintiff's experts opinion on that by large, the gentleman was excellent, he was fair, he was articulate and extremely well-informed; but, when he came up with so many hundred units as being Cinnaminson's fair share, I asked him, how did you arrive at that? Well, in the Court's opinion, the man simply oversimplified the problem. I did it by population. We asked him what he meant by population. Well, he said, I took the population of Cinnaminson in a ratio to the population of the region, as excess to 100, and came up with so many hundred units. Well, it became apparent that if you simplify fair share to a population basis

only, one reaches absolutely absurd results. The municipality that has knocked itself out providing houses and quadrupled its population, then has a much higher fair share when you finish the arithmetic. Whereas the municipality who has done nothing for twenty years kept out all housings and consequently has a small population, has a very small share. We can think of certain rural municipalities which in the last twenty years have increased very slightly. So, if we take the population ratio, they have a very small burden because they have a small rural population; yet, that of course is the precise case that Mount Laurel was talking about. The undeveloped rural area, whereas you take Willingboro, with practically wall-to-wall houses, with a tremendous population, you apply the plaintiff's experts' population testimony, Willingboro, they are going to have to come up with hundreds or thousands of housing units to meet their fair share. So, that must be rejected. I agree, on the other hand, with the defendants' expert on that point. That approaching a fair share you must take the land area basis and you must take approach, coupled with the population

approach, coupled with other approaches as well.  
Now, I don't know what the need for a low-cost housing, for low-moderate cost housing, for high-moderate cost, or for high-cost housing is in Cinnaminson. I don't think any of us know after four days of testimony.

I find as fact that there is nothing that can be done in Cinnaminson to provide for poor people. Plaintiff's own expert volunteered this. When asked why he stated, well, Judge, if you order the zoning ordinance amended to provide to multi-housing, by virtue of the municipality, we have in fact 46 possessions in the County. The fact it is this far developed; the fact that there are some wealthy municipalities in close proximity to it; the speculators are going to come in, the cost of the lands are going to sky rocket, and of course this will ultimately be passed off to the consumer, the buyers of the apartments and the condominiums and what have you, so the prices are going to be back up to 30, 40, or 45,000, or whatever it may be. I find that the only possible group that such a project, that multi-housing could satisfy would be the upper half

1 of the moderate-income group. Namely, the  
2 people in the area of 12,500 to 15,500; but  
3 query out of this alleged 43,000 units needed  
4 in the Camden Metropolitan region, how many  
5 people with that kind of money to spend, that is  
6 twice the income of twelve-five or twelve to  
7 fifteen-five want a condominium as opposed to  
8 a single-family house? I don't know. I gather  
9 from the plaintiff's testimony that viewing  
10 New Jersey as a whole, 60 percent of the people  
11 would, and when asked, well, how many people in  
12 our region want multi-housing, he said he, well,  
13 because of the great number of low-income people,  
14 he suspects it would be higher. I find as  
15 testified to by the experts in this area at this  
16 time, the only way that low-income people are  
17 going to get houses is for the Federal Government  
18 to step back into the picture. They stepped out  
19 in 1972 when H.U.D. housing and Urban Development  
20 no longer permitted Federal monies to be made  
21 available for subsidies; and that the only way  
22 you are going to provide for low-income people  
23 is for Federal subsidies. So, let's exclude that  
24 from our thinking in this case. As of now,  
25 nothing can be done and I repeat for low income,

or low-moderate income people, by virtue of Federal legislation and the mortgage market.

Now, we return, therefore, to the question of this so-called 42 -- 43,000 people in the Camden region that want housing. How many of them are low income? I suspect a very high percentage. How many people are low-moderate and, again, I suspect a very high percentage; and I suspect a rather limited number of people in that, in the high moderate income, twelve to fifteen-five. I suspect that number is limited and I have a grave question in my mind as to how many of those people want condominiums. Why do I say that? Well, there was evidence in this case that condominiums in neighboring municipalities are, if not a drug on the market, at least they are having difficulty selling, difficulty selling. That there are higher vacancy rates in a number of them and in at least one project, they are selling for two or \$3,000 less, that is on the first turnover, than their original sale prices.

There are, gentlemen, many cases that have come out since Mount Laurel. I know one can even, if he has, or would quarrel with Mount Laurel.

