MM - Centex Homes of NJ 5-13-83

v.

Twp. of East Windsor

- Transcript of argument & judge's decision

- double S. ded

Pgs. 14

Pi. #3386

MM000029S

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MERCER COUNTY
DOCKET NO. L-5117-80 & L-06433-83

CENTEX HOMES OF NEW JERSEY, INC.,a corporation of the State of Nevada,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE TOWNSHIP OF EAST WINDSOR, a Municipal corporation, THE PLANNING BOARD OF THE TOWNSHIP OF EAST WINDSOR, et al., and THE EAST WINDSOR MUNICIPAL UTILITIES AUTHORITY,

Defendants.

and

CENTEX HOMES OF NEW JERSEY, INC., a corporation of the State of Nevada,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE TOWNSHIP OF EAST WINDSOR, a Municipal corporation, and THE PLANNING BOARD OF THE TOWNSHIP OF EAST WINDSOR,

Defendants.

STENOGRAPHIC TRANSCRIPT OF
COUNSELS' ARGUMENT AND JUDGE"S DECISION

Date: May 13,1983
Place: Mercer County Courthou
Trenton, New Jersey

B E F O R E:

HONORABLE PAUL G. LEVY

TRANSCRIPT ORDERED BY: JOHN F. McCARTHY, III

60A

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

MESSRS. STERNS, HERBERT & WEINROTH,
By: Frank J. Petrino, Esq., and Joel Sterns, Esq.,
Attorneys for Plaintiff.

MICHAEL A. PANE, ESQ.,
Attorney for Defendant, The Mayor
and Council of the Township of East Windsor.

MESSRS. SCHWARTZ, TOBIA & STANZIALE,
By: Gary S. Rosensweig, Esq.,
Attorneys for Defendant, The Planning Board of
the Township of East Windsor.

MESSRS. GOLDSHORE & WOLF,
By: Lewis Goldshore, Esq.,
Attorneys for Defendant, East Windsor Municipal
Utilities Authority.

ANNE C. NEMETH, C.S.R.
OFFICIAL COURT REPORTER
MERCER COUNTY COURTHOUSE

GIA

THE COURT: All right, I have prepared notes from which I will enter an oral opinion. I have copies of those notes for each of you and a set of orders for each of you. I will cover all the motions including from the beginning, since I've just received a copy of the brief submitted by the New Jersey Association of Professional Planners and have considered that.

First, the New Jersey Builders Association moves to intervene as Amicus Curiae. This motion is denied. Although the requirements of Rule 1:13-9 has been fulfilled, the Builders Association filed a brief on the merits, which, I believe added nothing to assist the resolution of the matter, not that it contained nothing, but its arguments were the same on the issue with which it was concerned as that of the plaintiff's. Therefore, I believe everything has been amply covered by the plaintiff.

The New Jersey Association of Professional Planners, also, moved to intervene as Amicus Curiae. Apparently the brief was filed here in the courthouse and was misplaced and was, apparently, filed on April 22. I have reviewed that brief, and I will discuss its contents during the course of my ruling on the motions for summary judgment with regard to the 1983 cause of action. The point of view expressed there is, basically, that a TDR concept is nothing more than a simple extension

of cluster zoning, and its purpose is to preserve open space, including agricultural areas. That, basically, was argued this morning by Mr. Pane. Their arguments as Amicus Curiae are limited to whether TDR is permissible under the Municipal Land Use Law and without specific reference to the East Windsor ordinance. That particular issue has, I believe, been adequately briefed and argued by the parties to this matter. There are some interesting arguments raised in this brief with regard to what property owners may do in terms of open space area in a cluster zoning ordinance, and that there are different ways that is handled by different municipalities. My problem with that is that, although that may be, I don't get enough out of that to change my mind as to what I see in terms of TDR as a basis. So, I'm going to deny that motion for two reasons. First, because I've, also, denied the motion for Amicus Curiae from the Builders Association, which was covered by the plaintiff, and I think this is, also, covered by the defendants as far as the Planners are concerned. Therefore, although I stated earlier this morning before Mr. Norman appeared here -- and he should enter his appearance on the record.

