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Township of Hazlet

HIGHVIEW HOMES, LLC,	:	SUPERIOR COURT OF NEW JERSEY
	:	
Plaintiff,	:	MONMOUTH COUNTY
	:	LAW DIVISION
v.	:	
	:	DOCKET NO. MON-L-4224-15
TOWNSHIP OF HAZLET and	:	
PLANNING BOARD OF THE	:	CIVIL ACTION
TOWNSHIP OF HAZLET,	:	
	:	STATEMENT OF MATERIAL FACTS
Defendants.	:	IN SUPPORT OF DEFENDANT'S
	:	MOTION FOR SUMMARY JUDGMENT
	:	TO DISMISS COMPLAINT
	:	

The defendant, Township of Hazlet, submits this Statement of Material Facts in support of defendant's motion for summary judgment to dismiss plaintiff's complaint:

1. On July 28, 2008, the Honorable Lawrence A. Lawson, A.J.S.C. entered an order in a matter entitled Elegant Properties, LLC v. Township of Hazlet, Docket No. MON-L-1559-08. That order provided in relevant part, "ORDERED that the Township is granted immunity from further Mount Laurel litigation until such ordinance is adopted and approved by this Court." Gorman Cert. ¶ 2, Ex. A thereto.

2. The July 28, 2008 immunity order remains in full force and effect. Gorman Cert. ¶ 3.

3. The July 28, 2008 order also found that the Township of Hazlet was not in compliance with its Mount Laurel obligation. Gorman Cert. ¶ 3.

4. The plaintiff alleges that it is the contract purchaser of Block 68.13, Lot 26 and Block 69.01, Lot 8 on Route 36 in the Township of Hazlet. Pino Aff. ¶ 2.

5. The property is owned by The Church of the Holy Family. Pino Aff. ¶ 2.

6. Block 68.13, Lot 26 is developed with a now unused grammar school. Pino Aff. ¶ 2.

7. Block 69.01, Lot 8 is a small vacant parcel across a side street. Pino Aff. ¶ 2.

8. In 2010, at the request of Holy Family, the front half of Block 68.13, Lot 26 (basically, the parking lot for the former school), and all of Block 69.01, Lot 8 (the vacant parcel) were rezoned from the R-70 zone (7,000 square feet single family residential) to the BH Business Highway zone to permit the commercial development sought by Holy Family. Pino Aff. ¶ 3.

9. No affordable housing was proposed by Holy Family in 2010. Pino Aff. ¶ 3.

10. The Township rezoned the front portion of the property as requested by ordinance adopted on March 15, 2011. Pino Aff. ¶ 3, Ex. A thereto.

11. The rear portion of Block 68.13, Lot 26, where the school building stood, remained zoned for single family homes. Pino Aff. ¶ 3.

12. On October 26, 2011, Tri State Commercial, Inc., as a contract purchaser, inquired about further zoning changes to permit a 65 unit multi-family development on the rear part of the school property. Pino Aff. ¶ 4, Ex. B thereto.

13. No affordable units were proposed by Tri State on behalf of Holy Family. Pino Aff. ¶ 4.

14. By email dated January 17, 2012, Tri State stated:

I want to confirm if the township of Hazlet has any affordable housing fees that could be imposed under the Mt. Laurel II decision or any possible contributions to the municipality's housing fund (if that exists on the books) or regional contribution agreements. Please let me know as these could be huge impediments to pursuing the projects. Thank you John.

Pino Aff. ¶ 5, Ex. C thereto.

15. The next proposal on behalf of Holy Family was from William F. Barglow, who at a meeting on January 16, 2014 switched gears and proposed that all of the school property

now be rezoned as part of the Business Highway zone. Pino Aff. ¶ 6, Ex. D thereto.

16. No affordable housing was proposed by Mr. Barglow on behalf of Holy Family. Pino Aff. ¶ 6.

17. At a meeting on or about June 10, 2014, Jack Morris of M&M Realty Partners, Holy Family's new developer, requested that the rear portion of the school property be rezoned to permit 192 apartments in four story buildings while the front remain as Business Highway. Pino Aff. ¶ 7, Ex. E thereto.

18. No affordable units were proposed by M&M Realty on behalf of Holy Family. Pino Aff. ¶ 7.

19. On March 12, 2015, David Roskos, Esq., the attorney for Holy Family, and Neil Pirozzi, the real estate manager for Holy Family, and others presented Holy Family's next plan consisting of 150 apartments covering the entire site, now without any retail. Pino Aff. ¶ 8.

20. The new developer was to be Highview Homes, the plaintiff herein. Pino Aff. ¶ 8.

21. Again, no affordable units were proposed by Holy Family. Pino Aff. ¶ 8.

22. A meeting was held on May 14, 2015 at Town Hall with Mr. Abene of Highview Homes, who explained his plans for a 150 unit apartment complex. Pino Aff. ¶ 9.

23. The Highview plan did not contain any affordable units. Pino Aff. ¶ 9.

24. To study the Highview/Holy Family request, the Township retained Fred Heyer, P.P. by resolution dated June 1, 2015. Pino Aff. ¶ 10, Ex. F thereto.

25. On July 30, 2015, over four months after Highview's plan was first presented, its planner, Christine Cofone, P.P. emailed her planning report to Fred Heyer, the Township's planner. Pino Aff. ¶ 11, Ex. G thereto.

26. The Highview plan called for 180 self-described "luxury" apartments, again without any affordable units. Pino Aff. ¶ 11.

27. At a meeting held with Ms. Cofone at Mr. Heyer's office on August 6, 2015, Mr. Heyer firmly advised Ms. Cofone that any rental apartment project must contain at least 15 percent affordable units, pursuant to the COAH rules. Pino Aff. ¶ 12.

28. In her follow-up email of August 12, 2015, Ms. Cofone proposed only a 10 percent affordable set-aside. Pino Aff. ¶ 13, Ex. H thereto.

29. Mr. Heyer was reviewing Highview's revised, but still deficient, proposal. Pino Aff. ¶ 14.


30. Mr. Heyer was scheduled to appear before the Township Committee at its meeting of November 16, 2015 to

offer his advice to the Committee about Highview's request for a rezoning for "luxury" apartments with a non-compliant 10 percent set-aside. Pino Aff. ¶ 14.

31. However, there was no reason for Mr. Heyer to appear on November 16th as the plaintiff filed this lawsuit on November 10, 2015. Pino Aff. ¶ 14.

Dated:

1/15/16



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