Morris County Fair Housing Council
v.
Boonton Township
Ch

~~Boonton Township~~ (Randolph Township) | 06-20-1986

Affidavit ~~by~~ of Terrence Mattice, an employee of an engineering firm serving Randolph Township Municipal Authority.

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The employee stated that public sanitary sewers cannot be connected to particular units that are under a building ban. But, also, there are new building permits issued to buildings not connected to public sewers.

- The purpose of this affidavit is to induce the Court to deny the Public Advocate's application to enjoin the Authority from distributing gallonage, for new construction other than Mt. Laurel.

developable land nor public sanitary sewerage capacity constitute a scarce resource under The Hills case.

Sworn and Subscribed
to Before me this 19th day
of June, 1986.

EDWARD J. BUZAK
ATTORNEY-AT-LAW OF NEW JERSEY

Adrian P. Humbert

no problems will be encountered by utilizing this on-site system.

15. Based upon the fact that the Township has had experience with the construction of higher density housing utilizing an on-site system, it is simply an inaccurate assumption that high density housing can only be constructed on a public sanitary sewer system. Thus, although there might be insufficient gallonage held by the Randolph Township Municipal Utilities Authority to accommodate on public sewers all Mt. Laurel development for 1600 units under the most conservative estimate, the potential lack of public sewers cannot be considered a "scarce resource". There is no indication based upon the Advocate's expert reports that I have reviewed that a higher density development needs public sanitary sewers in order to function properly.

16. I make this affidavit in support of the Township's opposition to the request of the Advocate to impose conditions upon the transfer of this case to the Council on Affordable Housing since the facts as outlined in this affidavit demonstrate beyond a doubt that neither vacant

and moderate income housing based upon the tentative settlement which was never finalized by the Advocate. Most of that land was also within the growth area under the State Development Guide Plan.

12. I have further reviewed the Advocate's contentions that public sanitary sewers are necessary in order to develop properties within the Township for higher density low and moderate income housing. I understand from a review of the brief of Edward J. Buzak, Esq. that there is no legal prohibition against the development of higher density housing on on-site systems, rather than public sewers.

In addition, however, I must point out that there is no practical prohibition either, assuming that the land can properly accommodate the system.

13. Perhaps the best illustration of the development of higher density housing without public sewers within Randolph Township is the development of the senior citizen complex of 100 units at a density in excess of 10 units to the acre, the same senior citizen complex for which the Township will receive a one-to-one credit under the guidelines established by the Council.

14. The 100 unit senior citizen complex is being constructed entirely on an on-site system as public sewers are not available to the complex. It is anticipated that

and which were attached to the Advocate's supplementary brief of June 6, 1986 in this action. That data was furnished to the Advocate in response to his request for the production of documents.

10. The information in that report is accurate and after again carefully reviewing the same, I cannot find any support for the proposition that vacant developable land within the growth area of the Township is lacking.

11. Thus, even utilizing the most conservative estimate and the mandatory set-aside as the exclusive mechanism for satisfying the obligation of the Township, the Township's obligation would be 320 units of low and moderate income housing which would produce under a 20% mandatory set-aside 1600 units. Given the fact that the Township has 480 acres of vacant developable land within the growth area, at a density of 10 units to the acre, the Township has three times the amount of vacant developable land necessary to accommodate its obligation, all within the growth area. Based upon the foregoing, it is simply inaccurate for the Advocate to contend that vacant developable land constitutes a scarce resource under The Hills Development Co. v. Township of Bernards (A-122-85)___N.J.____(1986). Additionally, it must be recalled that the Advocate had accepted lands sufficient to accommodate an obligation of 634 units of low

of not less than 320 units. Were a mandatory set-aside the sole mechanism utilized by the Township to satisfy its obligation, 1600 units would have to be constructed. Using 480 acres of vacant developable land within the growth area, as defined in the SGDP, and utilizing a density of 10 units to the acre, the Township has three times as much land vacant and developable in the growth area as is necessary to accommodate 1600 units. It is further noted that this net figure of 320 units does not take into account bungalow conversions or other qualifying credits under the guidelines established by the Council on Affordable Housing ("Council").