MR. NORMAN: Thomas Norman for the New Jersey Chapter of the American Planning Association on a motion for leave to appear as Amicus Curiae.

THE COURT: Although I said before that it was denied, because I received nothing, except a letter indicating that moving papers would be filed, I'll consider that they were filed, but that the motion is, also, denied.

Next is the group of motions dealing with the validity of TDR as a concept. Plaintiff's move for summary judgment on Count 1 of the 1983 complaint, which is Docket L-6433-83. Defendant's cross-move for summary judgment. Then defendant's move for summary judgment on Counts 2 and 9 of that action, and plaintiff's cross-move for summary judgment on Count 2.

Ordinance 1982-16 is invalid because it creates zones in East Windsor Township dependent upon transfer of development rights, a zoning concept not authorized by the legislature. Having reached that conclusion, I think I need only deal with the motions for summary judgment and cross-motion for summary judgment on Count 1, and the motions with regard to Counts 2 and 9 need not be considered at this time. Summary judgment is granted to plaintiff on Count 1 of the complaint, and defendant's cross-motion for summary judgment on that count is denied. Similarly, defendant's motion to consolidate this action with the earlier action,

Docket No. L.51177-80, is denied as is plaintiff's motion to dismiss the counterclaims filed in the instant action.

Summary judgment, of course, may only be granted when there are no material questions of fact to be decided. All parties agree that this matter is proper for such disposition and a motion and cross-motion to that end have been filed. Undoubtedly, this is the proper procedure, as the parties argue that the ordinance is either valid or invalid on its face. See Brunetti v. New Milford, 68 N.J. 576 (1975); Morristown v. Hanover, 168 N.J. Super. 295 (App. Div. 1979); Bridge Park Co. v. Highland Park, 113 N.J. Super. 219 (App. Div. 1971). Can everybody hear? I don't want anybody to have come this far and not be able to hear ~~with~~ what's going on.

The constitution provides that the legislature may delegate certain zoning powers to municipalities permitting them to adopt ordinances, which either regulate the construction, nature and extent of use of buildings in specified districts, or regulate the nature and extent of the uses of land in specified districts. See, N.J. Constitution (1947), Article IV, Section VI, paragraph 2. The legislature delegated such zoning authority in the Municipal Land Use Law.

See, N.J.S.A. 40.55D-62, which repeates the terms of the constitution: "The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon." Any zoning ordinance must conform to those limits or it is void, because a municipality has no inherent power to adopt a zoning ordinance. See, Dresner v. Correra, 69 N.J. 237 at 241 (1976) and Rockhill v. Chesterfield Township, 23 N.J. 117 at 125 (1957).

To begin with, the language of the enabling act has no express reference to or authorization of "development rights" or the TDR concept. One must look to N.J.S.A. 40:55D-62 and 65 as the source of the municipality's power, rather than N.J.S.A. 40:55D-2, which sets forth the "intent and purpose" of the Municipal Land Use Law. Defendants argue that the latter section is the basis for the implied authority of East Windsor Township to enact the ordinance in question. Subsections (a), (e), (g), (i) and (j) demonstrate the legislative concern with preservation of agricultural land and stand for the proposition that such a concern or purpose may be the basis for an ordinance creating a zone for agricultural uses. But the power to create such a zone and to restrict land, herein, to such uses comes from sections 62 and 65, rather than from section

2. An examination of the effect of this ordinance will demonstrate that East Windsor Township has, herein, exceeded its power to zone.

