

Attorney's Fees

9-7-83

Garfield v. Top Cranbury

* in complete

- Complaint in Lieu of Prejudgment writ

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RECEIVED
SUPERIOR COURT
OF NEW JERSEY

SEP 7 3 11 PM '83

H. LE... FOR

*This is N/A litigation tied to TDC
advance which it is alleged
includes any realistic opportunity
to build... housing.
Also includes several 1983 + 1988
counts.*

L-055956-83

WARREN, GOLDBERG & BERMAN

A PROFESSIONAL CORPORATION
112 NASSAU STREET
PRINCETON, NEW JERSEY 08540
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ATTORNEYS FOR

Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

DOCKET NO. L- P.W.

CIVIL ACTION

GARFIELD & COMPANY, a
New Jersey Partnership,

Plaintiff,

vs.

COMPLAINT IN LIEU OF
PREROGATIVE WRIT

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF CRANBURY,
a municipal corporation, and the members thereof;
PLANNING BOARD OF THE TOWNSHIP OF
CRANBURY, and the members thereof,

Defendants.

Plaintiff Garfield & Company ("Garfield"), a New Jersey Partnership, with offices at 306 Carter Road, R.D. 2, Princeton, New Jersey 08540, by way of complaint states:

COUNT I

1. Plaintiff is the owner of 220 acres ± of land located on Half Acre Road in the Township of Cranbury, Middlesex County, New Jersey.

2. Defendant Mayor and the members of the Township Committee of the Township of Cranbury ("Committee") are sued individually and in their official capacity as a governing body of a municipal corporation located in Middlesex County which is

omitted to page 8---

COUNT III

1. Paragraphs 1 through 26 of Count I, and paragraphs 1 through 10 of Count II are realleged as if fully set forth herein.

2. As is recognized by the Ordinance, the predecessor Ordinance, and the Master Plan recognize, plaintiff's property is suitable for high density development.

3. Development of plaintiff's property will have little or no impact on the carrying on farming in the Agricultural zone.

4. There is no lawful justification for requiring plaintiff to purchase huge amounts of farmland development rights in the agricultural zone before its land can be developed at the high density which it is well capable of supporting.

5. There is no lawful justification for limiting residential development of plaintiff's property to one (1) dwelling unit for every two (2) acres unless such farmland development rights are purchased.

6. The restrictions on the development of plaintiff's land, as described in this and prior Counts herein are arbitrary, capricious and without foundation.

7. ~~These restrictions deprive plaintiff any reasonable use of its land.~~

8. Accordingly, defendants have under color of law deprived plaintiff of due process of law in violation of the Fourteenth Amendment of the United States Constitution, 42 U.S.C., §1983 and Article I of the New Jersey Constitution of 1947.

WHEREFORE, plaintiff demands judgment:

1. Declaring the Zoning Ordinance unconstitutional and enjoining further enforcement thereof;

2. Appointing a Master to supervise the revision of the Zoning Ordinance of the Township of Cranbury;

3. Granting plaintiff a rezoning of its land and all necessary local approvals including but not limited to site plan, subdivision and building permit

approvals so that it can construct a housing development of approximately 2000 units including low and moderate income dwelling units;

4. Awarding damages pursuant to 42 U.S.C., §1983 and reasonable attorneys' fees pursuant to 42 U.S.C., §1988; and

5. Granting plaintiff costs of court and such other and further relief as this Court deems fitting and proper.

COUNT IV

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, and paragraphs 1 through 8 of Count III are realleged as if fully set forth herein.

2. The purpose and effect of the transfer of development credit provisions of the Ordinance is to place on plaintiff the financial burden of carrying out a public project, namely, the preservation of agricultural uses in Cranbury Township.

3. The imposition of such a burden on plaintiff constitutes a taking of property for public purposes without payment of compensation therefor, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, 42 U.S.C., §1983 and Article I of the New Jersey Constitution of 1947.

4. The value of plaintiff's property has been drastically reduced by the aforesaid Ordinance provisions.

WHEREFORE, plaintiff demands judgment:

1. Ordering defendants to pay damages for the inverse condemnation of its land.

2. Reasonable attorneys' fees pursuant to 42 U.S.C., § 1988; and

3. Costs of court and such other relief as this Court deems fitting and proper.

COUNT V

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, paragraphs 1 through 8 of Count III, and paragraphs 1 through 4 of Count IV are realleged as if fully set forth herein.

