

AMB

11-6-81

pretrial order

- w/ attachments of factual & legal conditions
of parties

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SOMERSET COUNTY
L. R. OLSON, CLERKEntered ✓ Indexed

COURT, SOMERSET COUNTY, LAW DIVISION

PRETRIAL ORDER

TIMBER PROPERTIES, a Corporation
of the State of New Jersey,
Plaintiff,

v.

THE TOWNSHIP OF WARREN, a Municipal
Corporation of the State of New Jersey
THE PLANNING BOARD OF THE TOWNSHIP
OF WARREN and THE WARREN TOWNSHIP
SEWERAGE AUTHORITY, Defendants.

Pretried by Judge Arthur S. Meredith, J.S.C.

on Nov. 6, 1981

Superior No. L-67820-80 P.W.

County No. C-5-8492

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

1. Prerogative Writ suit challenging the zoning and land use regulations of Warren Township in seeking a ~~max~~ judgment ordering the rezoning of plf's land and further challenging the arbitrary limitation placed upon sewage treatment services required by plf. for the use of its lands.
2. See number 9.
3. & 4. See attached.
5. Not applicable except for allegation of taking of plf's land.
6. None.
7. Exclusionary zoning; violation of Municipal Land Use Act; denial of request for zoning of land; unlawful exercise of police power; unlawful taking of property; limitation of sewage treatment facilities; legality of ~~MINXEXEXX~~ agreement to limit the availability of sewage treatment as an unlawful means of growth control; exhaustion of administrative remedies; Statute of Limitations; estoppel; laches; designation of "region"; whether Warren Township is a developing community; whether Warren Zoning Ordinance complies with Mt. Laurel and the cases subsequent thereto; reasonableness of Warren fwp's Zoning Ordinance in light of ecological and environmental aspects of the Township and the premises in question; standing; waiver.
8. None.
9. See Warren Township Sewer Memo.
10. Unlimited.

- 11. To be filed subsequent to trial.
- 12. Usual.
- 13. None.
- 14. Raymond R. Trombadore, Esq. for ~~XXX~~ Plaintiff; John E. Coley, Esq. for the Township of Warren; Gene W. Jacobs, Esq. for Planning Board; J. Albert Mastro, Esq. for Sewerage Authority.
- 15. One week.
- 16. To be notified.
- 17. Not applicable.
- 18. Discovery to continue up to ten days prior to trial.
- 19. None.

Arthur S. Meredith
 HON. ARTHUR S. MEREDITH, J.S.C.

Raymond R. Trombadore
 Attorney for Plaintiff

John E. Coley
 Attorney for Deft. Township

Gene W. Jacobs
 Attorney for Deft. Planning Bd.

J. Albert Mastro
 Attorney for Deft. Sewerage Aut

FACTUAL AND LEGAL CONTENTIONS
OF THE PLAINTIFF TIMBER PROPERTIES

The plaintiff, Timber Properties, a New Jersey Corporation, is the contract purchaser and equitable owner of approximately 68 acres of vacant land in Warren Township. The property is located on Mountain View Boulevard and in an area which is presently zoned for residential use. Immediately North of the property and slightly to the West of the property there is being constructed an office complex for Chubb and Sons, Inc. Warren Township is a rural community and a developing community comprised largely of open space. No provision is made under present zoning for other than single family houses on large lots. The present zoning ordinance does not meet the standards of the decision of the Supreme Court of New Jersey in the Mount Laurel case, South Burlington County, N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975). The Township has had numerous requests for either variance or rezoning of property to permit either multi-family housing, small lot housing or planned residential development. All of these have been rejected by the Township. The present zoning, likewise, violates the spirit and intent and specific requirements of the Municipal Land Use Act, N.J.S. 40:55D-1 et seq. Adjoining communities have been required by court decisions to rezone to permit appropriate development of housing and such development is occurring in the adjoining communities. The present zoning of the plaintiff's land would require a minimum lot area for a single family residence of 50,000 square feet. This lot area requirement of the zoning ordinance bears no relationship to a reasonable exercise of the police power and is arbitrary, capricious and unreasonable. It is especially unreasonable in light of the fact that the defendant Township has rezoned substantial portions of land in the area of the plaintiff's land for intense office use. The present development of the site of Chubb and Sons, Inc. involves the construction of a major headquarters office facility almost directly opposite the land of the plaintiff. The traffic which will be generated by that development renders the present zoning of the plaintiff's lands arbitrary and unreasonable and constitutes an inverse condemnation of the property without just compensation. In December, 1980 the plaintiff submitted a request to the defendant Township for rezoning of its lands in said Township to permit the development of said lands for townhouses at a density of approximately 3.7 units per acre. The governing body of the defendant Township referred said request to its Planning Board and a hearing was conducted before the Planning Board at which time the plaintiff submitted evidence clearly establishing the feasibility of the development of the plaintiff's lands for townhouses at the density proposed.

Notwithstanding that evidence, which was uncontradicted, the Planning Board arbitrarily and unreasonably refused to recommend to the Township Committee the rezoning of the plaintiff's lands. In addition, the plaintiff has asked the Warren Township Sewerage Authority to provide adequate sewage treatment for the sewage which would be generated by the development of the plaintiff's lands. The Sewerage Authority arbitrarily limited the capacity of treatment available to the plaintiff to the gallonage which would be generated by the development of the plaintiff's lands under the present zoning. In effect, the Sewerage Authority arbitrarily and capriciously refused to design its treatment plant, which is about to be constructed, so that it would have adequate capacity to handle all of the gallonage which would be generated from the plaintiff's lands if the plaintiff were granted permission to develop its land for townhouses. The refusal of the defendant Warren Township Sewerage Authority to provide adequate sewage treatment capacity to the plaintiff was based upon an illegal agreement between the Sewerage Authority and the defendant Township of Warren which limits the allocation of sewage capacity on residential lands to the capacity required to service said lands pursuant to present zoning limitations existing upon the lands. Plaintiff seeks a judgment from this Court ordering the Township of Warren to rezone its lands to permit townhouse development of the lands and ordering the Sewerage Authority of Warren Township to provide adequate facilities to treat the sewage which would be generated from the plaintiff's lands.