In order to preserve agricultural land, the ordinance creates an AP (agricultural preservation) zone which includes approximately 3000 acres in the southeaster and southern parts of the township. Permitted uses are limited to agricultural, roadside produce stands and farm dwellings. Conditional use provisions permit single-family dwellings on farms at a ratio of one per 20 acres and on smaller farms if the land is not suitable for agricultural preservation. Plaintiff owns some 600 acres in this zone, all of which is designated as "growth area" in the State Development Guide Area. An owner of land in that zone may be granted some "development rights" for which he gives the township a recordable covenant against future nonagricultural use of the farmland. The ordinance defines a development rights as "an interest in land which represents a certain right to use the land for residential or nonresidential purposes."

Such development rights may then be transferred by such landowners to developers of land in another portion of the township. That other land, consisting of, approximately, 700 acres, is in the RLAP (residential

expansion for agricultural preservation) zone. Permitted uses in that zone are agricultural, single-family dwellings on two-acre lots and planned development. Higher density development for single-family residences, townhouses, or garden apartments is permitted if development rights are transferred according to schedule. Thus, landowners desiring to develop residential units in the REAP zone of any significant density must purchase development rights from landowners in the AP zone and surrender them to the municipality in order to obtain approval of the desired higher density development.

This court is to decide whether the Municipal Land Use Law authorizes municipalities to adopt zoning laws creating a preservation zone, providing for separation of development rights from land ownership in that zone, and permitting development of land in a receiving zone conditioned on purchase and transfer of such rights. I think it does not when the ordinance involves a departure from traditional concepts of zoning and planning permitted by the Municipal Land Use Law. The legislative development of N.J.S.A. 40:55D-65 demonstrates that changes in the traditional concepts are made by the legislature, rather than by the municipalities. If specific authority was provided for such mundane matters

as creation of flood plain area, requiring taxes to be paid prior to subdivision approval, permitting planned developments and zoning for senior citizen community housing, it is clearly necessary for this proposed zoning, which impacts on title interests and taxation problems so seriously that statewide uniform regulation is required. Ordinance 1982-16 of East Windsor Township is an ordinance, which departs from the accepted concepts of zoning and planning, no matter how liberally construed.

Plaintiffs argue that the two bills were introduced by legislators to regulate the concept of transfer of development rights, and they claim that this indicates the legislature's intent to exclude such authority from the Municipal Land Use Law. That is not persuasive authority for such an argument, but these proposed bills do indicate the complexity of the issue and the need for uniform regulation. See, A-3192 (1975) and A-1509(1978). Certainly, after the decision by the Supreme Court in South Burlington County NAACP v. Mt. Laurel Township, 92 N.J. 158 (1983), the State Development Guide Plan (May 1980) has become a very important document for Mount Laurel type disputes, and the other cause of action related to the instant case has such disputes at issue. The extant fact question of whether the AP

and REAP zones were located in a manner inconsistent with that plan indicates the need for uniform regulation of the criteria for delineating the preservation and transfer zones in a TDR plan. Such regulation was proposed by A-1509 (1978), as was a scheme for determining how development rights were to be assessed, taxed and sold or exchanged.

Under this ordinance, the conditional uses of higher density residential development are not conditioned on traditional land uses. Instead, they are conditioned on relinquishment of part of the fee ownership of property -- the development right -- and this requires uniform regulation. One need only look to the development of condominium ownership and remember the multitude of planning and zoning applications for condominium developments. The result was a regulatory statute: N.J.S.A. 46:8B-1 et seq. Probably more directly on point is Bridge Park Company v. Highland Park, 113 N.J. Super. 212 (Appellate Division 1971), where the zoning ordinance defined a garden apartment as "a building or series of buildings under single ownership." The municipality did this in order to exclude horizontal property regimes and condominiums, but the court held that the enabling act then in force (N.J.S.A.40:55-30) did not permit a municipality to use a zoning ordinance

"to regulate the ownership of buildings or the types of tenancies permitted." In the matter at bar, East Windsor Township has enacted an ordinance which regulates the ownership of property rather than the physical use of land and structures. See, also, Metzdorf v. Rumson, 67 N.J. Super. 121 (Appellate Division-1961) where the zoning ordinance was invalidated because it prohibited transfer of title to land by specific devise.

