MM Urban Farms v. North Haledon 11/3/75

MM Opinion of Rubin

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MM000045Q

SUPERIOR COURT OF NEW JERSEY

IRVING I. RUBIN
JUDGE

COURT HOUSE
PATERSON, NEW JERSEY

NOT FOR PUBLICATION WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

November 3, 1975

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Re: Urban Farms, Inc. v. Mayor and Council
of the Borough of North Haledon, et al.
Docket No. L-16324-72 P.W.

Gentlemen:

The controversy before the Court is grounded in So. Burl. Cty. N.A.A.C.P., et al. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) (hereinafter referred to as Mt. Laurel). The attorneys have prosecuted the herein matter on the principles enunciated in such case.

Plaintiff, owner of approximately 188 acres of vacant land in the Borough of North Haledon, seeks an order compelling, in effect, the defendant borough to permit use of a portion of

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plaintiff's property for multi-family purposes, or to take such steps as would accomplish the foregoing.

It was stipulated by the defendants that North Haledon's ordinance does not make any provision for multi-family dwellings.

Mt. Laurel posed the issue on p. 173:

> "The legal question before us, as earlier indicated, is whether a developing municipality like Mount Laurel may validly, by a system of land use regulation, make it physically and economically impossible to provide low and moderate income housing in the municipality for the various categories of persons who need and want it and thereby, as Mount Laurel has, exclude such people from living within its confines because of the limited extent of their income and resources.***" (Emphasis added).

and answered the foregoing inquiry on p. 174:

> "We conclude that every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing.

> More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor.***" (Emphasis added).

Again on p. 187:

> "As a developing municipality, Mount Laurel must,***" (Emphasis added).

As to procedure, it was stated on p. 180:

> "***when it is shown that a developing municipality in its land use regulations***." (Emphasis added).

Mt. Laurel stressed throughout the opinion that the first issue for determination was whether the municipality was a "developing municipality", see ante. Its application to other municipalities was covered on p. 160:

> "As already intimated, the issue here is not confined to Mount Laurel. The

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same question arises with respect to any number of other municipalities of sizeable land area outside the central cities and older built-up suburbs of our North and South Jersey metropolitan areas (and surrounding some of the smaller cities outside those areas as well) which, like Mount Laurel, have substantially shed rural characteristics and have undergone population increase since World War II, or are now in the process of doing so, but still are not completely developed and remain in the path of inevitable future residential, commercial and industrial demand and growth.***It is in the context of communities now of this type or which become so in the future, rather than with central cities or older built-up suburbs or areas still rural and likely to continue to be for some time yet, that we deal with the question raised."

Some WWII shed rural population increase

Accordingly, there appears to be a threshold question, ie., is the municipality under attack a developing community?

Mount Laurel does not define what a developing community is and the Court must consider the decisions which have followed that opinion. A reported case, Segal Construction Co. v. Zoning Bd. of Adj., Borough of Wenonah, N.J., et al., 134 N.J.Super. 421 (App.Div. 1975) held, that the Borough was tiny compared to

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Mount Laurel and because of its size and the other factors therein mentioned, was not a developing community.[1]

Mount Laurel at p. 161 states the facts of that case which include:

1) A township of 22 square miles or 14,000 acres in area.
2) Sixty-five percent of its total land vacant or in agricultural use.
3) 29.2% of the total area is zoned for industrial use which if fully utilized would create 43,500 jobs.
4) Approximately 10,000 acres zoned for residential use.
5) Population growth from 2,817 in 1950 to 11,221 in 1970.
6) Surrounded by major access roads.

In the case sub judice the proofs disclose a municipality with 3 1/2 square miles, with approximately 2,280 acres

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[1] Wilann Associates v. Borough of Rockleigh, (App. Div. 5/29/75) an unreported case, also declared that such borough was not within the purview of Mount Laurel for similar reasons as in Segal. In Pascack Assoc. Ltd. v. Mayor and Council of the Twp. of Washington, (App. Div. 6/25/75) also unreported, an area approximately 3 1/2 miles square, without any provision for multi-family construction, and with approximately 3% of land readily and quickly available for development, was construed by the Appellate Division as not to be a developing community within the Mount Laurel rule. The opinion said on p.17 (slip sheet) "Its mandate applies only to a municipality of 'sizeable land area' which remains at the present open to substantial future development."

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and a 1970 census of 7,614 people, an increase of 1,588 from 1960 or 26%. Over a period of more than four years, 88 occupancy permits were issued. There were approximately six commercial enterprises with a total employment roll of 240 full time and 243 part time employees. No new industrial facilities over six existing ones had been built in the Borough over the last forty years and two or three shopping centers were the only evidence of commercial activity over the past twenty years.

Plaintiff contends that 40% of the municipality is vacant land and relies on a statement in the master plan and the testimony of Grace Harris, who said that "32% of private land in the Borough is vacant and, if public lands were added, would total 40%. However, no determination was made as to whether all such lands were available for use. On the other hand, Gar Chew Lai, the borough engineer, analyzed each vacant plot and arrived at a figure which would appear to be approximately 15% of total and useable land in the Borough. The latter figure was further reduced to approximately 8% in defendants' argument by deducting lands which they contend were to be taken for park lands, but no condemnation has as yet been instituted.

The Court finds from the testimony that the present available vacant land in the municipality (without deducting for alleged park purposes), including plaintiff's acreage, would be less than 15% of the total area of the municipality. The thorough analysis by the engineer, Gar Chew Lai, discloses that sections thereof cannot be utilized at this time. Further, the Court finds conclusions by plaintiff's witness as to future goals of employment and housing needs are not anchored in the factual testimony.

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new criteria

Contrasting the foregoing with the analysis in Mount Laurel, the proofs fall far short of demonstrating that type of a community, explosive of population and development, that was the sine qua non of Mount Laurel. ?

In passing, although our holding is not made on such basis, one must note that Mount Laurel reflects a proper concern for the low and moderate income house dwelling seeker. Mount Laurel p.158, note 2. Here, the attack is by an applicant for luxury housing (the minimum apartment to rent for $350.00 per month). Further much testimony was introduced on the question of whether sewage facilities would be available for the plaintiff's project. The herein decision on the threshold question obviates any determination of that issue.

For all the reasons hereinabove set forth, this Court is not persuaded that the plaintiff has carried the burden as postulated by our decisions, including Mount Laurel. Judgment will be entered in favor of the defendants and an order should be submitted embodying the herein findings.

Very truly yours,

IRVING I. RUBIN, JUDGE

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