

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

Rivers Edge Professional Building

2052 Route 35, Suite 201

Wall Twp, NJ 07719

(732) 449-8811

Attorneys for Defendants, Borough of Roselle Park

and the Planning Board of the Borough of Roselle Park

Roselle Park VP, LLC

Plaintiff,

v

**Borough of Roselle Park and the
Planning Board of the Borough of
Roselle Park**

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: UNION COUNTY

DOCKET NO. UNN-L-338-07

Civil Action

**REPLY CERTIFICATION OF CHARLES
LATINI, Jr., PP, AICP IN SUPPORT OF
THE BOROUGH'S MOTION FOR
SUMMARY JUDGMENT**

CHARLES LATINI, JR., PP, AICP, of full age, does hereby certify as follows:

1. I am a licensed Professional Planner of the State of New Jersey.
2. I am currently employed by Heyer, Gruel and Associates, consulting planners for the Borough of Roselle Park and the Planning Board of the Borough of Roselle Park.
3. I have held this position since March 1, 2006. As such, I am thoroughly familiar with the past and current planning, land use, and development issues in Roselle Park.
4. I am also thoroughly familiar with the facts set forth herein.
5. I have reviewed all the papers submitted by plaintiff in opposition to the Borough's Motion for Summary Judgment and in support of plaintiff's Cross Motion for Summary Judgment.
6. These documents include not only false statements, but also certain statements that are illogical on their face. The basis for this conclusion is set forth below.

The Borough Initiates the Redevelopment Process

7. In para. 5 of his certification, Braunstein states that, prior to the December 12, 2006 meeting, “Roselle Park officials never told me that there was a possibility of an RFP process and the taking of my property by eminent domain.”

8. This is false.

9. My professional planning firm is experienced in assisting New Jersey municipalities through the redevelopment process.

10. The Borough hired my firm on March 1, 2006 to, among other things, assist in the development of a Redevelopment Plan for the Romerovski site.

11. One of the first tasks of our assignment was to meet with Mr. Braunstein, the owner of the Romerovski site, to generally explain the redevelopment process and to discuss what the Borough and Mr. Braunstein should expect in bringing this project to fruition.

12. That first meeting took place on March 29, 2006.

13. In our initial meeting, I specifically focused on a general overview of the redevelopment process, and I informed Mr. Braunstein at this meeting that one of the standard procedures for redevelopment projects is to attract multiple redevelopment proposals by publishing an advertisement known as a “Request For Proposals” or RFP.

14. I am attaching the relevant portion of a redevelopment treatise that provides as follows:

“The most common approach is [for the redevelopment entity] to select a redeveloper through a competitive process in which proposals are solicited from potential redevelopers.”

[See Exhibit A (relevant excerpt from Stan Slachetka, A.I.C.P., P.P. and David G. Roberts, A.I.C.P., P.P., A.S.L.A., C.L.A., The Redevelopment Handbook, A Guide to Rebuilding New Jersey’s Communities, 2003).]

15. I did not discuss the Borough's power to use eminent domain in that meeting due to the cooperative nature of the relationship at that point.

16. The notes I took at the meeting on March 29, 2006 with Mr. Braunstein demonstrates that we unquestionably discussed the idea that an RFP process was a very real possibility for this project. Specifically, my notes provide as follows on this point: "perhaps an RFP to issue for developer." See Exhibit B.

17. Thus, there is no question that we discussed the RFP process at this meeting.

18. I brought up the issue of an RFP at the March 29th meeting because, as a professional planner, I understood that RFPs are an *extremely effective* method used by municipalities to attract experienced redevelopers to such a project. See Redevelopment Handbook, attached as Exhibit A

19. Since Mr. Braunstein had such difficulties with the subject property as zoned and used, there was every reason to believe that the Borough, through the RFP process, could create a sufficiently attractive redevelopment project to enable Mr. Braunstein to secure an economic benefit and to enable the Borough to pick the best proposal for the community.