Defendants argue that this ordinance is sustainable as an exercise of the ordinary police power of the municipality pursuant to N.J.S.A. 40:48-2. However, as noted at the start, the constitution only permits the legislature to empower a municipality to regulate land use within its borders, and the vehicle by which the legislature granted such power is the Municipal Land Use Law and only that. There is no doubt that Ordinance 1982-16 fulfills many of the worthy purposes of zoning legislation, but that it does so without any statutory power to achieve such purposes. The Planning Association argued the same thing, I think, in their brief, I think, when they stated that there are valid purposes of zoning to be achieved by this particular technique. And as I've just said, I agree that the concept is worthy and should be certainly considered

as a possible pool in land use development and growth in this state, but, I believe, that because of the other implications of taxation and title questions, that this has to be addressed on the uniform basis by the legislature.

Finally, there is the issue of remedy -- that is, what happens when summary judgment is granted to plaintiff? The ordinance contains a severability clause, and defendants rely on that to protect all parts of the ordinance not specifically related to TDR. The entire background of the enactment of Ordinance 1982-16 shows that it was a unitary plan to adopt the TDR concept, and that the zones created were only created to fit into the overall TDR scheme. This is the dominant purpose of the ordinance, no one part is functionally independent of another, and TDR was the significant inducement to adoption. Thus, by the rule of Inganamort v. Fort Lee, 72 N.J. 412 (1977), the entire ordinance is invalid notwithstanding the existence of a severability clause.

Plaintiff says the next step is for the court to order the township to rezone the area within 90 days and submit the new ordinance to judicial review. There is nothing to demonstrate any substantial legal problems with the prior ordinance, except as it is challenged

in the related matter of Docket No. L-51177-80. The land in question is not unzoned. Cf., Petlin Associates, Inc. v. Dover, 64 N.J. 327 (1974); Morris County Land v. Parsippany-Troy Hills, 40 N.J. 539 (1963). I'll talk more about this when I get into the question of the defenses and the counterclaims.

Defendants then move to consolidate the two actions. This motion is denied, because the 1983 action has been terminated by the grant of summary judgment to plaintiff declaring the entire ordinance invalid.

That leads us directly to defendants' motion to file amended answer and counterclaim in the 1981 case, which has the 1980 docket number. This motion is granted in part and denied in part. That is, the defendants may amend their answer and assert the affirmative defenses set forth in the proposed "Amendment to Answers", but they may not file the proposed counterclaim.

Defendants state that the essence of their counterclaim is that plaintiff and/or its officers, agents and employees desired to turn a loss into a substantial profit by tortiously threatening and seeking to coerce the township into rezoning plaintiff's property. They claim the plaintiff committed fraud, violated the

civil rights of the township and its inhabitants and, filed a baseless lawsuit (meaning the instant 1983 case). The basis of these claims is a series of internal memoranda from plaintiff's files indicating litigation strategy which this court finds to be ordinary and usual in prerogative writ cases involving rezoning requests by land developers. That is, presentation of a worst case plan or one legally noxious is often done by developers to convince the municipal authorities that the proferred plan should be approved.

In general, the counterclaim sounds as if it was a complaint for malicious use of process. All parties acknowledge that such a claim may not be brought by counterclaim, but must await termination of the underlying action. See, Penwag Property Co. v. Landau, 76 N.J. 595 (1978). Defendants argue that such is not the true nature of their counterclaims, but they seek redress for conspiracy, harassment and other tortious conduct. It seems to me, however, that the defendants are merely trying to rename a rose, and the familiar cliche is pertinent. Such claims will be permitted as affirmative defenses, and if they are established, they may support an action for malicious prosecution in the future. Since nothing on the fact of the Centex memoranda, when read in context, indicates unusual or

bad faith action by the plaintiff, the claims are facially insufficient. However, because I will grant additional time to complete pretrial discovery until September 9, 1983, defendants may seek further support for the presentation of these claims as affirmative defenses at trial or for the renewal of this motion.

