MM Wilann Assocs. v. Borough of Rockleigh 5/29/75

MM

opinion of Judges Michels, Morgan, and Kentz

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3224-72

WILANN ASSOCIATES, a
New Jersey Corporation,

Plaintiff-Appellant,

v.

BOROUGH OF ROCKLEIGH, a
Municipal Corporation,

Defendant-Respondent.

Argued October 7, 1974 -- Decided MAY 29 1975

Before Judges Michels, Morgan and Kentz

On appeal from Superior Court of New Jersey,
Law Division, Bergen County.

Mr. Charles J. Sakany argued the cause for appellant (Mr. Sakany, attorney; Mr. Timothy J. Dunn, II, on the brief).

Mr. William E. Logan argued the cause for respondent (Messrs. Logan and Logan, attorneys).

PER CURIAM

The judgment below is affirmed substantially for reasons set forth in Judge VanTassel's written opinion dated May 16, 1973. Because that opinion was written before the Supreme Court decided Southern Burlington County NAACP v. Township of Mount Laurel, A-11,

New Jersey Supreme Court, decided March 24, 1975,(*) some additional comment with respect to the possible effect the Mount Laurel case might have on the trial court decision is required.

Mount Laurel clearly describes its intended area of application in the following terms:

> As already intimated, the issue here is not confined to Mount Laurel. The 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 great 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. Most such municipalities, with but relatively insignificant variation in details, present generally comparable physical situations, courses of municipal policies, practices, enactments and results and human, governmental and legal problems arising therefrom. 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.

From the foregoing language, it is clear that the requirements imposed by Mount Laurel have no application to the Borough of Rockleigh. Rockleigh is not a municipality having a "sizeable land area;" it occupies less than one square mile, or 600 acres of land space, and houses only 300 people in 46 single family

*Requested briefs concerning the possible application of Mount Laurel were submitted by counsel and considered by this court.

dwellings. These characteristics must be contrasted with Mount Laurel which spreads itself over 22 square miles, or about 14,000 acres of space, and has yet available for development 65% of its total land area which remains vacant or devoted to agricultural use. In Rockleigh, even plaintiff admits that only 7.5% of its tiny land area is available for further development. Rockleigh, unlike Mount Laurel or Madison Township, has not bee n experiencing significant growth. From the facts recounted in Hankins v. Borough of Rockleigh, 55 N.J. Super. 132, 133 (App. Div. 1959), it appears that only nine houses have been built since 1959 and at that time 80% of the existing homes were more than fifty years old.

Rockleigh boasts no public sewer system and soil conditions prevalent in the borough require large acreage lots in order to properly break up and treat sewerage. There are no public schools in the Borough and the current road network in the borough consists of four two-lane thoroughfares built on narrow rights of way. The residents of the borough are not served by any form of mass transportation linking the community with major population and commercial centers.

Rockleigh must be characterized as a tiny, substantially developed community of settled and long-standing character with only rudimentary utility and transportation facilities and none for public education. Constitutional considerations do not, in our view, require the creating or enlarging of present public

services to accommodate the relatively small number of persons who could be housed in judicially mandated multi-family units on the few remaining acres available for that kind of development. Mount Laurel was not intended to apply to this kind of community.

Affirmed.

A TRUE COPY

Elizabeth M. Langlin

Clerk