The Borough Crystallizes Its Redevelopment Plans

20. Soon after the March 29, 2006 meeting, the Borough scheduled a series of public meetings in which I explained several times the redevelopment process to the residents of the Borough, and secured a myriad of comments concerning the public's vision for the redevelopment of the site.

21. I explained the redevelopment process generally and the RFP process specifically in these meetings before the Planning Board and the Borough Council. My explanations would have been similar to the one I gave to Mr. Braunstein on March 29, 2006, but the Borough

believed that a fair open process was the most appropriate pursuit and the public was told the Borough would pursue an open RFP process.

22. Mr. Braunstein admits that he attended a number of these meetings. Braunstein Cert. at para. 34.

23. During this period, which occurred between May and October of 2006, the Borough's residents, including members of the governing body, expressed a desire to attract multiple proposals and choose the best one.

24. Frankly, given the natural benefit of securing multiple proposals and being able to choose the best one, I was not surprised at all that Roselle Park opted for this course.

25. It is also inconceivable that Braunstein could believe as he apparently claims that he could unilaterally select the redeveloper of his site without the Borough's approval, because the redevelopment process requires that the redevelopment entity, which is the Borough in this case, to enter into an agreement naming a specific entity as the redeveloper.

26. Therefore, even assuming Braunstein is as "unsophisticated" as he claims, he should have known, at a minimum, that the Borough had to ultimately approve a competent redeveloper.

27. Further, I noted that Braunstein claims that he began to develop a relationship with Ron Ladell by August of 2006, and I note that Ron Ladell holds himself out to be a sophisticated developer.

28. A sophisticated developer, knowing that the Borough had embarked on the redevelopment process, (a) would certainly know that RFPs are common in this arena; (b) would appreciate the value to the municipality of utilizing an RFP; and (c) would understand that as part of that process the municipality would need to enter a redeveloper's agreement.

29. In view of the above, while Mr. Braunstein accuses the Borough of “rewriting history” with no documentation to prove his allegation, I can confirm through my notes that Mr. Braunstein knew about the RFP process for *eight and one half months* before he admits.

30. In his certification, Mr. Braunstein claims that the Borough’s actions were all pretextual in that the Borough’s real intention was to use its powers of eminent domain.

31. That is also false.

32. In the several meetings in which Mr. Braunstein participated, and in the numerous public meetings we conducted, members of my firm and I explained in fine detail the process envisioned by the Borough. That process included (1) a series of public meetings to provide the residents of Roselle Park with the opportunity to create a “vision” for the overall future of the Borough and specifically to express ideas for the redevelopment of the Romerovski site; (2) the drafting and adoption of a Redevelopment Plan; (3) an RFP process to secure multiple proposals and to optimize the Borough’s ability to select the proposal most suited for the Borough’s planning goals; (4) after the RFP process, the appointment of the redeveloper by the Borough and signing of a redevelopment agreement between the Borough and the redeveloper, and (5) finally, the cooperation between Mr. Braunstein and the entity selected to redevelop the site.

33. Although the Borough certainly has the legal authority to condemn the property, the Borough has never indicated an intention to utilize such power.

34. To expressly demonstrate that the Borough never had the intention of utilizing its condemnation powers, I refer the Court to page 25 of the Borough’s Redevelopment Plan, adopted on March 1, 2007, after the Borough was sued by Mr. Braunstein: “The Plan **does not anticipate the use of eminent domain, given the cooperative relationship with the property**

owner.” “Furthermore, the Borough will work in concert with the owner and its choice to select redevelopers.”

35. I wrote that language.

36. The RFP process envisioned by the Borough and the “cooperative relationship” we had with Mr. Braunstein was the very impetus for me to include the “in concert” reference within the Borough’s Redevelopment Plan.

37. The reference to “its choice” was not a relinquishment of the vitally important power of the municipality to choose the redeveloper. Rather, a review of the entire sentence reveals the Borough and owner “to select” redevelopers.