There's another motion that relates to this, in which plaintiff moves to dismiss counterclaims filed in the 1983 action. I'll grant this motion because the counterclaims have been considered and dismissed in connection with the earlier filed action.

Now, as to trial and whether or not these affirmative defenses may be struck or the counterclaims successfully added, I think that we whould consider trying what plaintiffs call a Mount Laurel issue on the two-acre zoning claim and the use or non-use of the PD zone. Your discovery will be over right after Labor Day. What I'd like you to do is contact me as soon as the -- well, we're in session the day after Labor Day. I was going to say the new term, but the new term begins July 1 this year, and we should set up a status conference in the way of a pretrial conference. I'd like you to be prepared at that time to tell me how long it's going to take to try the case, how many witnesses your're going to have and have suggestions for breaking

the litigation up, so that we don't try it all at once. But that if this is an issue that would be the predominant issue, that would then require, if the plaintiffs previal, a new ordinance, or if the defendants prevail, the plaintiffs will have to do whatever steps they deem necessary. That will be. basically, dispositive of -- I don't know, tactics or where you stand and let you each move off to another step outside of the court. I think we should consider trying to break that issue out of litigation, and that would, also, impact on the MUA.

Now, the next set of motions deal with the MUA's motion for summary judgment in the 1981 action, and in this instance, East Windsor MUA moves for summary judgment claiming: (1) there is no legally cognizable dispute because Centex never made a complete application and it requested a stay of the preliminary application it had been processing; (2) the claim for a violation of the federal civil rights act (42 U.S.C.A. section 1983) is barred by a two-year statute of limitations; (3) no notice of claim was filed as required by the Tort Cliams Act (N.J.S.A. 59:8-8) and EWMUA is immune from liability thereunder for its licensing and permitting activities; (4) the prerogative writs claims were not brought within the time limit permitted by

Rule 4:69-6; and (5) Centex failed to exhaust administrative remedies and required by Rule 4:69-5.

Centex replies by arguing: (1) the Tort Claims Act does not apply to a damage claim under the federal civil rights act or to an action seeking injunctive or declaratory relief; (2) the proper statute of limitations is six years or two years from discovery of the cause of action; (3) the complaint was amended timely under Rule 4:69; and (4) it is not required to exhaust administrative remedies because there are important consitutional issues raised in this matter and because such exhaustion would be futile.

As we all know, summary judgment will be denied if there is a genuine issue as to a material fact as long as the statute of limitations has not been violated. It will, also, be denied if discovery is incomplete, if discovery would lead to revelation of such issues of fact. The gist of the amendments to the complaint, which added East Windsor MUA as a defendant is the claim that it, the governing body and the planning board "acted in concert to formulate an exclusionary land use plan for the Township that utilized the lack of sewer plant and line capacity as a key element to prevent or limit development in East Windsor Township." Count 14 seeks damages under the federal civil rights

act for the alleged conspiracy. As such, the notice of claim and immunity provisions of the Tort Claims Act do not apply. See, Gipson v. Bass River, 82 Federal Rules Decision 122 (District of New Jersey 1979); T & M Homes, Inc. v. Township of Mansfield, 162 N.J. Super. 497 (Law Division 1978); Lloyd v. Stone-Harbor, 179 N.J. Super. 496 (Chancery Division 1981), Counts 15 and 16 ask the court to require East Windsor MUA to approve the extention of its water and sewer lines to plaintiff's property, so plaintiff may develop its land. Since no relief by way of damages is sought in these two counts, the Tort Claims procedures would not apply. N.J.S.A. 59:1-4. I conclude that neither the notice provisions, nor the immunity provisions of the Tort Claims Act impact on claims under the federal civil rights act.