8. Even utilizing the 320 units, under the Fair Housing Act ("Act"), the Township can transfer up to 50% of its obligation to a receiving municipality under a regional contribution agreement, leaving 160 units which would have to be accommodated within the Township. Again, assuming the Township utilizes a mandatory set-aside as the sole method of satisfying that obligation within the Township, 800 units would have to be built and given 480 acres of vacant developable land within the growth area, the Township has six times more land at 10 units to an acre than is necessary to accommodate such a number.

9. I have also reviewed the excerpt of the master plan revision and amendments of 1985 which I had prepared

5. In the tentative settlement entered into, the conditional use was not utilized as a mechanism to satisfy the Township's obligation.

6. The second excerpt taken from my deposition was attached to the Advocate's supplementary brief of June 6, 1986. There, I simply spoke about the standards that I had utilized, along with the Township Engineer in order to arrive at the conclusion that there were approximately 480 acres of vacant developable land within the growth area in the Township. At a density of 10 units to the acre, 4800 units could be developed. Since the Township's obligation without any credits is 452 units, if the sole mechanism utilized by the Township were a mandatory set-aside of 20%, the Township would have to zone for the construction of 2,260 units, which is less than half the number of units that can be developed on the acreage, vacant and developable within the growth acrea as set forth under the State Development Guide Plan ("SDGP").

7. Against the 452 units of low and moderate income housing constituting the Township's obligation as determined by the Council on Affordable Housing, the Township will receive a credit for 100 units of senior citizen housing presently under construction within the Township and 32 units of family housing to be constructed, leaving a net figure

2. I have reviewed the excerpt from my deposition attached to the Public Advocate's April 17, 1986 brief.

3. The excerpt from my deposition, in addition to obviously being taken out of context, involved my response to a question posed by the Advocate concerning the use of the "conditional use" mechanism as the exclusive method for satisfying the Township's obligation.

More specifically, I had mentioned during the course of the deposition that one mechanism to utilize to satisfy the Township's obligation might be the conditional use mechanism. I did not assume for the purposes of my answer that this methodology would be the exclusive method of satisfaction, but the Advocate questioned me as to the amount of land which would be necessary in the event that the conditional use application was utilized as the exclusive method of satisfying our obligation. I responded that it would take between 500 and 1000 acres, depending upon the densities and the details of the conditional use mechanism that were ultimately established.

4. In response to that question, we were assuming an obligation of 719 units. This case was tentatively settled at 634 units and the Council on Affordable Housing has established the number for the Township at 452 units.

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FILED

JUN 20 1986

STEPHEN SKILLMAN, J.S.C.

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ATTORNEY FOR Defendants, Township of Randolph, Randolph Township Planning Board and Randolph Township Municipal Utilities Authority

Plaintiff MORRIS COUNTY FAIR HOUSING COUNCIL, et. al., *vs.* *Defendant* BOONTON TOWNSHIP, et. al.	SUPERIOR COURT OF NEW JERSEY MIDDLESEX/MORRIS COUNTIES *Docket No.* L-6001-78 P.W. L-59128-85 P.W. *CIVIL ACTION* AFFIDAVIT
Plaintiff RANDOLPH MOUNTAIN INDUSTRIAL COMPLEX, a New Jersey Partnership vs. Defendant THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF RANDOLPH, et. al.	

STATE OF NEW JERSEY)
SS.:
COUNTY OF MORRIS)

I, ADRIAN P. HUMBERT of proper age, being duly sworn according to law upon my oath, depose and say:

1. I am the Township Planner in the Township of Randolph and am fully familiar with the facts surrounding the above captioned matter.