2. The transfer of development credit provisions of the Ordinance regulate the use of land.

3. Regulation of land use in New Jersey is governed by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

4. All municipal attempts to regulate land use must find authorization in that statute.

5. The statute does not mention, let alone authorize, any municipality to enact a transfer development credit scheme.

6. The Township is thus without authority to enact the transfer development credit provisions.

7. In enacting these invalid provisions defendants have unlawfully deprived plaintiff of the use of its property under color of law in violation of the Due Process clause of the United States and New Jersey Constitutions and 42 U.S.C., §1983.

WHEREFORE, plaintiff demands judgment:

1. Declaring the transfer development provisions of the Zoning Ordinance to be invalid as ultra vires and enjoining their enforcement;

2. Awarding plaintiff damages pursuant to 42 U.S.C., §1983, and counsel fees pursuant to 42 U.S.C., §1988; and

3. Costs of court and such other and further relief as the Court deems fitting and proper.

COUNT VI

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, paragraphs 1 through 8 of Count III, paragraphs 1 through 4 of Count IV and paragraphs 1 through 7 of Count V are realleged as if fully set forth herein.

2. The transfer development credit provisions of the Ordinance require that the owner of the land in the agricultural zone file a deed restriction which shall be recorded with the Clerk of Middlesex County. Ordinance 150-16B. The Ordinance also makes such restriction specifically enforceable.

3. In addition, under the Ordinance, the Township Clerk is required to keep a map showing land from which credits have been transferred and a record of the total approved number of credits. Ordinance 150-16D.

4. After transferral and recording of the credits, pursuant to Township approval, the owner of the land loses all right to use it except for agricultural purposes.

5. The creation of such restrictions on property rights inherent in ownership is a function of the State Legislature.

6. The creation and designation of forms of legal instruments to be recorded and mapped is also a function of the Legislature.

7. The Legislature has not authorized municipalities to create new forms of property rights which divorce the right to use the land from the ownership of the land.

8. Neither has the Legislature authorized county clerks to record instruments containing such transfers or municipal clerks to develop official maps depicting them.

9. Therefore the enactment of ordinance provisions for the transfer of development credits, the filing of instruments with respect to same and keeping

an official map as to them are ultra vires any regulatory power granted to a municipality by the Legislature.

10. In addition, the exercise of such authority has been pre-empted by the legislative enactment of statutes, detailed in scope, which are inconsistent with the right of the municipality to develop such new forms of property rights and provide for their transfer, recording and mapping.

11. In enacting this invalid scheme defendants have unlawfully deprived plaintiff of the use of its property under color of law on violation of the Due Process clause of the United States and New Jersey Constitutions and 42 U.S.C., §1983.

WHEREFORE, plaintiff demands judgment:

1. Declaring the transfer development provisions of the Zoning Ordinance to be invalid as ultra vires and enjoining their enforcement;
2. Awarding plaintiff damages pursuant to 42 U.S.C., §1983 and counsel fees pursuant to 42 U.S.C., §1988; and
3. Costs of court and such other and further relief as the Court deems fitting and proper.

COUNT VII

1. Paragraphs 1 through 26 of Count I, paragraphs 1 through 10 of Count II, paragraphs 1 through 8 of Count III, paragraphs 1 through 4 of Count IV, paragraphs 1 through 7 of Count V and paragraphs 1 through 11 of Count VI are realleged as if fully set forth herein.

2. In enacting the Ordinance, defendants have combined and conspired to restrain trade and commerce in the development of property for residential uses.

3. Such conduct of the defendants violates the New Jersey Antitrust Act,

N.J.S.A. 56:9-1, et seq.

WHEREFORE, plaintiff demands judgment:

1. Awarding it damages, treble damages and reasonable attorneys' fees;
2. Declaring the Ordinance invalid and enjoining its enforcement; and
3. For costs of court and for such other and further relief as this Court deems fitting and proper.

WARREN, GOLDBERG, BERMAN & LUBITZ
A Professional Corporation
Attorneys for Plaintiff

By



Ronald Berman

Dated: September 7, 1983
Princeton, New Jersey