As to the applicable statute of limitations, the rule requires reference to the most appropriate state law. See, Johnson v. Railway Express Agency, 421 U.S. 454 at 462 (1978). The nature of the conduct plaintiff complains of is a conspiracy to prevent it from developing its land -- a tortious injury to real property. As such, N.J.S.A. 2A:14-1 is directly applicable and ist six-year period of limitations governs. Compare, Gipson v. Bass River, supra.

The 45-day limitation of Rule 4:69-6 cannot fairly apply to this situation. As plaintiff points out, nothing is being done by EWMUA regarding plaintiff's property, so the doctrine of continuing wrong is pertinent. But more than that, the interaction of a utilities authority with other local administrative bodies is obvious and necessary in any large scale land development today. If plaintiff can prove the existence of a conspiracy, all conspirators would be liable if the conspiracy involved a deprivation of due process of law or equal protection of law under the U.S. Constitution. Along those lines, there's a case called Lawrence Wood Sales Corp. v. Lawrence Township Planning Board and the Township of Lawrence. I believe it's an unreported opinion of the Appellate Division, decided February 10, 1983, in which Lawrence Township land development ordinance allowed subdivisions where public sewage and water facilities were available, and if there was individual sewage, facilities had to have, at least, 60,000 square feet. Plaintiff applied for some approval and was rejected because he was unable to give assurance that the public sewage facilities would be available, and the plaintiff said that, although this can be required on an application for final subdivision approval, it can not require it on a

preliminary application. The court referred to part of the Municipal Land Use Law, 40:55D-38(b)(3), which provided that an ordinance requiring approval by the planning board of either subdivisions or site plans or both, shallinclude provisions insuring sewage facilities and other utilities necessary for essential services to residents and occupants. So, they have this in their ordinance, and they required a subdivision applicant to give them written assurance, which, obviously, they couldn't do. The trial judge, which was me, found that sewage facilities were neither available, nor planned because there was a letter from the local sewage authority which clearly stated that such a project was not contemplated, and the Appellate Division upheld that.

Now, that's different than this case, because that's an application for a subdivision approval. But it stands for the possibility of the validity of the plaintiff's action that Utilities Authority is an important agency in any land use or land development on a large scale today. So, there may be a valid cause of action here. There may not be. I don't want the Utilities Authority to spend any more time in the litigation than necessary.

Centex will undoubtedly have to comply with

applicable administrative regulations if it prevails against the municipality, and the usual relief would be a remand for further proceedings in accordance with the court's rulings on the substantive issues. Then both the state DEP and EWMUA would be involved with plaintiff's plans. But because of the nature of the overall complaint, alleging a conspiracy by three municipal bodies, it would be uneconomic to dismiss the claim against the East Windsor MUA now and require another action if plaintiff prevails against the township and the planning board, but has problems with the utilities authority. Therefore, although the application by Centex to East Windsor MUA was voluntarily placed "on hold", East Windsor MUA might be liable for participating in an illegal conspiracy against plaintiff, and its administrative or regulatory actions involving plaintiff's property might be evidential as to plaintiff's main claims for declaratory or injunctive relief. So, for those reasons it would stay in this action so all matters can be resolved expeditiously. I would encourage that the MUA to fully participate with everybody else during the next three months of the discovery with an eye towards moving again to dismiss the complaint in September or to be placed at our pretrial conferences in a status of just a "by-

stander." It may be that this particular claim should stand aside and another issue be tried first, and that other issue might lead to no further need for litigation. The expenses that the MUA is undergoing are strictly legal, and I think that for the time being, the MUA should stay in the case.

In conclusion, the motion for summary judgment here by the East Windsor MUA must be denied because there are material issues of fact to be resolved. It, also, appears that further discovery is needed concerning the basis for the conspiracy claim, and that, too, requires a denial of the motion.

The sixth area of dispute is not a dispute, and that is plaintiff's motion to extend discovery until September 9, 1983. This motion is granted as no opposition is offered.