38. Certainly, Mr. Ladell’s efforts to cut off the RFP process and select him demonstrates that he realized that the borough had to sign off on any redeveloper

39. Unfortunately, the “cooperative relationship” I referred to in the Redevelopment Plan ended when Mr. Braunstein was apparently seduced by a lucrative offer from Mr. Ladell and AvalonBay.

40. After Mr. Ladell came into the picture, Mr. Braunstein’s position changed radically.

41. Further, a sophisticated developer would also understand that the embarking on an RFP process does not necessarily mean, as a practical matter, that the Borough would be condemning Braunstein’s property.

42. From a legal standpoint, a sophisticated developer would also know that the redevelopment laws would require the Borough expressly state in its adopted Redevelopment Plan exactly which properties in the redevelopment zone will be condemned.

43. The Borough's adopted Redevelopment Plan (a) contains no language stating that the Braunstein site will be taken via eminent domain; and (b) does state that condemnation is not anticipated due to the cooperative nature of the parties. Specifically, the Redevelopment Plan, which states: "The Plan **does not anticipate the use of eminent domain, given the cooperative relationship with the property owner.**"

44. In view of these facts, the Borough could not condemn the Romeovski site even if it was so inclined—which it is not—under the Redevelopment Plan as currently written and as was drafted by November of 2006.

45. Consequently, it is disingenuous for Braunstein, who indicates he had been working with Ron Ladell, a sophisticated developer, to equate a simple RFP process with the taking of his property.

46. Another theme of Mr. Braunstein is that the Mayor somehow "politicized" the Borough's Redevelopment efforts.

47. In all the meetings that I have attended with Mayor DeIorio, I have never heard the Mayor comment that the Braunstein project could create a "political problem" for him.

48. I do know, however, that on many occasions, the Mayor has expressed his concern for the interests of the residents of the Borough, which naturally included the public's input and opinion of whether the Borough should facilitate the redevelopment of the Romerovski site and, if so, what might be best for the community. Indeed, the Redevelopment of the Romerovski site is a matter of utmost importance to the community.

49. The Borough should be applauded in its efforts to properly apply public participation in the redevelopment process. Roselle park has gone out of its way to include the

public in a meaningful way in the redevelopment process. Such an approach fosters community acceptance and is a very positive aspect of how the Borough has approached redevelopment.

50. In paragraph 12, Braunstein states that “Ron Ladell specifically mentioned that the proposed project would have an affordable housing component” at the meetings that took place on August 9th and December 12th of 2006.

51. With regard to the meeting on December 12, 2006, that is false.

52. Neither Mr. Braunstein nor Mr. Ladell asked us to consider the inclusion of an affordable housing component in the project at the meeting December or at any meeting in which I participated.

53. Mr. Ladell was aggressive and overbearing at the December 12, 2006 meeting.

54. At the December 12, 2006 meeting in which I participated by phone, Mr. Ladell pressed the Mayor to select him as the redeveloper.

55. The Mayor stressed that the public had been promised an open process, that we could not make any back room deals, and that he would need to compete publicly.

56. Mr. Ladell became inflamed when the Mayor refused to capitulate to Mr. Ladell’s pressure to forego the RFP process designed to facilitate public input and to avoid the perception of a backroom deal.

57. That is when Ladell indicated we could forget about the RFP process because no developer would compete for the project after he sent the word out to the development community of his contract rights.

58. Although Ladell now indicates that he had a concept plan and engineering reports, he never presented those to me or to the Borough

59. This is extremely unusual, in my experience, because if a developer wishes to pursue the right to develop land, one of the first steps the developer typically takes is to present a concept plan and any supporting information.

60. While Braunstein and Ladell both claim in their respective certifications that they wanted to provide affordable housing, they never stated a desire to include affordable housing in their project to me at this December 12 meeting or at any other meeting in which I participated.

61. In paragraph 35 and 36, Braunstein states that “there were some vague references to public participation” and that “a handful of members of the public” that participated in the many public meetings discussing the Redevelopment of the Borough.

