

U. L. v. Cateret, Cranbury

9/24 1985

- Letter memo as a reply to material ~~###~~ with regard to
Cranbury Township's motion to transfer

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LETTER FROM HUFF, MORAN & BALINT, ESQS. TO
HONORABLE EUGENE D. SERPENTELLI, J.S.C. DATED SEPTEMBER 24, 1985

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September 24, 1985

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Honorable Eugene D. Serpentelli, J.S.C.
Court House
Ocean County
CN-2191
Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick, et al. v.
The Mayor and Council of the Borough of Carteret,
et al. - Docket No. C-4122-73

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Dear Judge Serpentelli:

I am writing this short letter memorandum as a reply to the volumes of material with which I have been served in opposition to Cranbury Township's Motion to transfer and accompanying alternate Motions. Yesterday, September 23, 1985, I was served with Briefs totalling 195 pages, together with an additional 38 pages of supporting Affidavits and 28 pages of professional reports, for a total of 261 pages of documentation. Obviously, it will be impossible to respond to all of the material contained therein, or to even review it in complete detail prior to the hearing scheduled on these Motions for September 27, 1985. However, there are certain points in passing which I feel deserve some comment.

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The vast majority of the arguments on the part of the various plaintiffs against this transfer Motion are directed at the Statute ("The Fair Housing Act", Chapter 222 P.L. 1985). The arguments made are that a minimum of 18 months additional delay will be necessary before anything can happen under that Statute. If that delay in and of itself, will constitute a "Manifest Injustice" that would mean that no transfer Motion would be granted despite the fact that the Legislature has specifically authorized such transfer Motions. The fact that the judicial system may think that there is a better way to handle the problem than that which the Legislature has devised, should not permit the Judiciary to substitute its judgment for that of the Legislature, unless the objections rise to the level of constitutionality. While the various briefs submitted

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appear to question the moratorium on builder's remedy on constitutional grounds, I do not see any strong arguments against the transfer motion, itself, or the entire procedures of "The Fair Housing Act" being raised on constitutional grounds. The fact that the Legislature has built this initial delay into the system, and simultaneously authorized the transfer motion, clearly means that they did not intend that this internal delay would be considered a Manifest Injustice which would result in a denial of the Motion. Similarly, as pointed out in numerous occasions in Mt. Laurel II, the Judiciary has in the past indicated its strong intent to defer to the Legislature the question of dealing with the problem of low and moderate income housing. For a discussion of these citations, see Township of Cranbury's initial brief, pages 1 & 2.

It should be further noted that the delay which would occur as the result of the granting of this transfer motion is certainly no greater and probably substantially less than the delay that would occur, if the Township were to appeal whatever ultimate decision may result from this Court. It should be noted in this regard, that the period of time from the original Decision in Mt. Laurel II, was six and one-half years. The vast majority of this time was taken with waiting for the scheduling of oral arguments and waiting for court opinions. In the meantime, the Township of Cranbury is committed to going forward with its support of the Cranbury Housing Associates Project which in its first stage will construct 40 low and moderate income housing units. Despite Mr. Warren's protestations to the contrary, since the initiation of this suit, the Township of Cranbury has continued to support low and moderate income housing in the Township through use of community development revenue sharing funds, and through support of Cranbury Housing Associates Project, such as the Pin Oaks Development which is geared solely towards low income individuals. Granted, these projects are small, but in relative terms the construction of 40 low and moderate income housing units in Cranbury, is the equivalent of the construction of 800 such units in East Brunswick.

Another point that should be addressed is the Urban League argument that the transfer motion should not be granted when it would have the effect of disrupting vested rights. This argument has the effect of saying that somehow the Civic League and the plaintiff builders have a vested right in the fair share number that has been awarded to Cranbury Township. It would almost seem to indicate that they view this action as one for damages with the measure of damages being the fair share number allocated, and once that number has been arrived at, it becomes a property right of theirs which cannot be taken away. When looked at in those terms, the preposterousness of that argument is self evident.

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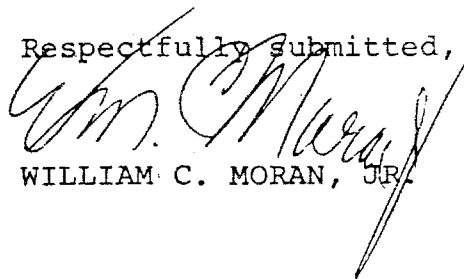
Finally, it should be noted that plaintiff's references to the case of Kruvant v. Cedar Grove, 82 N.J. 435, 1980 are inapposite. Kruvant involved a situation where municipality continually rezoned the plaintiff's property after being reversed on its denial of a zoning variance for a multi-family development. The case was replete with efforts by the municipality to evade directors of the Court without resort to the judicial process. Cranbury Township has done nothing in this case which would in any way evade any Order of a Court which was directed to it, other than to take a judicial appeal of that Order. If it is to be criticized for exercising the rights that are available to it under the law, then again, transfer motions could not legitimately be granted in any case.

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Obviously, there are numerous other points raised in the various briefs which need to be addressed. In the limited time available, however, I wish to highlight these most important points. Additional comments will be made at the time of oral argument.

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Respectfully submitted,



WILLIAM C. MORAN, JR.

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WCM:gs

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