STATEMENT OF DEFENDANT, WARREN TOWNSHIP SEWERAGE AUTHORITY

3-4. Factual and Legal Contentions

Defendant Warren Township Sewerage Authority is currently in the process of constructing a new sewage treatment plant in the Northwest portion of Warren Township commonly known as Stage V of the municipal sanitary sewerage system. All parties in the area were notified of proposed construction and after several meetings, interested parties owning land in the area entered into standard forms of contract with defendant Sewerage Authority providing for the allocation of sewage capacity for each parcel of property and a pro-rata contribution for the cost of constructing same. The standards utilized for allocation of sewage capacity considered the highest and best use of the respective properties affected under applicable zoning. Plant construction was in accordance with currently applicable Department of Environmental Protection standards and within limitations outlined in a 208 Water Quality Management Plan and the Upper Passaic Environmental Impact Statement adopted in accordance with the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, as amended and supplemented.

At the time plaintiff allegedly requested additional sewage capacity in the Stage V treatment plant, this defendant had completed planning of said facility in conformity with applicable state and

lons per day. In addition, at the time of plaintiff's filing its complaint, this defendant had entered into contracts with participants for construction of Stage V treatment plant having a capacity of 380,000 gallons per day. Construction of said project was advertised for bid and a bid was awarded at a public meeting on October 6, 1981. In view of the above, plaintiff is barred from seeking relief from this defendant as alleged in its complaint because of laches, waiver and estoppel.

Defendant, Township of Warren, entered into a Service Agreement with defendant, Warren Township Sewerage Authority, on May 7, 1981. Said Service Agreement was authorized by Ordinance No. 81-6 adopted by defendant Township of Warren on May 7, 1981. Notice of adoption of Ordinance 81-6 was published in the Echoes-Sentinel, a newspaper printed and published in the Township of Warren on May 14, 1981. Plaintiff's complaint alleging illegality or improprieties in said Service Agreement was not brought within the time period permitted by Rule 4:69-6 and accordingly relief from any of the provisions of said Agreement is thereby barred.

3-4. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT, TOWNSHIP OF WARREN.

Defendant, Warren Township, is a Municipal Corporation of the State of New Jersey. The Plaintiff, Timber Properties, is the owner of certain large tracts of land in the Township of Warren known as lots 12, 13, 19, 19C, 36, 37 and 38 in block 111; lot 4 in block 221; lot 1 in block 122; and lot 1 in block 123 as the same are set forth on the currently official tax assessment maps of the said municipality. The plaintiff is seeking relief from the Warren Township zoning ordinance primarily as to the particular property owned by the plaintiff. No application has been made by the Plaintiff to the Warren Township Zoning Board of Adjustment. The plaintiff, it is the understanding of this defendant, has made a specific presentation to the Warren Township Planning Board for the construction of approximately two hundred fifty two (252) town house units on the above mentioned property. The present attack upon the Warren Township zoning ordinance made by plaintiff in its present Complaint is merely a subterfuge; the real purpose of the present litigation is to grant relief from the existing zoning ordinance of the Township of Warren to allow construction of proposed town houses by plaintiff on the specific property owned by plaintiff. The plaintiff is not seeking a betterment of the house-buying public in the area of Warren Township, but rather is only seeking pecuniary profit to be derived through a maximization of land development on their property. The existing Warren Township zoning ordinance #79-3 adopted on January 25, 1979 offers a wide range of land development choices within the Township of Warren. These choices include residential development on 65,340 sq. ft. lots, 20,000 sq. ft. lots and 10,000 sq. ft. lots. The square footage of a lot can be modified by "variable lot size provisions" as set forth in the ordinance and also as to "modified density" provisions. The ordinance also has zoning provisions for neighborhood business zones, commercial business zones, office service zones, highway development zones and certain other industrial and research zones. Warren Township's zoning ordinance is not violative of any Court mandates.

Based upon certain ecological and environmental aspects of Warren Township which is comprised of a mountainous (steep slope) terrain and also certain very wet, marshy areas and the limited sewer capacity for the Township, and also the limited service of Township properties by public water, the Warren Township zoning ordinance is reasonable. Warren Township is not a developing community as defined in the relevant Court decisions and is not located in a region which requires any further multi-family development. The Warren Township zoning ordinance is not exclusionary and thus, is not prescribed by the New Jersey Constitution. The plaintiff is required to exhaust its variance procedures before the Warren Township Zoning Board of Adjustment and has not complied with that requirement. Thus, the plaintiff is not entitled to proceed with the present action. The Warren Township zoning ordinance #79-3 was adopted on January 25, 1979. It is the belief of the defendant, Warren Township, that the plaintiff has owned the property in question in excess of forty five (45) days before the filing of their Complaint with the Clerk of the Superior Court of New Jersey. Thus, the plaintiff is barred by Rule 4:69-6(a) from maintaining the within action. The plaintiff is also estopped from maintaining the within action.

Warren Township zoning law is the result of extensive studies and Master Plan work by the Township Professional Engineers and Planners and complies with all mandates of the New Jersey Courts and the New Jersey Constitution, and all fair and equitable considerations. The Township Planner is presently in the process of updating and studying the Warren Township zoning ordinance.