'QUOTAS' FOR HOUSING ARE DENIED IN JERSEY

State Court Says It Lacks Power to Require Low-Income Zoning

By MARTIN WALDRON
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TRENTON, Jan. 26—The New Jersey Supreme Court held today, in a 4-to-3 ruling, that it did not have the power to require cities to provide "quotas" of housing for low-income and middle-income families, and that such decisions must be made by the Legislature.

The court said it went as far as it could in this direction in 1975, when it held in a case involving Mount Laurel Township that the zoning regulations of suburbs must provide "an opportunity" for private developers who might want to build housing for poor families trying to move from the cities into the suburbs.

The decision today appeared closer to a ruling by the United States Supreme Court earlier this month that said a town could not be compelled to change its zoning requirements unless there was proof of discriminatory "intent," not just discirminatory effect.

The New Jersey cases on exclusionary zoning are a reflection of a national stirring in this area.

Paul Davidoff of the Suburban Action Institute in New York said that similar cases were in courts in both New York and Connecticut.

A case attacking zoning in New Castle, N.Y., is being heard currently in White Plains. The New York Court of Appeals, the state's highest tribunal, ordered trial in this case after a developer said that New Castle zoning regulations excluded multifamily dwellings.

In Suffolk County in New York, several

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Associated Press

State Senators John J. Fay, left, and Anthony Scardino Jr., chairman of a committee on right-to-death legislation, listening to testimony yesterday.

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towns have been ordered by a Federal district judge to sign affirmations that they will use Federal housing funds to build low-cost housing.

In Connecticut, a Federal Court ordered seven Hartford suburbs to provide housing for families who might want to live in the suburbs because of their jobs or "other reasons." The Circuit Court of Appeals has upheld this ruling.

The suburbs have not yet decided whether to appeal.

Mr. Davidoff said that the Suburban Action Institute had been suing corporations to keep them from moving out of New York City into the suburbs unless they made arrangements for "adequate housing" for members of their work force.

Although open housing groups viewed today's decision in New Jersey as a victory and as a "reasonable" exercise of judicial restraint, even some members of the court disagreed about what the ruling intended.

For one thing, the State Supreme Court declined to lay down guidelines to cover the numerous zoning cases expected to be filed by groups seeking to destroy the exclusiveness of many of New Jersey's bedroom communities.

The practical effect of today's ruling will apparently be to require every zoning case to be settled on its own merits, unless the Legislature provides its own guidelines for nonrestrictive zoning, an action that the court said it would welcome. The court said that zoning was a reasonable and necessary concept.

Today's decision was split widely, with all seven judges agreeing in part, and three dissenting vigorously in part. The majority opinion ran 97 pages.

The court upheld the 1928 state zoning law, rejecting what it called the "novel contention" that the law was not up to date since it did not direct cities and towns to be amalgamous "racially and economically." The purpose of zoning, the court said, is to promote "health, morals and the general welfare."

The New Jersey Supreme Court also "summarily rejected" the use of tax concessions and "mandatory sponsorship" in whole or in part of public housing projects by cities as devices to be used to enable poor people to move into suburbs.

"Tax concessions would unquestionably require enabling legislation and perhaps constitutional amendment," the court said.

The court said it had absolutely no power to direct cities or towns to take part in subsidized housing.

The ruling came in a case involving a six-year-long effort by a private developer to build low- and moderate-cost housing in Old Bridge Township, formerly known as Madison Township, in Middlesex County.

The problems of the developer were treated almost incidentally by the court as it pondered the wide implications of "judicial block-busting."

Two Acres for One House

The developer ran into problems when the township zoned his 400 acres for single-family dwellings, each of which would have had to be on a two-acre lot.

Restrictions imposed by the township, even after zoning laws were rewritten in 1973, would require each unit to sell for at least $63,000, the developer said.

The court directed Old Bridge to issue the builder a permit to develop his land—reduced to 200 acres after the state bought 200 acres for a Green Acres park—and forbade the township from requiring the developer to spend more than $2 million building a school, and bearing all of the costs of extending roads and water and sewer lines into the area.

The court said the township also had to adopt a zoning regulation allowing for houses to be built on small lots in that 200 acres.

The court said that its order directing the township to issue a building permit, provided a trial judge found that the proposed project would not be "ecologically" harmful, was not to be construed as a precedent in future cases.

This "unusual action" was being taken, the court said, because the developer has spent a large amount of money in pressing the case, and his contention had been upheld twice in trial courts, and further delays might require him to spend even more money.

The court said it was not ruling on the constitutionality of cities' assessing school, highway and sewer and water line costs against new developments—costs known legally as exactions—since in many instances these assessments might be justified.

The bulk of the majority opinion was directed at the implications of the Mount Laurel decision, and the reasons the justices refused to take the next step and to order construction of low-and middle-income housing in every New Jersey town and suburb.

Justice Morris Pashman wanted the court to do that. Indeed, he said, "it is precisely the cause of the difficulty in enforcing our decision in Mount Laurel that I have urged this court and others to utilize a creative hand in shaping remedies which will adequately address the problems which engaged our attention."

Justice Sidney M. Schreiber said that he could not accept the language in the Mount Laurel decision to the effect that a "developing" municipality must "provide by its land use regulations the reasonable opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live within its boundaries."

"The general welfare calls for adequate housing of all types, but not necessarily within any particular municipality," Mr. Schrieber said.