Urban Farms, Inc. v. North Haledon 12/5/77

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opinion of Judges Halpern, Larner + King

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1073-75

URBAN FARMS, INC., a New Jersey corporation,

Plaintiff-Appellant,

v.

MAYOR and COUNCIL OF THE BOROUGH OF NORTH HALEDON and the PLANNING BOARD OF THE BOROUGH OF NORTH HALEDON,

Defendants-Respondents.

Argued: November 1, 1977 - Decided: DEC 5 1977

Before Judges Halpern, Larner and King.

On appeal from Superior Court, Law Division, Passaic County.

Mr. C. Theodore Murphy, Jr. argued the cause for plaintiff-appellant (Messrs. Jeffer, Walter, Tierney, Hopkinson & Vogel, attorneys; Mr. Brian J. Cooke, on Point III of the brief).

Mr. James V. Segreto, Borough Attorney, argued the cause for defendants-respondents.

PER CURIAM:

This appeal presents the recurring problem of the application of the principles of So. Burl.Cty. NAACP v. Twp. of Mt. Laurel, 67 N.J. 151, cert. den. and appeal dismissed 423 U.S. 808, 96 S.Ct. 18, 46 L.Ed.2d 28 (1975), to the failure of a municipality to provide for multi-family housing in

its zoning ordinance. Since the Mt. Laurel decision and the determination of the trial court herein the Supreme Court has further explored the limitations of the applicability of Mt. Laurel in Oakwood at Madison,Inc. v. Twp. of Madison, 72 N.J. 481 (1977); Pascack Assoc.Ltd. v. Mayor & Council of Washington, ___ N.J. ___ (March 23, 1977); and Fobe Associates v. Mayor & Council of Demarest, ___ N.J. ___ (March 23, 1977).

Plaintiff, a real estate developer, attacked the constitutionality of the zoning ordinance of the Borough of North Haledon because of the exclusionary effect of its failure to provide for multi-family housing anywhere in the municipality and particularly on plaintiff's property. The trial court sustained the validity of the ordinance in a finding on a threshold issue that North Haledon is not a "developing" municipality so as to mandate judicial interference with the judgment of the governing body to exclude multi-family housing in the municipality.

The trial judge also alluded in his opinion to the fact that the housing plan proposed by plaintiff does not fit the category of low or moderate income housing which concerned the Supreme Court in Mt. Laurel, although he did not rest his conclusion on that factor.

Appellant asserts that the factual complex contained in the voluminous record of a six week trial demonstrates that the court erred in its finding that North Haledon was not a developing community. It seeks a reversal with a judgment directing the municipality to amend its zoning ordinance so

as to permit the proposed multi-family housing construction on its property. In addition appellant advances other grounds for reversal relating to procedural matters and the conduct of the trial.

Since the principal issue is whether North Haledon is the type of community in which the governing body should be required by constitutional doctrine to provide for multiple family housing, it is appropriate to summarize the pertinent facts relating to its physical characteristics, population, available land, land uses, etc.

The Borough, situated in Passaic County, consists of a total area of 3.4 square miles or 2,280 acres. It is surrounded by Passaic County communities of Hawthorne on the east, Prospect Park and Haledon on the south, Wayne on the west and the Bergen County municipalities of Franklin Lakes and Wyckoff on the north. The central city of Paterson is within a ten minute drive from the Borough. Topographically, the Borough is located in a valley between the ridges of the First and Second Watchung Mountains.

According to the 1970 Census North Haledon's population was 7,614. The testimony of defendants' expert Dr. Carl Niels West indicates that the average annual rate of increase between 1970 and 1974 was but .275 per cent whereas the average annual rate of growth between 1960 and 1970 was 2.3%, according to United States Census figures.

The existing zoning ordinance establishes single family residential zones classified as RA-1 with 25,000 sq.ft.

minimum, RA-2 with 20,000 sq.ft. minimum and RA-3 with 15,000 sq.ft. minimum. Plaintiff's property is in an RA-1 zone. Approximately 90% of the Borough's developed land is devoted to residential use, of which over 85% consists of one family homes, approximately 10% of two family dwellings and the balance of three or four family residences or apartments located over stores. Between 1970 and 1973 the Borough issued 88 certificates of occupancy for one family houses.

Less than 10% of the land in the Borough is devoted to commercial and industrial use. The two largest industries are the Braen Quarry and the Ideal Milk processing plant. No new industry has been introduced for the past 25 years. However, three small shopping centers have been constructed in the last 10 years.

The Borough does not have any major highways and its only public transportation is a bus line to and from Paterson which runs approximately every hour.

Apparently most of its population commutes to work, for there are only 240 full-time and 243 part-time employees who work in the municipality.

From a demographic standpoint, the population in the community is relatively stable and more mature than surrounding municipalities; the homes range in value over a wide scale from approximately $10,000 to over $50,000, reflecting the existence of housing in all price categories. The median value is approximately $29,800 as of 1975.