It is the Supreme Law of our land, but I would remind counsel that Mount Laurel, as one of the attorneys said in his brief, Mount Laurel spoke of a developing municipality. Mount Laurel dealt with a rural municipality that was just about in a stage of stretching its wings. I forget the precise number as one of the attorneys quoted, the Supreme Court as having used the word developing fourteen times or more in its opinion; I repeat, we are not dealing with the developing municipality. It's not completely developed, but it's substantially developed. Of the four cases that we have talked following the Mount Laurel, would be the Wenonah case, the Rockaway case and the Holmdel case, and the East Brunswick case; the first two must be excluded from our thinking because they are so totally not apropos. We know that Rockaway dealt with a one square mile municipality. That the Wenonah case, 16 percent of the land still remained to be developed; and the Rockaway case, 7.5 percent of the land remained to be developed. I gather that there is much, per se, food for thought in Mr. Saputelli's Holmdel case. On the other hand, as a trial court opinion, the East Brunswick case is a Superior Court opinion



1 and this is a trial court here and I am bound by  
2 the laws enunciated by the Superior Court or by  
3 the Appellate Division in interpreting the  
4 Supreme Court until such time as the Supreme  
5 Court overrules the Appellate Division.

6 In the East Brunswick case, the  
7 touchstones were whether or not the plaintiff had  
8 demonstrated there was a sufficient need in that  
9 case for multi-family housing. In here, as the  
10 plaintiff demonstrated a sufficient need for  
11 upper-moderate income housing of the condominium  
12 type. The plaintiff has not. At best, we have  
13 generalities from the two experts, both of whom  
14 are good men. The second test is, has the  
15 plaintiff failed to demonstrate that Cinnaminson  
16 has not provided its fair share of balanced  
17 adequate housing? That is taken into account,  
18 zoning pattern, population trends and regional  
19 and community growth.

20 In concluding, I will say this,  
21 gentlemen. Mount Laurel did certainly talk in  
22 terms of the municipality having the heavy burden  
23 of having a heavy burden when it has zoning which  
24 does not provide for multi-housing; and of course,  
25 Mr. Saputelli's Holmdel case quotes this, what

1 page is that on, the Holmdel opinion, Mr. Saputelli?

2 MR. SAPUTELLI: Which quote is it, your  
3 Honor? The one I quoted today?

4 THE COURT: The heavy burden. Here we  
5 are. Page 14.

6 In the Mount Laurel case, the Supreme  
7 Court says in that situation, the obligation of  
8 municipality is presumptive and then defines,  
9 talks in terms of presumptive as referring first  
10 to procedure and then to substance; and it states,  
11 of course, that once this is shown, the  
12 municipality has a burden, which is a heavy one,  
13 to establish a valid basis for its action. I find  
14 in this case, gentlemen, that the municipality  
15 has sustained that heavy burden. Somehow, somehow,  
16 in the face of an exploding population; in the  
17 face of a housing crunch, Mount Laurel, after  
18 twenty years, wound up having done more, much  
19 more than the average municipality by way of  
20 housing; and wound up with a balanced desirable  
21 cross-section of housing. Albeit, a very tiny,  
22 minute fraction of it takes the form of apartments.

23 So, for those reasons, gentlemen, I  
24 enter judgment in favor of the defendants of the  
25 municipality and its Township committeemen and the

1 Zoning Board of Adjustment will be without costs  
2 to either party.

3 Submit a form of the judgment. If you  
4 cannot agree upon the form of the judgment, we  
5 will schedule a formal motion date to complete  
6 that purpose.

7 All right. I repeat. It's been a  
8 nice intellectual workout for all of us. Thank  
9 you for your very considerable help.

10 For the record, please, it has been  
11 brought to my attention I inadvertently said  
12 Mount Laurel, somehow, someway; of course, we  
13 are dealing with Cinnaminson. Please correct  
14 that.

15 MR. FARRELL: Thank you, your Honor.

16 MR. SMITH: Thank you, your Honor.

17 MR. SAPUTELLI: Thank you, your Honor.

18 - - -

19 (Court adjourned.)  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BURLINGTON COUNTY  
DOCKET NO. L-37016-73

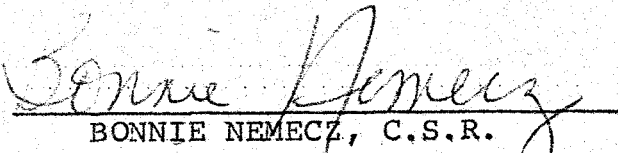
CAMDEN NATIONAL REALTY,

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CERTIFICATE

I, BONNIE NEMECZ, a Certified Shorthand  
Reporter and Notary Public of the State of New Jersey, do  
hereby certify the foregoing to be a true and accurate  
transcript of my original stenographic notes taken at the  
time and place hereinbefore set forth.

  
BONNIE NEMECZ, C.S.R.  
Official Court Reporter

DATED: August 1, 1975