62. This also is false.

63. I am attaching as Exhibit C various documents that I collected associated with the Borough’s overwhelming dedication to providing the residents of Roselle Park with the opportunity to participate in the reshaping of their community.

64. These documents include (1) my personal notes created in preparation for the Planning Board’s “kickoff” meeting used to introduce the redevelopment process to the residents, (2) two posters specifically created by the Borough to provide public notice of the meetings specifically scheduled to discuss the Borough’s “vision” and (3) my notes created at the meetings based upon the many comments made by the residents of Roselle Park.

65. To suggest that the Borough’s interest in public participation was “vague” is patently false. In fact, attendance at these meetings was great, and our dialogue was very fruitful in assisting me in drafting the Borough’s Redevelopment Plan.

66. Plaintiff also alleges that it was the impetus or “catalyst” for the Borough’s Mount Laurel compliance efforts.

67. That is also false.

68. Representatives of my firm and I met with Mayor DeIorio at the League of Municipalities meeting in November of 2006.

69. At that meeting, we discussed the status of the Borough's redevelopment efforts, the status of the drafting of "New Directions," and other planning issues in the Borough.

70. We specifically informed the Mayor at that meeting that the Borough needed to adopt a Housing Element and Fair Share Plan under the Municipal Land Use Law.

71. On November 22, 2007, the minutes of the Planning Board meeting reveal that the Planning Board discussed the need to adopt a plan and responded favorably.

72. On December 7, 2007, the Borough Council adopted a resolution authorizing my firm to begin drafting its Housing Element and Fair Share Plan.

73. The Borough was the "catalyst for change," not the plaintiff.

74. Finally, plaintiff asserts that the information provided in its meetings of August and December 2006 constituted a "proposed project" for purposes of satisfying its legal obligations under the Mount Laurel doctrine

75. However, the utter lack of detail presented by plaintiff, which amounted to nothing more than a statement that it wanted to construct a 300-unit rental project, does not give rise to a "proposed project" under any definition of that term.

76. The information provided by plaintiff does not provide sufficient detail to allow even the most rudimentary of review by the Borough's professionals, and it certainly does not give rise to any level of "meaningful review" that should be necessary when considering a redevelopment proposal.

77. If indeed plaintiff has a detailed concept plan and supporting reports, that would constitute a proposed project. However, the developer chose to withhold this information.

MISCELLANEOUS STATEMENTS OF FACT

78. The Borough forwarded its adopted and endorsed Housing Element and Fair Share Plan to COAH, together with copies of the relevant Planning Board and Council Resolutions and service list.

79. The Borough is poised to perfect COAH jurisdiction upon dismissal of this action. Although the version of the Housing Element and Fair Share Plan adopted on June 18, 2007 states that 215 residential units could be developed on the property, it is anticipated that the planning board will amend its Housing Element to mirror its Redevelopment plan and that, as a result, the housing element will make clear that “up to 215” units will be permitted.

80. In any event, the Borough’s amended Redevelopment Plan controls the zoning on the site.

81. The Borough’s Housing Element and Fair Share Plan provides that a minimum of 20 percent of the units on the subject property will be affordable and that the Borough reserves the right to increase the set-aside depending upon the results of a study.

82. The Borough’s current Redevelopment Plan contemplates that 11.11 percent of the units on the subject property will be affordable.

83. The proposed amended Redevelopment Plan mirrors the current Housing Element and Fair Share Plan with respect to the magnitude of the set-aside and eliminates the inconsistency.

84. The Borough will conduct a hearing on October 4, 2007 to consider the adoption of the proposed amended Redevelopment Plan.

85. Nothing in the proposed amended Redevelopment Plan is intended to relinquish the Borough's right to select the redeveloper or to negotiate a redevelopment agreement acceptable to the community.

I am aware that the Court will rely upon the facts set forth in this Certification and I am aware that, if any statements made by me are willfully false, I am subject to punishment by the Court.

CHARLES LATINI, JR., PP, AICP

Dated: October 1, 2007