The Borough Engineer made an analysis of existing vacant land in the community and testified at length from an exhibit prepared by him which described each parcel of such vacant land. The total amount of vacant land in the community, including the tract of 188 acres owned by plaintiff amounts to 564 acres. However, the record and the court's findings establish a rational distinction between existing vacant land and such vacant land which is available in a practical sense for multi-housing development.

The engineer thus deducted from the gross figure of 564 acres certain parcels which either were not suited for multi-housing development or were devoted to other established uses inconsistent with probable housing development. Although his testimony is not a model of clarity, and some of his figures in certain categories overlap each other, nevertheless there is sufficient evidence from which to derive an approximate relationship between available vacant land and the total land area of the community.

There are certain parcels which are clearly beyond the pale of probable availability for housing development and whose area should not be computed in the determination of the total figure of available development land. In approximate figures we note the following:

(1) 68 acres of plaintiff's tract which are mountainous and concededly unsuited for construction of housing

(2)	26.4 acres		- Oldham Pond
(3)	21.4	"	- Haledon Reservoir.
(4)	108.5	"	- Active Braen Quarry
(5)	13.5	"	- In Industrial and Commercial Zoned Districts
(6)	12.14	"	- Municipal Pool
(7)	5	"	- North Haledon Reform Church
(8)	4.13	"	- Holland Christian Home Assn.
(9)	.51	"	- Eastern Christian School
(10)	35.72	"	- Isolated small lots not subject to consolidation for substantial development
(11)	2.68	"	- Haledon underground tank
(12)	.5	"	- Hawthorne water tank
	298.48	"	- Unavailable vacant land

The foregoing figures do not take into consideration other categories which may be classified as doubtful as prospective available land for housing development such as parcels in the designated flood plain, landlocked parcels, those on paper streets, lots which are undersized in area, depth or width (which are probably duplicated in the figure for isolated lots), and land under consideration by Passaic County for park purposes.

Deducting 298.48 acres from the total vacant acreage—we arrive at a net figure of available vacant land of approximately 265 acres out of a total land area of 2,280 acres or

roughly 11.6%. The trial judge's finding of "less than 15%" is thus manifestly supported by the credible evidence in the record, particularly in view of the absence of specific countervailing testimony or data.

The largest single parcel of vacant land in the Borough is the 188 acre tract owned by plaintiff known as the McBride tract. This acreage is situated in the northwest corner of North Haledon and is zoned for single family residences with a minimum lot size of 25,000 square feet. The land is heavily wooded and according to plaintiff's planning expert only 120 acres are suited for multi-family development because of the extreme slope of a portion of the property. It lies in a narrow valley drained by Molly Ann's Brook. Urban Farms proposes a development of 1300 dwelling units constructed in two story garden apartment buildings in cluster fashion. The project contemplates that two-thirds of the apartments would be available for sale as condominiums and one-third as rentals. The application for a zone change was submitted to the Borough on several occasions with the last one filed on November 5, 1970.

The record reveals that the anticipated sales price of the condominiums would be in a range from $30,000 to $52,000 and the rentals would vary from $350 to $624 per month. Apparently these costs were projected as of the time of the hearing in May 1975.[1]

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[1] Realistically, the figures would undoubtedly have to be adjusted upwards to reflect inflationary costs between 1975 and the present.

With the foregoing factual background we turn to the applicable legal principles to determine whether the judgment below is warranted. The majority opinion in Pascack, supra, teaches certain basic tenets which must be applied in this troublesome area involving the evaluation of the discretionary power of a municipality to zone within the ambit of the grant of power under N.J.S.A. 40:55-31 and 32 and its successor statute 40:55D-1 et seq. and the broad constitutional limitations of Mt. Laurel, supra.

Judge Conford emphasized in Pascack that the "municipal category subjected to the mandate of the [Mt. Laurel] decision was that of the 'developing municipality.'"(slip opinion at 12) and that the Mt. Laurel principles would be enforced vigorously in an appropriate fact situation. See Oakwood at Madison, supra, 72 N.J. 481. He noted however:

> But it would be a mistake to interpret Mount Laurel as a comprehensive displacement of sound and long established principles concerning judicial respect for local policy decisions in the zoning field. What we said recently in this regard in Bow & Arrow Manor v. Town of West Orange, 63 N.J. 335, 343 (1973), is worth repeating as continuing sound law:
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> > It is fundamental that zoning is a municipal legislative function, beyond the purview of interference by the courts unless an ordinance is seen in whole or in application to any particular property to be clearly arbitrary, capricious or unreasonable, or plainly contrary to fundamental principles of zoning or the statute. N.J.S.A. 40:55-31,32. It is commonplace in