Now, I have for you sets of orders that cover each of these motions and sets of my notes on which this oral opinion was based. I assume, too, if you are going to seek any type of interlocutory relief, you might need this transcript, but 97 percent of what I said is in these notes, and I think that could get you off to a start there. Otherwise, I don't want you to delay the discovery, even though you are moving on to the Appellate Division for an interlocutory

relief because there isn't going to be any action from the Appellate Division this summer, other than to grant or deny the motion for relief of interlocutory appeal. That should not stop the discovery. This matter has been going on for quite some time. Several times, both sides advised me that you were close to resolving your differences and that didn't work out. But I think we're right close to getting to a decision on whether something should be done about the original lawsuit. It may be that that won't be tried in this court. The Supreme Court has been surveying, as you all know, people involved in various types of litigation after soliciting the bar to advivse it of possible Mount Laurel disputes, as well as the bench. This case was one of those in which, I believe, you were all -- at least, the lead counsel were contacted by the Chief Justice's law clerk, as I was, and I assume they are doing this around the State, and there will be a new assignment order coming out of the Supreme Court to start the new term, the July assignment order, and that may, although it may not, designate three judges as Mount Laurel judges. If it does, when we meet in September, if we decide there are Mount Laurel issues and that they are preliminary and should be tried first, it will be assigned to whichever judge has Mercer County in its region. Nobody knows who they are, what the

regions will be, or anything about that at the present time. Okay.

MR. ROSENSWEIG: In your opinion, you indicated that the property was not unzoned. In the order you made no mention of it. Is it your Honor's ruling that the prior ordinance is still in effect?

THE COURT: Yes.

MR. ROSENSWEIG: Should that say so in the order?

THE COURT: Probably. Let's just change the order.

MR. ROSENSWEIG: Okay.

THE COURT: Do you have any idea what the number of the other ordinance is?

MR. ROSENSWEIG: I have the ordinance booklet.

MR. PETRINO: 1918-13, but --

MR. ROSENSWEIG: Let me look.

THE COURT: Is there a name for it?

MR. PANE: I assume it could be referred to as the existing township zoning ordinance section. I mean, their codifies, Gary, will have the sections in particular.

THE COURT: Would you call it a zoning ordinance?

MR. PANE: Chapter 20 of the Revised General Ordinance of Zoning.

THE COURT: Does it have a name?

MR. ROSENSWEIG: Agricultural district?

THE COURT: No, no. The old ordinance.

MR. PANE: The old ordinance, the township zoning ordinance.

THE COURT: East Windsor.

MR. ROSENSWEIG: Right, Chapter 20.

MR. PANE: Chapter 20 of the General Revised --

THE COURT: The zoning ordinance.

MR. PANE: Simply say Chapter 20 of the General Revised Ordinance of Zoning as they existed.

THE COURT: How about, the previously existing zoning ordinance will control development in the township?

MR. ROSENSWEIG: Known as Chapter 20-17.

THE COURT: Is that all right? The previously existing zoning ordinance will control development in the township.

MR. PANE: Yes.

THE COURT: Well, if you will take the copy of the order that you have and turn to page 2, add to paragraph 2, of this order at the very end, after the word "effect," put a comma , and it says, "The previously existing zoning ordinance --"

MR. PANE: "Shall"?

THE COURT: "Will control development in the township," and that should cover it. You want to

write me a 12-page brief as to what two words I should add?

MR. PANE: Perhpas control is best.

MR. ROSENSWEIG: Shall be applicable?

MR. PANE: Shall be enforced and effect?

THE COURT: Leave it as control. You know what it means.

MR. PANE: All right.

THE COURT: You're the township lawyer. You tell them what to do.

(At which time the matter was concluded.)

* * *

C E R T I F I C A T E

I, ANNE C. NEMETH, being a Certified Shorthand R Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by me at the time, place and on the date hereinbefore set forth.

ANNE C. NEMETH, C.S.R.

DATE