> municipal planning and zoning that there is frequently, and certainly here, a variety of possible zoning plans, districts, boundaries, and use restriction classifications, any of which would represent a defensible exercise of the municipal legislative judgment. It is not the function of the court to rewrite or annul a particular zoning scheme duly adopted by a governing body merely because the court would have done it differently or because the preponderance of the weight of the expert testimony adduced at a trial is at variance with the local legislative judgment. If the latter is at least debatable it is to be sustained.
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> See also Kozesnik v. Montgomery Twp., 24 N.J. 154, 167 (1957); Vickers v. Tp.Com. of Gloucester Tp., 37 N.J. 232, 242 (1962), cert. den. and app. dism. 371 U.S. 233 (1963).
>
> There is no per se principle in this State mandating zoning for multi-family housing by every municipality regardless of its circumstances with respect to degree or nature of development. [Pascack, supra, slip opinion at 13-14]

At another point of the opinion he articulated the long-standing principle of law in this State:

> Thus, maintaining the character of a fully developed, predominantly single-family residential community constitutes an appropriate desideratum of zoning to which a municipal governing body may legitimately give substantial weight in arriving at a policy legislative decision as to whether, or to what extent, to admit multi-family housing in such vacant land areas as remain in such a community. [slip opinion at 17]

The Court therefore refused to set aside or interfere with the local judgment to exclude multi-family housing development in the Township of Washington because that community differed substantially from the sizeable developing municipality of

Mt. Laurel. Factually, the picture of Washington Township parallels to a great extent that of North Haledon as depicted by the record herein.

The total area of Washington Township is 3 1/4 square miles; that of North Haledon is 3.4 square miles. Both municipalities are built up almost exclusively with single family residences. Washington has only 2.3% remaining vacant land, while North Haledon has available 11.6% vacant land consisting of 265 acres. The population of Washington is approximately 10,500, while North Haledon boasted in 1970 of 7,614 residents. Neither municipality presents a need for additional housing to accommodate those employed therein, nor a projection of substantial population growth in the future.

We are satisfied that the trial court's conclusion herein to the effect that North Haledon is not a developing community with substantial vacant land so as to qualify for the Mt. Laurel mandate that it adopt an ordinance provision for multi-family housing is amply supported by the credible evidence in the record. See Fobe Associates v. Mayor & Council of Demarest, supra (slip opinion at 4); Segal Construction Co. v. Zoning Bd., 134 N.J. Super. 421 (App.Div. 1975). In view of that threshold finding it becomes unnecessary to evaluate the considerable evidence in the record relating to the environmental impact of plaintiff's proposed project because of its location, the soil conditions

and the absence of a municipal sewer system.

We do, however, note another fact element which would serve to negate the application of Mt. Laurel principles. Mt. Laurel and all subsequent opinions are bottomed upon the appropriate concern for the urgent need of more low and moderate income housing. 67 N.J. at 174. It is this motivation which underlies and justifies judicial mandates to developing municipalities to undertake the obligation to provide such housing for those in the income segments of society who are unable to obtain housing within their financial means.

In Pascack, supra, the Court noted that the relevance of the Mt. Laurel decision is affected not only by the character of the municipality as a "developing" community but also by the population category effectively excluded by the ordinance involved in Mt. Laurel. As Judge Conford pointed out:

> It required the combired circumstances of the economic helplessness of the lower income classes to find adequate housing and the wantonness of foreclosing them therefrom by zoning in municipalities in a state of ongoing development with sizeable areas of remaining vacant developable land that moved this court to a decision which we frankly acknowledged as "the advanced view of zoning law as applied to housing laid down by this opinion." [Slip opinion at 12-13]

See also concurring opinion of Sullivan, J.

The cost of purchasing a condominium and the projected

apartmental rental in plaintiff's proposed development are realistically beyond the reach of those who may be classified in the low or middle income categories. Although this factor is not essential for the determination of this appeal in view of the conclusion that North Haledon is not a developing community, the lack of correlation between the proposed housing and the needs of low and middle income families presents another reason for the refusal of the court to invoke the Mt. Laurel remedy.

In light of the limitations of our judicial function we are of the opinion that the facts of this case do not warrant interference with the policy decision of the governing body of this municipality in maintaining the established one family character of the developed community. No matter how desirable it might be from a planning standpoint for every municipality to provide housing of all kinds for all segments of the general population, the judgmental decision of the local authority is beyond the reach of judicial compulsion unless the municipality is of such a character that judicial interference is appropriate under the principles of Mt. Laurel.

The ultimate solution rests not only with the local legislatures but with the State Legislature in the form of regulation and planning on a regional basis. See Pascack, supra (slip opinion at 23-24). And unless the characteristics

of the municipality are such that it can be said that it is a developing community having the available land and need for new housing and the facts point to the reasonable conclusion that the housing will benefit low and moderate income families, the court will not exercise the power authorized by the Mt. Laurel decision.

We have also considered the other grounds of appeal and find that they are clearly without merit as a basis for reversal. R. 2:11-3(e)(1)(E).

Affirmed.

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Elizabeth M. Laughlin

Clerk